11878 SENATE JUDICIARY

should inquire about such because victims may be embarrassed and reluctant to disclose these facts unless asked.

Visible injuries to the neck may include scratches, abrasions, and scrapes. Redness on the neck may be fleeting, but may demonstrate a detectable pattern. These marks may or may not darken to become a bruise. Bruises may not appear for hours or even days. Chin abrasions are also common, as are tiny red spots called petechiae. These are caused by ruptured capillaries and may be found around the eyes, under the eyelids, anywhere on the face, and on the neck above the area of constriction. Blood red eyes are due to capillary rupture in the white portion of the eyes. This phenomenon suggests a particularly vigorous struggle between the victim and assailant.

In 70 to 80 percent of all domestic violence cases, the victim will recant. Therefore law enforcement should anticipate this and plan on prosecution based on the evidence, just like in a murder case. Efforts should be made to investigate the cases like an attempted homicide case. It is important to ask as many questions as possible at the earliest time possible. For specific questions and checklists to assist in detecting and investigating strangulation cases, go to http://www.correctionhistory.org/northcountry/html/knowlaw/strangulationinvestigation3.htm.

Condensed by NYPTI, (518) 432-1100, the Continuing Legal Education and Mutual Assistance Division of the New York State District Attorneys Association. The points of view or opinions stated in this article are those of the particular author and do not represent the official position of the NYS Division of Criminal Justice Services. Information dealing with a specific legal matter should be researched in original and current sources of authority.

Note to Officers and Prosecutors: Treat Your Strangulation Cases Seriously

Start by using the word "strangle" as opposed to the word "choke." Strangle means to obstruct seriously or fatally the normal breathing of a person. Choke means having the windpipe blocked entirely or partly by some foreign object like food.

"How to Improve Your Investigation and Prosecution of Strangulation Cases" by Gael B. Strack, San Diego Assistant City Attorney and Dr. George McClane, Emergency Physician, October 1998, updated May 1999 is an excellent article. It can be obtained by request from Gael B. Strack at: Gael B. Strack at

Know the Law: Resource Materials on Strangulation

Strangulation Conference

On September 28-30, 1999, the Clinton County District Attorney's Office and the New York Prosecutor's Training Institute sponsored a conference on **Detection and Prosecution of Strangulation in Domestic Violence and Sexual Assault Cases.** Funding was provided by the United States Department of Justice Violence Against Women Grants Office and the New York State Division of Criminal Justice Services.

The leading experts on this subject, Assistant City Attorney Gael Strack of the San Diego City Attorney's Office and George E. McClane, M.D., Emergency Physician at Sharp Health Care in San Diego, came to Plattsburgh and conducted three days of training for more than 350 physicians, nurses, emergency responders, law enforcement, prosecutors, case workers and others.

"Strangulation" refers to the behavior of one person placing one or two hands around the neck of another person and squeezing or applying other pressure. This can kill.

We presented training on detecting and prosecuting strangulation because, in reviewing the Domestic Incident Reports (DIRs) filed by the police and interviewing victims, we repeatedly came across descriptions of the incident that included the complainant being choked - hands put on her throat, sometimes until she passed out! There might have been other physical violence, as well, sometimes not.

In examining this more closely, we found that in about 10% of the DIRs, choking was part of the specific incident. Reports made to the STOP Domestic Violence program by women, about 40% described "choking" as part of the abusive conduct at one or more points in their relationship.

Despite this frequency, rarely was there an arrest for the choking behavior. Seldom were there any marks or visible injuries seen by the police, and the victims themselves often described the choking aspect as minor in relation to the other violence used against them.

In New York, a person cannot be charged with criminal assault unless "physical injury" is actually caused. That is defined in the Penal Law as "impairment of physical condition or substantial pain." The choking cases did not really seem to meet this standard; it was understandable that the police did not make an arrest.

But, we wondered whether there were internal injuries caused by being choked - strangled - that did not leave outward visible signs. Or maybe the signs were there, but we did not know what to look for.

In our search for more information, we found some people around the state asking the same things, but no real answers. Eventually, through an internet search, we made progress. When the key word was "choking," it brought articles about medical conditions or choking on food. "Strangulation" first led to some guy's personal web page that suggested the sexual benefits of that conduct!

In refining the search to "manual strangulation," we came up with articles by pathologists, describing the evidence of strangulation found during autopsies. Hoping for someone who could identify such signs in living people who had been strangled, we pressed on and learned of Gael Strack and Dr. George McClane in San Diego.

We learned that they struggled with the same kinds of problems a couple of years earlier in San Diego, in cases that started with what looked like minor abuse, including choking, and led to homicide. As a consequence, they taught themselves and other law enforcement and medical personnel what to look for to detect whether injury was caused.

As a prosecutor, I know that I can only be effective if there is a good investigation. I depend upon the police, the EMTs, the nurses and doctors for the evidence I use in court.

We now realize that we may be overlooking serious crimes, because we did not know what to look for. The frequency with which manual strangulation is used in domestic violence incidents is surprising: in San Diego, in Plattsburgh, and very likely, everywhere else.

Because we all see it but have not known how to deal with it, we brought the experts from San Diego to train us. We want to learn how to better do our jobs; how to better protect our community.

The three days of training were outstanding - all we hoped for and more. The presentations of Gael Strack and Dr. Geroge McClane are summarized in the New York Prosecutors Training Institute Newsletter which follows.

HB

258

SENATE COMMITTEE REPORT

DATE: 4/27/06

FURTHER:

DATE TURNED
IN TO OFFICE:_____

Judiciary Committee considered CS FOR HOUSE BILL NO. 258(JUD)

HB 258 SEXUAL ASSAULT BY PERSON WITH HIV/AIDS

"An Act relating to aggravating factors at sentencing for sexual assault and sexual abuse."

and recommends:

[ ] be **replaced** with _____ **CS** _____ (_____)

[ ] adopt **previous** _____ **CS** _____ (_____)

[ ] attached amendment(s)

[ ] adopt Letter of Intent by _____ Committee

[ ] further referral to _____ Committee

CS Senate Bill:
[ ] Same Title
[ ] New Title

SCS House Bill:
[ ] Same Title
[ ] Technical Title Change
[ ] New Title w/ SCR #_____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

[ ] **APPROPRIATION - no fiscal note**

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
			X	
	✓			
	X			
CHAIR:	✓			

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
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SPONSOR STATEMENT SCSHB 258( )

"An Act relating to sexual abuse of a minor in the second degree and to aggravating factors at sentencing for sexual assault and sexual abuse."

By Representative Bob Lynn
Released: April 27, 2006

SCSHB 258( ) would make sexual assault by someone who has 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 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.

Twenty-four states have some type of law that specifically criminalizes the exposure or transmission of HIV/AIDS, 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 also addresses an inconsistency in Senate Bill 218 (Sex Offenders/Sentencing/Abuse Reports), which the governor plans to sign today. SCSHB 258( ) should take care of an unintended error regarding authority figures who commit sexual abuse of a minor in the second degree.

This bill is needed to protect all of us, but especially those most at risk – the victims of rape and sexual assault. Your favorable consideration of SCSHB 258( ) 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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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.

24-LS0790\Y
Luckhaupt
4/26/06

SENATE CS FOR CS FOR HOUSE BILL NO. 258( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES LYNN, Neuman, Kelly

A BILL

FOR AN ACT ENTITLED

"An Act relating to sexual abuse of a minor in the second degree and to aggravating factors at sentencing for sexual assault and sexual abuse."

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

*** Section 1.** AS 11.41.436(a), as amended by sec. 1, HCS CSSB 218(FIN), Twenty-Fourth Alaska State Legislature, is amended to read:

(a) An offender commits the crime of sexual abuse of a minor in the second degree if,

(1) being 17 years of age or older, the offender engages in sexual penetration with a person who is 13, 14, or 15 years of age and at least four years younger than the offender, or aids, induces, causes, or encourages a person who is 13, 14, or 15 years of age and at least four years younger than the offender to engage in sexual penetration with another person;

(2) being 16 years of age or older, the offender engages in sexual contact with a person who is under 13 years of age or aids, induces, causes, or

encourages a person under 13 years of age to engage in sexual contact with another person;

(3) being 18 years of age or older, the offender engages in sexual contact with a person who is under 18 years of age, and the offender is the victim's natural parent, stepparent, adopted parent, or legal guardian;

(4) being 16 years of age or older, the offender aids, induces, causes, or encourages a person who is under 16 years of age to engage in conduct described in AS 11.41.425(a)(2) - (6);

(5) being 18 years of age or older, the offender engages in sexual contact with a person who is under 16 years of age, and

(A) the victim at the time of the offense is residing in the same household as the offender and the offender has authority over the victim; or

(B) the offender occupies a position of authority in relation to the victim;

(6) being **18** [20] years of age or older, the offender engages in sexual penetration with a person who is 16 or 17 years of age and at least **three** [FOUR] years younger than the offender, and the offender occupies a position of authority in relation to the victim; or

(7) being under 16 years of age, the offender engages in sexual penetration with a person who is under 13 years of age and at least three years younger than the offender.

*** Sec. 2.** AS 12.55.155(c) is amended by adding a new paragraph to read:

(33) the offense was a felony specified in AS 11.41.410 - 11.41.455, the defendant had been previously diagnosed as having or having tested positive for HIV or AIDS, and the offense either (A) involved penetration, or (B) exposed the victim to a risk or a fear that the offense could result in the transmission of HIV or AIDS; in this paragraph, "HIV" and "AIDS" have the meanings given in AS 18.15.310.

*** Sec. 3.** The uncodified law of the State of Alaska is amended by adding a new section to read:

APPLICABILITY. This Act applies to offenses occurring on or after the effective date

of this Act.

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						
CHANGE IN REVENUES ( )						

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, Adminstrative Director — Date 2/16/2006
Agency: Alaska Court System

(Revised 9/7/2005 OMB)

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						
CHANGE IN REVENUES ( )						

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

(Revised 9/7/2005 OMB)

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 Assult 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**
CHANGE IN REVENUES ( )	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

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-2-21-0
() Publish Date:

Revision Date/Time (Note if correction):
Dept. Affected: LAW
Title "An Act relating to aggravating factors at sentencing."
RDU CRIMINAL
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						
CHANGE IN REVENUES ( )						

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

(Revised 9/7/2005 OMB)

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

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"Bob Lynn's Alaska Blog" AlaskaDistrict31.blogspot.com

Session:
Alaska State Capitol
Juneau, AK 99801-1182

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A brief explanation of the changes from the original HB 258 to SCSHB 258 ( ), which the bill sponsor wants adopted:

On March 24, 2006, the House Health, Education and Social Services amended HB 258 to change the aggravator number from (31) to **(33)** on page 1, line 4.

On April 10, 2006, the House Judiciary Committee amended Section 1 from:

(33) the offense was a felony specified in AS 11.41.410 – 11.41.455 and the defendant had been previously diagnosed as having or having tested positive for HIV or AIDS; in this paragraph, "HIV" and "AIDS" have meanings given in AS 18.15.310.

to:

(33) the offense was a felony specified in AS 11.41.410 – 11.41.455, the defendant had been previously diagnosed as having or having tested positive for HIV or AIDS**, and either A) involved penetration, or B) exposed the victim to a risk or a fear that the offense could result in the transmission of HIV or AIDS**; in this paragraph, "HIV" and "AIDS" have meanings given in AS 18.15.310.

Also on April 10, 2006, the House Judiciary Committee amended the title for CSHB 258(JUD) from "An Act relating to aggravating factors at sentencing." to "An Act relating to aggravating factors at sentencing **for sexual assault and sexual abuse**."

On April 27, 2006, a Senate CS was drafted to include a new Section for CSHB 258 (JUD) to address an inconsistency in Senate Bill 218 (Sex Offenders/Sentencing/Abuse Reports), which the governor plans to sign today. CSHB 258 (JUD) sponsor Rep. Bob Lynn would like the Senate CS adopted and passed out of the Senate Judiciary Committee.

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Sectional Analysis for SCSHB 258( ), "An Act relating to sexual abuse of a minor in the second degree and to aggravating factors at sentencing for sexual assault and sexual abuse."

Released: April 27, 2006
Michael Sica, staff for Rep. Bob Lynn

Section 1. Amends AS 11.41.436 (a) (6), under the crime of sexual abuse of a minor in second degree, to identify an offender as a person being 18 years of age or older, the offender engages in sexual penetration with a person who is 16 or 17 years of age and at least three years younger than the offender, and the offender occupies a position of authority in relation to the victim.

Section 2. Adds a new paragraph to AS 12.55.155 (c) 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, and the offense either involves penetration or exposes the victim to a risk or a fear of transmission of the virus or the disease.

Section 3. 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.

24-LS1883\A
Luckhaupt
4/26/06

SENATE CONCURRENT RESOLUTION NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - SECOND SESSION

BY

Introduced:
Referred:

A RESOLUTION

Suspending Rules 24(c), 35, 41(b), and 42(e), Uniform Rules of the Alaska State Legislature, concerning House Bill No. 258, relating to aggravating factors at sentencing for sexual assault and sexual abuse.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

That under Rule 54, Uniform Rules of the Alaska State Legislature, the provisions of Rules 24(c), 35, 41(b), and 42(e), Uniform Rules of the Alaska State Legislature, regarding changes to the title of a bill, are suspended in consideration of House Bill No. 258, relating to aggravating factors at sentencing for sexual assault and sexual abuse.

L

New Text Underlined [DELETED TEXT BRACKETED]

HB258 Background Information

Reports, studies, fact sheets, statues and other information referred to in the sponsor's Q&A paper

United States Department of Health & Human Services

OCR PRIVACY BRIEF

SUMMARY OF THE HIPAA PRIVACY RULE

HIPAA Compliance Assistance

SUMMARY OF
THE HIPAA PRIVACY RULE

Contents

SUMMARY OF
THE HIPAA PRIVACY RULE

Introduction

The *Standards for Privacy of Individually Identifiable Health Information* ("Privacy Rule") establishes, for the first time, a set of national standards for the protection of certain health information. The U.S. Department of Health and Human Services ("HHS") issued the Privacy Rule to implement the requirement of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA").[1] The Privacy Rule standards address the use and disclosure of individuals' health information—called "protected health information" by organizations subject to the Privacy Rule — called "covered entities," as well as standards for individuals' privacy rights to understand and control how their health information is used. Within HHS, the Office for Civil Rights ("OCR") has responsibility for implementing and enforcing the Privacy Rule with respect to voluntary compliance activities and civil money penalties.

A major goal of the Privacy Rule is to assure that individuals' health information is properly protected while allowing the flow of health information needed to provide and promote high quality health care and to protect the public's health and well being. The Rule strikes a balance that permits important uses of information, while protecting the privacy of people who seek care and healing. Given that the health care marketplace is diverse, the Rule is designed to be flexible and comprehensive to cover the variety of uses and disclosures that need to be addressed.

This is a summary of key elements of the Privacy Rule and not a complete or comprehensive guide to compliance. Entities regulated by the Rule are obligated to comply with all of its applicable requirements and should not rely on this summary as a source of legal information or advice. To make it easier for entities to review the complete requirements of the Rule, provisions of the Rule referenced in this summary are cited in notes at the end of this document. To view the entire Rule, and for other additional helpful information about how it applies, see the OCR website: http://www.hhs.gov/ocr/hipaa. In the event of a conflict between this summary and the Rule, the Rule governs.

Links to the OCR Guidance Document are provided throughout this paper. Provisions of the Rule referenced in this summary are cited in endnotes at the end of this document. To review the entire Rule itself, and for other additional helpful information about how it applies, see the OCR website: http://www.hhs.gov/ocr/hipaa.

Statutory & Regulatory Background

The Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104-191, was enacted on August 21, 1996. Sections 261 through 264 of HIPAA require the Secretary of HHS to publicize standards for the electronic exchange, privacy and security of health information. Collectively these are known as the *Administrative Simplification* provisions.

HIPAA required the Secretary to issue privacy regulations governing individually identifiable health information, if Congress did not enact privacy legislation within

	three years of the passage of HIPAA. Because Congress did not enact privacy legislation, HHS developed a proposed rule and released it for public comment on November 3, 1999. The Department received over 52,000 public comments. The final regulation, the Privacy Rule, was published December 28, 2000.[2] In March 2002, the Department proposed and released for public comment modifications to the Privacy Rule. The Department received over 11,000 comments. The final modifications were published in final form on August 14, 2002.[3] A text combining the final regulation and the modifications can be found at 45 CFR Part 160 and Part 164, Subparts A and E on the OCR website: http://www.hhs.gov/ocr/hipaa.
Who is Covered by the Privacy Rule	The Privacy Rule, as well as all the Administrative Simplification rules, apply to health plans, health care clearinghouses, and to any health care provider who transmits health information in electronic form in connection with transactions for which the Secretary of HHS has adopted standards under HIPAA (the "covered entities"). For help in determining whether you are covered, use the decision tool at: http://www.cms.hhs.gov/hipaa/hipaa2/support/tools/decisionsupport/default.asp. **Health Plans.** Individual and group plans that provide or pay the cost of medical care are covered entities.[4] Health plans include health, dental, vision, and prescription drug insurers, health maintenance organizations ("HMOs"), Medicare, Medicaid, Medicare+Choice and Medicare supplement insurers, and long-term care insurers (excluding nursing home fixed-indemnity policies). Health plans also include employer-sponsored group health plans, government and church-sponsored health plans, and multi-employer health plans. There are exceptions—a group health plan with less than 50 participants that is administered solely by the employer that established and maintains the plan is not a covered entity. Two types of government-funded programs are not health plans: (1) those whose principal purpose is not providing or paying the cost of health care, such as the food stamps program, and (2) those programs whose principal activity is directly providing health care, such as a community health center,[5] or the making of grants to fund the direct provision of health care. Certain types of insurance entities are also not health plans, including entities providing only workers' compensation, automobile insurance, and property and casualty insurance. **Health Care Providers.** Every health care provider, regardless of size, who electronically transmits health information in connection with certain transactions, is a covered entity. These transactions include claims, benefit eligibility inquiries, referral authorization requests, or other transactions for which HHS has established standards under the HIPAA Transactions Rule.[6] Using electronic technology, such as email, does not mean a health care provider is a covered entity; the transmission must be in connection with a standard transaction. The Privacy Rule covers a health care provider whether it electronically transmits these transactions directly or uses a billing service or other third party to do so on its behalf. Health care providers include all "providers of services" (e.g., institutional providers such as hospitals) and "providers of medical or health services" (e.g., non-institutional providers such as physicians, dentists and other practitioners) as defined by Medicare, and any other person or organization that furnishes, bills, or is paid for health care.

	Health Care Clearinghouses. *Health care clearinghouses* are entities that process nonstandard information they receive from another entity into a standard (i.e., standard format or data content), or vice versa.[7] In most instances, health care clearinghouses will receive individually identifiable health information only when they are providing these processing services to a health plan or health care provider as a business associate. In such instances, only certain provisions of the Privacy Rule are applicable to the health care clearinghouse's uses and disclosures of protected health information.[8] Health care clearinghouses include billing services, repricing companies, community health management information systems, and value-added networks and switches if these entities perform clearinghouse functions.
Business Associates	**Business Associate Defined.** In general, a business associate is a person or organization, other than a member of a covered entity's workforce, that performs certain functions or activities on behalf of, or provides certain services to, a covered entity that involve the use or disclosure of individually identifiable health information. Business associate functions or activities on behalf of a covered entity include claims processing, data analysis, utilization review, and billing.[9] Business associate services to a covered entity are limited to legal, actuarial, accounting, consulting, data aggregation, management, administrative, accreditation, or financial services. However, persons or organizations are not considered business associates if their functions or services do not involve the use or disclosure of protected health information, and where any access to protected health information by such persons would be incidental, if at all. A covered entity can be the business associate of another covered entity. **Business Associate Contract.** When a covered entity uses a contractor or other non-workforce member to perform *"business associate"* services or activities, the Rule requires that the covered entity include certain protections for the information in a business associate agreement (in certain circumstances governmental entities may use alternative means to achieve the same protections). In the business associate contract, a covered entity must impose specified written safeguards on the individually identifiable health information used or disclosed by its business associates.[10] Moreover, a covered entity may not contractually authorize its business associate to make any use or disclosure of protected health information that would violate the Rule. Covered entities that have an existing written contract or agreement with business associates prior to October 15, 2002, which is not renewed or modified prior to April 14, 2003, are permitted to continue to operate under that contract until they renew the contract or April 14, 2004, whichever is first.[11] Sample business associate contract language is available on the OCR website at: http://www.hhs.gov/ocr/hipaa/contractprov.html. Also see OCR "Business Associate" Guidance.
What Information is Protected	**Protected Health Information.** The Privacy Rule protects all *"individually identifiable health information"* held or transmitted by a covered entity or its business associate, in any form or media, whether electronic, paper, or oral. The Privacy Rule calls this information *"protected health information (PHI)."*[12]

	"Individually identifiable health information" is information, including demographic data, that relates to: • the individual's past, present or future physical or mental health or condition, • the provision of health care to the individual, or • the past, present, or future payment for the provision of health care to the individual, and that identifies the individual or for which there is a reasonable basis to believe can be used to identify the individual.[13] Individually identifiable health information includes many common identifiers (e.g., name, address, birth date, Social Security Number). The Privacy Rule excludes from protected health information employment records that a covered entity maintains in its capacity as an employer and education and certain other records subject to, or defined in, the Family Educational Rights and Privacy Act, 20 U.S.C. §1232g. **De-Identified Health Information.** There are no restrictions on the use or disclosure of de-identified health information.[14] De-identified health information neither identifies nor provides a reasonable basis to identify an individual. There are two ways to de-identify information; either: 1) a formal determination by a qualified statistician; or 2) the removal of specified identifiers of the individual and of the individual's relatives, household members, and employers is required, and is adequate only if the covered entity has no actual knowledge that the remaining information could be used to identify the individual.[15]
General Principle for Uses and Disclosures	**Basic Principle.** A major purpose of the Privacy Rule is to define and limit the circumstances in which an individual's protected heath information may be used or disclosed by covered entities. A covered entity may not use or disclose protected health information, except either: (1) as the Privacy Rule permits or requires; or (2) as the individual who is the subject of the information (or the individual's personal representative) authorizes in writing.[16] **Required Disclosures.** A covered entity must disclose protected health information in only two situations: (a) to individuals (or their personal representatives) specifically when they request access to, or an accounting of disclosures of, their protected health information; and (b) to HHS when it is undertaking a compliance investigation or review or enforcement action.[17] See OCR "Government Access" Guidance.
Permitted Uses and Disclosures	**Permitted Uses and Disclosures.** A covered entity is permitted, but not required, to use and disclose protected health information, without an individual's authorization, for the following purposes or situations: (1) To the Individual (unless required for access or accounting of disclosures); (2) Treatment, Payment, and Health Care Operations; (3) Opportunity to Agree or Object; (4) Incident to an otherwise permitted use and disclosure; (5) Public Interest and Benefit Activities; and

(6) Limited Data Set for the purposes of research, public health or health care operations.[18] Covered entities may rely on professional ethics and best judgments in deciding which of these permissive uses and disclosures to make.

(1) To the Individual. A covered entity may disclose protected health information to the individual who is the subject of the information.

(2) Treatment, Payment, Health Care Operations. A covered entity may use and disclose protected health information for its own treatment, payment, and health care operations activities.[19] A covered entity also may disclose protected health information for the treatment activities of any health care provider, the payment activities of another covered entity and of any health care provider, or the health care operations of another covered entity involving either quality or competency assurance activities or fraud and abuse detection and compliance activities, if both covered entities have or had a relationship with the individual and the protected health information pertains to the relationship. See OCR "Treatment, Payment, Health Care Operations" Guidance.

> ***Treatment*** is the provision, coordination, or management of health care and related services for an individual by one or more health care providers, including consultation between providers regarding a patient and referral of a patient by one provider to another.[20]
>
> ***Payment*** encompasses activities of a health plan to obtain premiums, determine or fulfill responsibilities for coverage and provision of benefits, and furnish or obtain reimbursement for health care delivered to an individual[21] and activities of a health care provider to obtain payment or be reimbursed for the provision of health care to an individual.
>
> ***Health care operations*** are any of the following activities: (a) quality assessment and improvement activities, including case management and care coordination; (b) competency assurance activities, including provider or health plan performance evaluation, credentialing, and accreditation; (c) conducting or arranging for medical reviews, audits, or legal services, including fraud and abuse detection and compliance programs; (d) specified insurance functions, such as underwriting, risk rating, and reinsuring risk; (e) business planning, development, management, and administration; and (f) business management and general administrative activities of the entity, including but not limited to: de-identifying protected health information, creating a limited data set, and certain fundraising for the benefit of the covered entity.[22]

Most uses and disclosures of psychotherapy notes for treatment, payment, and health care operations purposes require an authorization as described below.[23]

Obtaining "consent" (written permission from individuals to use and disclose their protected health information for treatment, payment, and health care operations) is optional under the Privacy Rule for all covered entities.[24] The content of a consent form, and the process for obtaining consent, are at the discretion of the covered entity electing to seek consent.

(3) Uses and Disclosures with Opportunity to Agree or Object. Informal permission may be obtained by asking the individual outright, or by circumstances that clearly give the individual the opportunity to agree, acquiesce, or object. Where the individual is incapacitated, in an emergency situation, or not available, covered entities generally may make such uses and disclosures, if in the exercise of their professional judgment, the use or disclosure is determined to be in the best interests of the individual.

> ***Facility Directories.*** It is a common practice in many health care facilities, such as hospitals, to maintain a directory of patient contact information. A covered health care provider may rely on an individual's informal permission to list in its facility directory the individual's name, general condition, religious affiliation, and location in the provider's facility.[25] The provider may then disclose the individual's condition and location in the facility to anyone asking for the individual by name, and also may disclose religious affiliation to clergy. Members of the clergy are not required to ask for the individual by name when inquiring about patient religious affiliation.
>
> ***For Notification and Other Purposes.*** A covered entity also may rely on an individual's informal permission to disclose to the individual's family, relatives, or friends, or to other persons whom the individual identifies, protected health information directly relevant to that person's involvement in the individual's care or payment for care.[26] This provision, for example, allows a pharmacist to dispense filled prescriptions to a person acting on behalf of the patient. Similarly, a covered entity may rely on an individual's informal permission to use or disclose protected health information for the purpose of notifying (including identifying or locating) family members, personal representatives, or others responsible for the individual's care of the individual's location, general condition, or death. In addition, protected health information may be disclosed for notification purposes to public or private entities authorized by law or charter to assist in disaster relief efforts.

(4) Incidental Use and Disclosure. The Privacy Rule does not require that every risk of an incidental use or disclosure of protected health information be eliminated. A use or disclosure of this information that occurs as a result of, or as "incident to," an otherwise permitted use or disclosure is permitted as long as the covered entity has adopted reasonable safeguards as required by the Privacy Rule, and the information being shared was limited to the "minimum necessary," as required by the Privacy Rule.[27] See OCR "Incidental Uses and Disclosures" Guidance.

(5) Public Interest and Benefit Activities. The Privacy Rule permits use and disclosure of protected health information, without an individual's authorization or permission, for 12 national priority purposes.[28] These disclosures are permitted, although not required, by the Rule in recognition of the important uses made of health information outside of the health care context. Specific conditions or limitations apply to each public interest purpose, striking the balance between the individual privacy interest and the public interest need for this information.

> ***Required by Law.*** Covered entities may use and disclose protected health information without individual authorization as *required by law* (including by

statute, regulation, or court orders).[29]

Public Health Activities. Covered entities may disclose protected health information to: (1) public health authorities authorized by law to collect or receive such information for preventing or controlling disease, injury, or disability and to public health or other government authorities authorized to receive reports of child abuse and neglect; (2) entities subject to FDA regulation regarding FDA regulated products or activities for purposes such as adverse event reporting, tracking of products, product recalls, and post-marketing surveillance; (3) individuals who may have contracted or been exposed to a communicable disease when notification is authorized by law; and (4) employers, regarding employees, when requested by employers, for information concerning a work-related illness or injury or workplace related medical surveillance, because such information is needed by the employer to comply with the Occupational Safety and Health Administration (OHSA), the Mine Safety and Health Administration (MHSA), or similar state law.[30] See OCR "Public Health" Guidance. CDC Public Health and HIPAA Guidance.

Victims of Abuse, Neglect or Domestic Violence. In certain circumstances, covered entities may disclose protected health information to appropriate government authorities regarding victims of abuse, neglect, or domestic violence.[31]

Health Oversight Activities. Covered entities may disclose protected health information to health oversight agencies (as defined in the Rule) for purposes of legally authorized health oversight activities, such as audits and investigations necessary for oversight of the health care system and government benefit programs.[32]

Judicial and Administrative Proceedings. Covered entities may disclose protected health information in a judicial or administrative proceeding if the request for the information is through an order from a court or administrative tribunal. Such information may also be disclosed in response to a subpoena or other lawful process if certain assurances regarding notice to the individual or a protective order are provided.[33]

Law Enforcement Purposes. Covered entities may disclose protected health information to law enforcement officials for law enforcement purposes under the following six circumstances, and subject to specified conditions: (1) as required by law (including court orders, court-ordered warrants, subpoenas) and administrative requests; (2) to identify or locate a suspect, fugitive, material witness, or missing person; (3) in response to a law enforcement official's request for information about a victim or suspected victim of a crime; (4) to alert law enforcement of a person's death, if the covered entity suspects that criminal activity caused the death; (5) when a covered entity believes that protected health information is evidence of a crime that occurred on its premises; and (6) by a covered health care provider in a medical emergency not occurring on its premises, when necessary to inform law enforcement about the commission and nature of a crime, the location of the crime or crime victims, and the perpetrator of the crime.[34]

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PHOTO ESSAYS

WHITE HOUSE FEATURES

The HIV/AIDS Epidemic: 20 Years in the U.S.

AIDS Information in the U.S.	Statistics
Number of people living with HIV/AIDS	Approx. 900,000
Number of people who may not know they are HIV pos.	Approx. 300,000
Number of new HIV infections per year	Approx. 40,000
Percent of new HIV infections who are male	70%
Percent of new HIV infections who are female	30%
Cumulative AIDS cases (as of June 2000)	753,907
Percent of AIDS cases (as of June 2000) who are male	76%
Percent of AIDS cases (as of June 2000) who are female	24%
Number of new AIDS cases (7/99-6/00)	43,517
Cumulative number who have died from AIDS	438,795
Percent of AIDS deaths who are male	85%
Percent of AIDS deaths who are female	15%
Number of States affected by HIV/AIDS	50 + DC and US territories

Death due to AIDS by race/ethnicity	AIDS Deaths	U.S. Population
White, non-Hispanic	46%	71%
African American	35%	12%
Latino	17%	13%
Asian/Pacific Islander	1%	4%
American Indian/Alaska Native	<1%	1%

Mode of transmission among men	Percent
Men who have sex with men (MSM)	47%
Injection drug use (IDU)	25%
Heterosexual sex	10%
Other	18%

Mode of transmission among women	Percent
Heterosexual sex	75%
Injection drug use (IDU)	25%

HIV/AIDS among ethnic populations (men)	AIDS Cases	U.S.

Office of National AIDS Policy

Summary Fact Sheet on HIV/AIDS

Carol Thompson, Director, White House Office of National AIDS Policy

Get Information
Prevention & Education
General Information
Global Pandemic

Contact Information
The White House
Washington, DC 20502
(202) 456-7320
FAX (202) 456-7315

A Glance at the HIV/AIDS Epidemic

View PDF (374 KB, 2 pages)

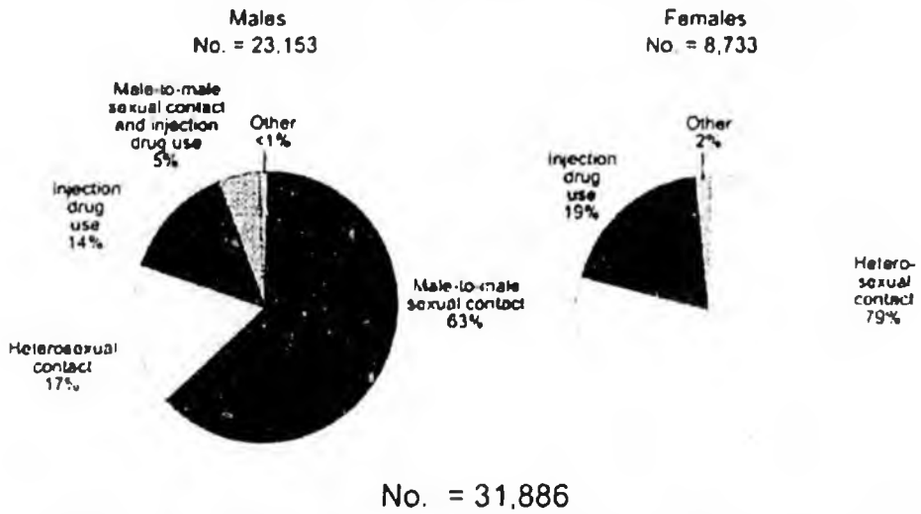
HIV/AIDS Diagnoses

At the end of 2003, an estimated 1,039,000 to 1,185,000 persons in the United States were living with HIV/AIDS [1]. In 2003, 32,048 cases of HIV/AIDS were reported from the 33 areas (32 states and the US Virgin Islands) with long-term, confidential name-based HIV reporting [2]. When all 50 states are considered, CDC estimates that approximately 40,000 persons become infected with HIV each year [1].

By Exposure

In 2003, men who have sex with men (MSM) represented the largest proportion of HIV/AIDS diagnoses, followed by adults and adolescents infected through heterosexual contact.

Exposure categories of adults and adolescents who received a diagnosis of HIV/AIDS, 2003



No. = 31,886

Note. Based on data from 33 areas with long-term, confidential name-based HIV reporting

HIV/AIDS includes persons with a diagnosis of HIV infection (not AIDS), a diagnosis of HIV infection and a later diagnosis of AIDS, or concurrent diagnoses of HIV infection and AIDS.

By Sex

In 2003, almost three quarters of HIV/AIDS diagnoses were made for male adolescents and adults.

DEFINITIONS FOR AIDS AND HIV IN ALASKA STATUTES

Sec. 18.15.310. Testing; test results.

(a) The withdrawal of blood for a test under AS 18.15.300 - 18.15.320 shall be performed in a medically approved manner. Only a physician or physician assistant licensed under AS 08.64, registered nurse, licensed practical nurse, or certified emergency medical technician may withdraw blood specimens for the purposes of AS 18.15.300 - 18.15.320.

(b) The court shall order that the blood specimens withdrawn under AS 18.15.300 - 18.15.320 be transmitted to a licensed medical laboratory and that tests be conducted on them for medically accepted indications of exposure to or infection by the human immunodeficiency virus (HIV) and other sexually transmitted diseases for which medically approved testing is readily and economically available as determined by the court.

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

(d) The test results shall be provided to the designated recipients with the following disclaimer.

"The tests were conducted in a medically approved manner but tests cannot determine exposure to or infection by HIV or other sexually transmitted diseases with absolute accuracy. Persons receiving this test result should continue to monitor their own health and should consult a physician as appropriate."

(e) The court shall order all persons, other than the test subject, who receive test results under AS 18.15.300 - 18.15.320 to maintain the confidentiality of personal identifying data relating to the test results except for disclosures by the victim, or if the victim is a minor or incompetent by the victim's parents or legal guardian, as

(1) is necessary to obtain medical or psychological care or advice or to ensure the health of the victim's spouse, immediate family, persons occupying the same household as the victim, or a person in a dating, courtship, or engagement relationship with the victim:

(2) is necessary to pursue civil remedies against the test subject; or

(3) otherwise permitted by the court.

(f) The specimens and the results of tests ordered under AS 18.15.300 - 18.15.320 are not admissible evidence in a criminal or juvenile proceeding.

(g) A person performing testing, transmitting test results, or disclosing information under AS 18.15.300 - 18.15.320 is immune from civil liability for an act or omission under authority of AS 18.15.300 - 18.15.320. However, this subsection does not preclude liability for a grossly negligent or intentional violation of a provision of AS 18.15.300 - 18.15.320.

(h) If the results of a blood test conducted under AS 18.15.300 indicate exposure to or infection by HIV or other sexually transmitted diseases for which testing was conducted, the department shall provide (1) free counseling and free testing to a victim for HIV and other sexually transmitted diseases reasonably communicable through the offense; and (2) counseling to the alleged perpetrator or defendant upon request of the alleged perpetrator or defendant. The department shall provide referral to appropriate health care facilities and support services at the request of the victim.

(i) In this section,

(1) "AIDS" means acquired immunodeficiency syndrome or HIV symptomatic disease;

(2) "counseling" means providing a person with information and explanations relating to AIDS and HIV that are medically appropriate for that person, including all or part of the following:

(A) accurate information regarding AIDS and HIV;

(B) an explanation of behaviors that reduce the risk of transmitting AIDS and HIV;

(C) an explanation of the confidentiality of information relating to AIDS diagnoses and HIV tests;

(D) an explanation of information regarding both social and medical implications of HIV tests;

(E) disclosure of commonly recognized treatment or treatments of AIDS and HIV;

(3) "HIV" means the human immunodeficiency virus.

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 12.55.145 (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 trail 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 (l) 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 12.55.086, 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 08.54.720 (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 (l) of this section, 25 to 35 years;

(F) if the offense is a third felony conviction, the defendant is not subject to sentencing under (l) 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 (l) of this section, 15 to 25 years;

(F) if the offense is a third felony conviction, the defendant is not subject to sentencing under (l) 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;

(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.

DEFNITIONS FOR PHYSICAL INJURY, SEXUAL CONTACT AND SEXUAL PENETRATION IN ALASKA STATUTES

Sec. 11.81.900. Definitions.

(a) For purposes of this title, unless the context requires otherwise,

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(56) "serious physical injury" means

(A) physical injury caused by an act performed under circumstances that create a substantial risk of death; or

(B) physical injury that causes serious and protracted disfigurement, protracted impairment of health, protracted loss or impairment of the function of a body member or organ, or that unlawfully terminates a pregnancy;

(57) "services" includes labor, professional services, transportation, telephone or other communications service, entertainment, including cable, subscription, or pay television or other telecommunications service, the supplying of food, lodging, or other accommodations in hotels, restaurants, or elsewhere, admission to exhibitions, the use of a computer, computer time, a computer system, a computer program, a computer network, or any part of a computer system or network, and the supplying of equipment for use;

(58) "sexual contact" means

(A) the defendant's

(i) knowingly touching, directly or through clothing, the victim's genitals, anus, or female breast; or

(ii) knowingly causing the victim to touch, directly or through clothing, the defendant's or victim's genitals, anus, or female breast;

(B) but "sexual contact" does not include acts

(i) that may reasonably be construed to be normal caretaker responsibilities for a child, interactions with a child, or affection for a child;

(ii) performed for the purpose of administering a recognized and lawful form of treatment that is reasonably adapted to promoting the physical or mental health of the person being treated; or

(iii) that are a necessary part of a search of a person committed to the custody of the Department of Corrections or the Department of Health and Social Services;

(59) "sexual penetration"

(A) means genital intercourse, cunnilingus, fellatio, anal intercourse, or an intrusion, however slight, of an object or any part of a person's body into the genital or anal opening of another person's body; each party to any of the acts described in this subparagraph is considered to be engaged in sexual penetration;

(B) does not include acts

(i) performed for the purpose of administering a recognized and lawful form of treatment that is reasonably adapted to promoting the physical health of the person being treated, or

(ii) that are a necessary part of a search of a person committed to the custody of the Department of Corrections or the Department of Health and Social Services;

ACTIVE FORUMS:

- Choosing Your Meds
- Fatigue and Anemia
- Fusion Inhibitors
- Hepatitis and HIV Coinfection
- Managing Side Effects of HIV Treatment
- Mental Health and HIV
- Mixed-HIV-Status Couples
- Safe Sex and HIV Prevention
- Tratamientos (En Español)
- Understanding Your Labs
- Women and HIV
- Workplace and Insurance Issues

INACTIVE FORUMS:

- AIDS-Related Cancers
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Q Normal Life Expectancy?

Jan 14, 2006

First, I should tell you that each and every one of the professionals on this site that work so hard to add a voice of reason to an otherwise very confusion situation are worth your weight in gold. Thank you.

I am a 40 year old man newly diagnosed with HIV. I am a professional; dont smoke cigarettes, and only drink in moderation. My Doctor does not feel it is time to begin medication because my numbers are all near normal. I dont NOT have co infections such as Hep. A, B or C and I dont have diabetes (thank goodness).

I am the type of person who is extremely able to adhere to medications and have access to an excellent HIV Doctor and medication. Do you think it is reasonable to assume that can live a normal life span (providing I dont get hit in the head with a coconut or other circumstance beyond HIV)? I read conflicting things on life span from 10 years to a normal life span. Please tell me what prognoses for the future that you would tell one of your patients in a similar circumstance. Thank you and look forward to your answer.

A Response from Dr. Sherer

Renslow Sherer, MD
University of Chicago Hospitals

I tell my patients who have just been found to have HIV that there IS a chance of a normal life expectancy, and that that chance has been getting greater with each passing year, as the risk of antiretroviral therapy failures has decreased in the past 10 years.

So that's the good, optimistic news. And of course I inform them that this will not be easy, even in the best of circumstances. Adherence to daily medications is extremely demanding, even if there are no untoward side effects. Life with HIV is still a hard life, even if the medication part becomes simple and routine, as it does for a remarkable percentage of patients these days.

I prepare patients for a life long struggle with adherence, in part to be sure to get their attention at the outset, but also from long and hard experience, it is for many patients who perfectly fit the profile that you describe. If it turns out to be easier than expected, thats great...but lapses in adherence often result from complacency and a sense that 'I've got everything covered'. So some vigilance is

Oral Health and HIV

Spiritual Support and HIV

required.

But there is still harder news in that first encounter. A patient may do everything right, with exemplary perfect adherence...and still have trouble with ART, virologic failure, resistance mutations, and a difficult sequence of ART. Fortunately these are uncommon events in this era, but they still do occur.

I appreciate your coconut comment as well, as any one of us may obsess over one illness (maybe HIV, maybe diabetes, maybe cancer) only to walk in front of a bus. Its a reminder to enjoy life on this day, because none of knows what tomorrow will bring.

In sum - there was a modeling study of a 40 year old male with a story similar to yours and new HIV infection, the outcome of which was a reasonable chance of a normal life expectancy in the event of positive outcomes with antiretroviral therapy. I tell all new HIV positive patients about that study. And then I also tell them the possibilities for the outcomes that are less than the best.

Please Note: Due to volume considerations, not all questions can be answered. Questions most likely to be answered will be those of general interest to a broad group of visitors to this forum. Questions pertaining to a specific case; requests for diagnosis, medical advice, or second opinion; or requests for opinions about untested alternative therapies will generally not be answered.

The participation of Dr. Andrew Sherer in this forum is made possible in part by an unrestricted educational grant from Abbott Laboratories.

Terms of Use

www.cdc.gov/hepatitis
October 25, 2005

Hepatitis C Fact Sheet

SIGNS & SYMPTOMS	80% of persons have no signs or symptoms.	
	• jaundice • fatigue • dark urine	• abdominal pain • loss of appetite • nausea
CAUSE	• Hepatitis C virus (HCV)	
LONG-TERM EFFECTS	• Chronic infection: 55%-85% of infected persons • Chronic liver disease: 70% of chronically infected persons • Deaths from chronic liver disease: 1%-5% of infected persons may die • Leading indication for liver transplant	
TRANSMISSION	• Occurs when blood from an infected person enters the body of a person who is not infected. • HCV is spread through sharing needles or "works" when "shooting" drugs, through needlesticks or sharps exposures on the job, or from an infected mother to her baby during birth.	

Recommendations for testing based on risk for HCV infection

Persons at risk for HCV infection might also be at risk for infection with hepatitis B virus (HBV) or HIV.

Recommendations for Testing Based on Risk for HCV Infection

PERSONS	RISK OF INFECTION	TESTING RECOMMENDED?
Injecting drug users	High	Yes
Recipients of clotting factors made before 1987	High	Yes
Hemodialysis patients	Intermediate	Yes
Recipients of blood and/or solid organs before 1992	Intermediate	Yes
People with undiagnosed liver problems	Intermediate	Yes
Infants born to infected mothers	Intermediate	After 12-18 mos. old
Healthcare/public safety workers	Low	Only after known exposure
People having sex with multiple partners	Low	No*
People having sex with an infected steady partner	Low	No*

*Anyone who wants to get tested should ask their doctor.

CALIFORNIA STD/HIV PREVENTION TRAINING CENTER

Genital Herpes

Genital herpes is a Sexually Transmitted Disease (STD) caused by a herpes simplex virus (HSV). Genital herpes can cause sores on the genitals (vagina, penis and anus) and the skin around those areas.

Q: How is genital herpes spread?

A: Herpes is spread by direct contact with infected skin or sores during sexual activity. The virus is usually passed from an infected person's genitals or mouth to their partner's genitals during oral, vaginal or anal sex. A person with genital herpes may have sores or blisters. However, herpes is commonly passed to a sex partner when no actual sores are present.

Q: What are the signs and symptoms of genital herpes?

A: **Symptoms of genital herpes can include:**

- Blisters or sores on the genitals that may last a few days to a week or more.
- Tingling, numbness or itching at the site of the sores a day or two before they appear.
- Genital herpes infection lasts for life, although sores may come and go.

Q: Can I have genital herpes and not know it?

A: **Yes!** About 1 out of 4 sexually active adults are infected with genital herpes and most don't know they have it.

☞ **MANY PEOPLE HAVE NO SYMPTOMS, OR MILD SYMPTOMS THAT THEY DON'T KNOW ARE CAUSED BY HERPES.**

Q: Is genital herpes serious?

A:

- Genital herpes is not usually a severe or dangerous infection, but it can be painful.
- The first outbreak of sores is usually the worst. Recurrent outbreaks are sometimes linked to prolonged sunlight exposure, stress, fatigue, lack of sleep, or menstruation.
- A pregnant woman who has herpes should tell her doctor so that steps can be taken to protect the baby's health.
- A person with the open sores caused by genital herpes has a greater chance of giving or getting HIV, the virus that causes AIDS.
- If fluid from a herpes sore is passed to the eye (by hands touching the sore and then the eye), vision may be permanently damaged.

Q: How is genital herpes treated?

A:
- There is no cure for herpes. There are several medications, available by prescription, that can help control herpes outbreaks. Ask your doctor or nurse for more information.
- For some people, the outbreaks are mild and do not require medication.

Q: How can I avoid getting genital herpes?

A:
- ☐ Abstinence (not having sex) is the only sure way to avoid infection.
- ☐ **Plan Ahead:** Think about protecting yourself. Talk about STDs and the need to protect yourself with your sex partner(s).
- ☐ Use a male condom with each sex partner.
- ☐ If a male condom cannot be used properly, the female condom can be used.

Note: Condoms are more likely to protect you from genital herpes if they cover the infected area(s).

HIV IS ALSO A STD!

When you get infected with genital herpes, you could also be getting HIV.
Birth control pills or a birth control shot cannot protect you against genital herpes or other STDs.

☞ **USING CONDOMS CORRECTLY EVERY TIME YOU HAVE SEX CAN PROTECT YOU FROM HERPES, HIV, AND OTHER STDs.**

Where can I get more information about STDs and protecting myself?

- **In English:** Call toll free: National STD/HIV hotlines at 1+(800) 342-2437 or 1+(800) 227-8922.
- **In Spanish:** Call toll free: 1+(800) 344-7432
- **TTY for the Deaf and Hard of Hearing:** 1+(800) 243-7889

Talk to your own health care provider or call your county health department by looking for the telephone number in the phone book (white pages) under county government. Ask to speak to someone in the STD clinic or the STD program for more information about genital herpes.

HIV Therapy: Early Treatment Extends Life

June 11, 2003

A study led by Dr. Bruce Schackman of Weill Cornell Medical College shows that early antiretroviral therapy for HIV-positive patients may significantly increase life expectancy -- even after accounting for side effects like heightened cholesterol levels. And though early therapy is still being denied to many patients because of cost, it was found to be cost-effective.

In the study's computer simulation model, the projected life expectancy of a 37-year-old patient receiving early highly active antiretroviral therapy was nearly three years longer than that of a patient receiving delayed therapy (16.54 years vs. 13.73 years), even assuming increased cholesterol levels, a side effect associated with the therapy. This benefit is attributable to HAART's effectiveness in reducing HIV viral levels, which improves CD4 cell count and leads to a reduction in the likelihood of opportunistic infections. The study also compared life expectancy for early vs. delayed therapy assuming no cholesterol side effects, and the results were similar (16.66 years vs. 13.80 years).

The timing of HAART initiation has been the subject of controversy because of the drugs' side effects, including elevated cholesterol and fat redistribution (a condition that may have a negative effect on the patient's quality of life but is not life-threatening). Last year the U.S. Department of Health and Human Services changed its recommendation for initial HAART use: It suggested offering HAART only to those patients with somewhat more advanced disease (viral loads of greater than 30,000 copies/mL or CD4 cell count less than 350/(micro)L.

The current study's findings suggest that HIV patients who choose early treatment offered according to current guidelines will benefit. "Changes in cholesterol levels or quality of life associated with HAART should not be used by government or private payers to justify placing limitations on access to early HIV treatment," said Schackman, an assistant professor of public health. "We know that access is being denied due to budget limitations among AIDS Drug Assistance Programs, which frequently pay for early treatment for HIV patients who are too healthy to qualify for Medicaid. [ADAPs] in 10 states have one or more program restrictions, including capped enrollment, limited drug coverage, or expenditure caps. Early treatment is cost-effective, so enrollment caps that delay access until the patient's HIV disease becomes more advanced

are an inefficient reallocation of resources."

Early HAART is more expensive than delayed treatment. However, its cost-effectiveness ratio -- a measure of "value for money" -- is well below the median for all medical interventions nationwide. Early HAART's cost-effectiveness ratio was shown to be $13,000 per quality-adjusted life year, with or without the consideration of increased risk of heart disease. Even after adjusting for the decline in quality of life that may be associated with fat redistribution, early HAART's cost-effectiveness ratio was $17,000-$24,000 per quality-adjusted life year. This ratio is less than half that for cholesterol-lowering drugs used to prevent coronary heart disease in men without HIV.

The full report, "Cost-effectiveness Implications of the Timing of Antiretroviral Therapy in HIV-Infected Adults," was published in the *Archives of Internal Medicine* (2002;162:2478-2486).

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Excerpted from:
AIDS Weekly
05.26.03

This article is a part of the publication *The CDC HIV, STD, TB Prevention News Update*

Our thanks to Centers for Disease Control and Prevention, which provided this article to The Body.

Letters of Support for HB 258

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 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 99507-1599 • 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.

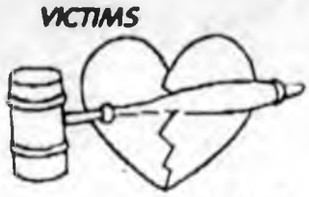
What can be insidious with some of those unfortunates who knowingly have been diagnosed with the "HIV" and "AIDS" virus is that they, for reasons of their own, can utilize their disease as a weapon to again strike out with the intent to harm. It would not be the handgun or edged weapon that police and 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



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

Susan Sullivan

Susan Sullivan
Executive Director
Victims for Justice

STATE OF ALASKA

DEPARTMENT OF ADMINISTRATION

VIOLENT CRIMES COMPENSATION BOARD

FRANK H. MURKOWSKI, GOVERNOR

P.O. 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 sponsor(s) and for their hard word work on behalf of Alaska crime victims.

Respectfully,

Susan L. Browne
for
Gerad Godfrey
Chair

Juneau Office
130 Seward St #209
Juneau, Alaska 99801
Phone: (907) 586-3650
Fax: (907) 463-4493
www.andvsa.org

ANDVSA
Alaska Network on Domestic Violence & Sexual Assault

Sitka Office
PO Box 6631
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

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 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 effects 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

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,

Chief Thomas Clemons
President
Alaska Association of Chiefs of Police

(907) 224-3338 PO Box 167 Seward, AK 99664

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 fulles. 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!

P.O. Box 210290 • Anchorage, Alaska 99521
Phone: 1 (907) 646-2262 • Fax: 1 (907) 646-2286
Website: www.acoa.us

HB258 Legislative Research Services Report and Other Background Material

HIV CRIMINAL LAW AND POLICY PROJECT

February 09

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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

Enter a Search Term:

Search

HIV CRIMINAL LAW AND POLICY PROJECT

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Alaska (AK)

HIV-Specific Criminal Laws

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

STD/Communicable Disease Criminal Laws

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

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

Suggested Citation:

HIV Criminal Law and Policy Project (2002). "HIV Criminal Law and Public Health Profile for Alaska." Retrieved February 09, 2006, from http://www.hivcriminallaw.org/state/profile.cfm?id=2

THE NATIONAL CENTER FOR
Victims of Crime

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HIV/AIDS Legislation

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 orderfor 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 - 2pm; 2pm - 5pm, PST)

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

(202) 898 - 0414
(202) 739 - 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.

Submit Query

National Center for Victims of Crime
2000 M Street NW, Suite 480
Washington, D.C. 20036
phone: 202-467-8700
fax: 202-467-8701

Lambada Legal HIV Project 9/9/2002

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, *however slight*, 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 t[illegible]erson 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.

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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. *See also* Colo. Rev. Stat. § 16-13-804.
	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. *See* 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 tranplantation, 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.