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State Criminal Statutes on HIV Transmission

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

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

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

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State	Statute	Type of Crime	Summary
Iowa	Iowa Code § 709C.1	Class B Felony	A person commits criminal transmission of HIV if the person, knowing of his or her HIV positive status, engages in intimate contact with another person, provides blood or bodily fluids for administration to another person, or in any way transfers to another person any nonsterile intravenous or intramuscular drug paraphernalia previously used by the person infected with HIV. ?Intimate contact? means the intentional exposure of the body of one person to a bodily fluid of another person in a manner that could result in the transmission of HIV. Actual transmission of HIV is not a necessary element of this crime. It is an affirmative defense that the person exposed to HIV knew of the other person's HIV positive status, knew that the action of exposure could result in transmission of HIV, and consented to the action of exposure with that knowledge.
Kansas	Kans Stat Ann. § 65-6005	Class C Misdemeanor	Any person violating, refusing or neglecting to obey any provision of the rules and regulations adopted by the Secretary of Health for the prevention and control of AIDS shall be guilty of a class C misdemeanor.
Kentucky	Ky Rev Stat Ann § 311.990	Class D Felony	Any person infected with HIV, knowing that he is infected and having been informed that he may communicate the infection by donating human organs, skin or tissues, who donates organs, skin or other human tissue is guilty of a class D felony.
	Ky Rev Stat Ann § 311.990	Class A Misdemeanor	Any person who fails to test organs, skin or other human tissue which is to be transplanted is guilty of a class A misdemeanor.
	Ky Rev Stat Ann § 529.090	Class D Felony	Any person who commits, offers, agrees to commit or procures another to commit prostitution by engaging in sexual activity in a manner likely to transmit HIV and who, prior to the commission of the crime, had tested positive for HIV and knew or had been informed that he had tested positive and that he could possibly communicate the disease to another through sexual activity is guilty of a class D felony.
Louisiana	La Rev Stat Ann § 14:43.5	Not specified	No person shall intentionally expose another to any AIDS virus through sexual contact or through any other means or contact without the knowing and lawful consent of the victim. Those who commit this crime shall be fined not more than \$5000, imprisoned with or without hard labor for not more than 10 years, or both. If the victim is a police officer, the fine will be not more than \$6000 and the imprisonment not more than 11 years.
	La Rev Stat Ann § 40:1062.1	Not specified	A health facility, agency, or physician which violates the provisions on testing donated semen for HIV shall be fined not more than \$2000 and shall be liable for damages in a civil action.

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State	Statute	Type of Crime	Summary
Maine	N/A		
Maryland	Md Code, Ann., Health General § 18-601.1	Misdemeanor	A person with HIV who knowingly transfers or attempts to transfer the virus to another individual is guilty of a misdemeanor, punishable by a fine not exceeding \$2,500 or imprisonment not exceeding 3 years, or both.
Massachusetts	N/A		
Michigan	Mich. Comp. Laws Ann § 14 15 (5210)	Felony	A person who knows that he or she has or has been diagnosed as having AIDS or who knows that he or she is HIV positive, and who engages in sexual penetration with another person without informing that person of his HIV positive status or AIDS condition, is guilty of a felony. "Sexual penetration" means sexual intercourse, cunnilingus, fellatio, anal intercourse, or any other intrusion, 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. It is irrelevant for purposes of this offense whether semen has been emitted.
Minnesota	N/A		
Mississippi	Miss Code Ann § 41-23-29	Misdemeanor	The state board of health has to the power to isolate, quarantine or otherwise confine a person afflicted with an infectious STD. The board may create rules and regulations relevant to this power. Violation of those rules and regulations will be deemed a misdemeanor and is punishable by fine or imprisonment or both.
	Miss Code Ann § 41-23-29	Misdemeanor	Any person suspected of being afflicted with an infectious STD may be subject to physical examination and inspection by any representative of the state board of health. Failure or refusal to allow such inspection or examination is a misdemeanor.
Missouri	Mo Rev Stat § 191.677 (2002)	Class B Felony, Class A Felony	It is unlawful for a person knowingly infected with HIV to be (or attempt to be) a donor of blood, blood products, organs, sperm or tissue, except as deemed necessary for medical research. It is also unlawful for a person knowingly infected with HIV to act in a reckless manner by exposing another person to HIV without the knowledge and consent of that person, in any of the following three manners: (1) through contact with blood, semen or vaginal secretions during oral, anal or vaginal sex, (2) by sharing needles, or (3) by biting another person or purposely doing anything else which causes the HIV infected person's semen, vaginal secretions, or blood to come into contact with the mucous membranes or nonintact skin of another person. The use of a condom is not a defense. A violation of these provisions is a class B felony, unless the victim contracts HIV from the contact, in which case it is a class A felony.

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

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State	Statute	Type of Crime	Summary
New Mexico	N/A		
New York	N/A		
North Carolina	N/A		
North Dakota	N.D. Cent Code § 12 1-20-17	Class A Felony	A person who, knowing that he or she has HIV or AIDS or AIDS related symptoms, willfully transfers any of his or her body fluid to another person is guilty of a class A felony. It is an affirmative defense that, if the transfer was by sexual activity, the activity took place between consenting adults after full disclosure of the risk of the activity and with the use of an appropriate prophylactic device.
Ohio	Ohio Rev Code Ann. § 2903 11	Second Degree Felony, First Degree Felony	No person, with knowledge that the person has tested positive for HIV, shall do any of the following: (1) Engage in sexual conduct with another person without disclosing his or her HIV positive status to the other person prior to engaging in the sexual conduct, (2) Engage in sexual conduct with a person whom the offender knows or has reasonable cause to believe lacks the mental capacity to appreciate the significance of the knowledge that the offender is HIV positive, or (3) Engage in sexual conduct with a person under 18 who is not the spouse of the offender. Violation of this provision is felonious assault, a felony of the second degree. If the victim is a peace officer and suffers serious physical harm as a result of the offense, it is a felony in the first degree.
	Ohio Rev Code Ann. § 2907 25	Third Degree Felony	No person, with knowledge that the person has tested positive for HIV, shall engage in sexual activity for hire. Violation of this provision is a third degree felony.
	Ohio Rev Code Ann. § 2907 24	Third Degree Felony	No person, with knowledge that the person has tested positive for HIV, shall solicit another person to engage in sexual activity for hire.
	Ohio Rev Code Ann. § 2907 241	Fifth Degree Felony	A person who commits "loitering to engage in prostitution" commits a fifth degree felony if the person commits the offense with the knowledge that he or she has tested positive for HIV.
	Ohio Rev Code Ann. § 2921 38	Third Degree Felony	No person who is confined in a detention facility, with knowledge that the person is HIV positive and with the intent to harass, annoy, threaten, or alarm another person, shall cause or attempt to cause the other person to come into contact with blood, semen, urine, feces, or another bodily substance. Violation of this provision is a third degree felony.

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

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

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

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

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

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

Relevant Alaska Statutes for HB 258

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

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

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

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

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

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

SEXUAL OFFENSES IN ALASKA STATUTES

Sec. 11.41.410. Sexual assault in the first degree.

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

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

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

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

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

(B) who is in the offender's care

(i) by authority of law; or

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

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

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

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

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

Sec. 11.41.420. Sexual assault in the second degree.

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

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

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

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

(B) who is in the offender's care

(i) by authority of law; or

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

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

(A) mentally incapable;

(B) incapacitated; or

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

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

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

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

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

Sec. 11.41.425. Sexual assault in the third degree.

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

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

(A) mentally incapable;

(B) incapacitated; or

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

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

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

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

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

Sec. 11.41.427. Sexual assault in the fourth degree.

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

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

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

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

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

Repealed or Renumbered

Sec. 11.41.432. Defenses.

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

(1) mentally incapable; or

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

(b) Except as provided in (a) of this section, in a prosecution under AS 11.41.410 or 11.41.420, it is not a defense that the victim was, at the time of the alleged offense, the legal spouse of the defendant.

Sec. 11.41.434. Sexual abuse of a minor in the first degree.

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

(1) being 16 years of age or older, the offender engages in sexual penetration with a person who is under 13 years of age or aids, induces, causes, or encourages a person who is under 13 years of age to engage in sexual penetration with another person;

(2) being 18 years of age or older, the offender engages in sexual penetration 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; or

(3) being 18 years of age or older, the offender engages in sexual penetration 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.

(b) Sexual abuse of a minor in the first degree is an unclassified felony and is punishable as provided in AS 12.55.

Sec. 11.41.436. Sexual abuse of a minor in the second degree.

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

(1) being 16 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 three 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 three 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 11.41.455 (a)(2) - (6); or

(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.

(b) Sexual abuse of a minor in the second degree is a class B felony.

Sec. 11.41.438. Sexual abuse of a minor in the third degree.

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

(1) being 16 years of age or older, the offender engages in sexual contact with a person who is 13, 14, or 15 years of age and at least three years younger than the offender;

(2) 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; or

(3) 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.

(b) Sexual abuse of a minor in the third degree is a class C felony.

Sec. 11.41.440. Sexual abuse of a minor in the fourth degree.

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

(1) being under 16 years of age, the offender engages in sexual contact with a person who is under 13 years of age and at least three years younger than the offender; or

(2) being 18 years of age or older, the offender engages in sexual contact 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.

(b) Sexual abuse of a minor in the fourth degree is a class A misdemeanor.

Sec. 11.41.443. Spousal relationship no defense. [Repealed, Sec. 61 ch 50 SLA 1989. For current law, see AS 11.41.432 (b)].

Repealed or Renumbered

Sec. 11.41.445. General provisions.

(a) In a prosecution under AS 11.41.434 - 11.41.440 it is an affirmative defense that, at the time of the alleged offense, the victim was the legal spouse of the defendant unless the offense was committed without the consent of the victim.

(b) In a prosecution under AS 11.41.410 - 11.41.440, whenever a provision of law defining an offense depends upon a victim's being under a certain age, it is an affirmative defense that, at the time of the alleged offense, the defendant

(1) reasonably believed the victim to be that age or older; and

(2) undertook reasonable measures to verify that the victim was that age or older.

Sec. 11.41.450. Incest.

(a) A person commits the crime of incest if, being 18 years of age or older, that person engages in sexual penetration with another who is related, either legitimately or illegitimately, as

(1) an ancestor or descendant of the whole or half blood;

(2) a brother or sister of the whole or half blood; or

(3) an uncle, aunt, nephew, or niece by blood.

(b) Incest is a class C felony.

Sec. 11.41.452. Online enticement of a minor.

(a) A person commits the crime of online enticement of a minor if the person, being 18 years of age or older, knowingly uses a computer to communicate with another person to entice, solicit, or encourage the person to engage in an act described in AS 11.41.455 (a)(1) - (7) and

(1) the other person is a child under 16 years of age; or

(2) the person believes that the other person is a child under 16 years of age.

(b) In a prosecution under (a)(2) of this section, it is not a defense that the person enticed, solicited, or encouraged was not actually a child under 16 years of age.

(c) In a prosecution under this section, it is not necessary for the prosecution to show that the act described in AS 11.41.455 (a)(1) - (7) was actually committed.

(d) Except as provided in (e) of this section, online enticement is a class C felony.

(e) Online enticement is a class B felony if the defendant was, at the time of the offense, required to register as a sex offender or child kidnapper under AS 12.63 or a similar law of another jurisdiction.

Sec. 11.41.455. Unlawful exploitation of a minor.

(a) A person commits the crime of unlawful exploitation of a minor if, in the state and with the intent of producing a live performance, film, audio, video, electronic, or electromagnetic recording, photograph, negative, slide, book, newspaper, magazine, or other material that visually or aurally depicts the conduct listed in (1) - (7) of this subsection, the person knowingly induces or employs a child under 18 years of age to engage in, or photographs, films, records, or televises a child under 18 years of age engaged in, the following actual or simulated conduct:

(1) sexual penetration;

(2) the lewd touching of another person's genitals, anus, or breast;

(3) the lewd touching by another person of the child's genitals, anus, or breast;

(4) masturbation;

(5) bestiality;

(6) the lewd exhibition of the child's genitals; or

(7) sexual masochism or sadism.

(b) A parent, legal guardian, or person having custody or control of a child under 18 years of age commits the crime of unlawful exploitation of a minor if, in the state, the person permits the child to engage in conduct described in (a) of this section knowing that the conduct is intended to be used in producing a live performance, film, audio, video, electronic, or electromagnetic recording, photograph, negative, slide, book, newspaper, magazine, or other material that visually or aurally depicts the conduct.

(c) Unlawful exploitation of a minor is a

(1) class B felony; or

(2) class A felony if the person has been previously convicted of unlawful exploitation of a minor in this jurisdiction or a similar crime in this or another jurisdiction.

(d) In this section, "audio recording" means a nonbook prerecorded item without a visual component, and includes a record, tape, cassette, and compact disc.

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 (I) of this section, 15 to 25 years;

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

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

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

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

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

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

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

(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.

TESTING, DISCLOSURE OF RESULTS, AIDS AND HIV

Sec. 18.15.300. Order for blood test; disclosure of results.

(a) A defendant charged in a criminal complaint, indictment, presentment, or information filed with a magistrate or court with a violation of AS 11.41.410 - 11.41.450 that includes sexual penetration as an element of the offense, or a minor with respect to whom a petition has been filed in a juvenile court alleging a violation of AS 11.41.410 - 11.41.450 that includes sexual penetration as an element of the offense, may be ordered by a court having jurisdiction of the complaint, indictment, information, presentment, or juvenile petition to submit to testing as provided in AS 18.15.300 - 18.15.320.

(b) An alleged victim listed in the complaint, indictment, information, presentment, or juvenile petition, the parent or guardian of an alleged victim who is a minor or incompetent, or the prosecuting attorney on the behalf of an alleged victim, may petition the court for an order authorized under this section.

(c) Upon receipt of a petition filed under (b) of this section, the court shall determine if (1) probable cause exists to believe that a crime for which a test may be ordered under (a) of this section has been committed, and (2) probable cause exists to believe that sexual penetration took place between the defendant or minor and the alleged victim in an act for which the defendant or minor is charged under (a) of this section. In making the determination, the court may rely exclusively on the evidence presented at a grand jury proceeding or preliminary hearing.

(d) If the court finds probable cause exists to believe that (1) a crime for which a test may be ordered under (a) of this section has been committed, and (2) sexual penetration described in (c)(2) of this section took place, the court shall order that the defendant or minor provide two specimens of blood for testing as provided in AS 18.15.300 - 18.15.320.

(e) Copies of the blood test results shall be provided to the defendant or minor, each requesting victim, the victim's designee or, if the victim is a minor or incompetent, the victim's parents or legal guardian. If the defendant or minor is being incarcerated or detained at the time of the blood test or thereafter, the blood test results shall be provided to the officer in charge and the chief medical officer of the facility in which the defendant or minor is incarcerated or detained, including an incarceration or detention ordered as a result of conviction or judgment

of delinquency or child in need of aid for an act for which the defendant or minor is charged under (a) of this section.

(f) A court may not order a test under this section

(1) before seven days after the defendant or minor's arrest;

(2) after the entry of a disposition favorable to a defendant; or

(3) if the defendant is convicted or adjudicated delinquent or in need of aid, after 90 days after the issuance of the judgment and sentence or of the judgment in a juvenile action.

(g) In this section,

(1) "disposition favorable to the defendant" means an adjudication by a court other than a conviction, or if the defendant is a minor not being prosecuted as an adult, that the minor is not adjudicated delinquent or a child in need of aid, for an offense for which a blood test could be ordered under this section;

(2) "sexual penetration" has the meaning given in AS 11.81.900 (b).

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.

HB

2666



Official Business

Alaska State Legislature

Senate

Office of the Secretary

State Capitol, Room 213
Juneau, Alaska 99801-1182
Phone: (907) 465-3701
Fax: (907) 465-2832
Email: senate_secretary@legis.state.ak.us

FOR YOUR IMMEDIATE ATTENTION

DATE: 5/1/06

TO: Judiciary Committee
(Brian, Room 125)

FROM: Office of the Senate Secretary

SUBJ: Referral Change

The Vice-Chair of the Committee noted above has waived the referral(s) on the following bill(s):

RETRIEVE

CS FOR HOUSE BILL NO. 266(FIN)

"An Act relating to penalties for violation of vehicle weight limitations; prohibiting the use of a violation of a vehicle weight limitation for certain personal automobile insurance actions; amending Rule 43.6, Alaska Rules of Administration; and providing for an effective date."

Please give the bill file(s) to the page delivering this message for forwarding to the next Committee of referral.

Thank you.

HB

268

SENATE COMMITTEE REPORT

DATE: 5/4/05

FURTHER:

DATE TURNED
IN TO OFFICE: _____

Judiciary Committee considered CS FOR HOUSE BILL NO. 268(JUD)

HB 268 OVERTAKING/PASSING STATIONARY VEHICLES

"An Act relating to overtaking and passing certain stationary vehicles."

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 # _____

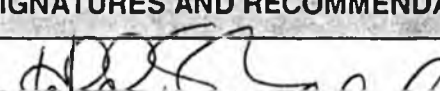



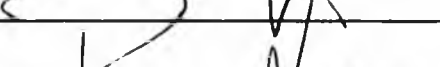

NEW FISCAL NOTE(S):

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	
			X	
			X	
				
CHAIR: 	✓			

Representative Jay Ramras
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V-Chair, Economic Develop.
Tourism & Trade

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Alaska State Legislature



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House District 10

House of Representatives

Sponsor Statement

HB 268

HB 268 is a bill that will further clarify the current law regarding drivers passing emergency vehicles that are required to display flashing emergency lights on a highway or roadway. Currently, AS 28.35.185 requires drivers to vacate the lane closest to stopped emergency vehicles. Emergency vehicles, under current law, are police and fire vehicles. HB 268 will change the law to include other vehicles that should be treated with the same amount of caution, specifically tow trucks and animal control vehicles.

HB 268 simply works to make sure that drivers are more cautious when approaching more kinds of emergency situations, especially situations where there is a significant risk of injury to the tow truck operator or animal control specialist.

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: HB 268
 (H) Publish Date: 4/21/05

Revision Date/Time (Note if correction): _____ Dept. Affected: Public Safety
 Title: "An Act relating to overtaking and passing certain stationary vehicles." RDU: Alaska State Troopers
 Component: AST Detachments
 Sponsor: Representative Ramras
 Requester: House Transportation Committee Component No.: 2325

Expenditures/Revenues (Thousands of Dollars)

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

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

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

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

Estimate of any current year (FY2005) cost: 0.0

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

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill amends AS 28.35.185. This legislation adds language designating tow trucks in the act of picking up a vehicles from the roadway and animal control vehicles in the act of removing animals from the roadway, to the list of vehicles that require drivers operating in two or more lanes traveling in the same direction to safely vacate the lane closest to these vehicles, unless directed by law enforcement.

No fiscal impact on the Department of Public Safety is anticipated.

Prepared by: Lieutenant Todd Sharp Phone 907-465-3223
 Division: Alaska State Troopers Date/Time 4/18/05 11:29 AM
 Approved by: Commissioner William Tandeske Date 4/18/2005
 Agency: Department of Public Safety

Sec. 28.35.185. Overtaking and passing a parked emergency vehicle.

Statute text

(a) The driver of a vehicle that approaches a stationary emergency, fire, or law enforcement vehicle displaying flashing emergency lights on a highway or roadway

(1) with two or more lanes traveling in the same direction, unless otherwise directed by law enforcement or emergency personnel, shall safely vacate the lane closest to the emergency, fire, or law enforcement vehicle; or

(2) unless otherwise directed by law enforcement or emergency personnel, shall slow to a reasonable and prudent speed considering the traffic, roadway, and weather conditions.

(b) A person who violates this section is guilty of

(1) a class A misdemeanor if personal injury results from the person's failure to vacate the lane or slow as required by this section;

(2) an infraction, under circumstances other than in (1) of this subsection.

History

(§ 1 ch 44 SLA 2004)

Annotations

Effective dates. Section 1, ch. 44, SLA 2004 makes this section effective September 2, 2004.

Sec. 28.40.050. Penalties for violations of law, regulations, and municipal ordinances.

(c) Unless otherwise specified by law a person convicted of a violation of a regulation adopted under this title, or a municipal ordinance regulating vehicles or traffic when the municipal ordinance does not correspond to a provision of this title, is guilty of an infraction and is punishable by a fine not to exceed \$300.

(d) An infraction, as provided for in (c) of this section, is not considered a criminal offense and may not result in imprisonment, nor is a fine imposed for the commission of an infraction considered a penal or criminal punishment; nor may the commission of a single infraction result in the loss of a driver's license or privilege to drive in this state except as may result from the accumulation of points under AS 28.15.221 - 28.15.261, or the registration of vehicles; nor does a person cited with an infraction have a right to trial by jury or to court-appointed counsel.

Sec. 12.55.135. Sentences of imprisonment for misdemeanors.

Statute text

(d) A defendant convicted of assault in the fourth degree who 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 assault shall be sentenced to a minimum term of imprisonment of

(1) 60 days if the defendant violated AS 11.41.230(a)(1) or (2);

(2) 30 days if the defendant violated AS 11.41.230(a)(3).

(e) If a defendant is sentenced under (c), (d), or (h) of this section,

(1) execution of sentence may not be suspended and probation or parole may not be granted until the minimum term of imprisonment has been served;

(2) imposition of a sentence may not be suspended except upon condition that the defendant be imprisoned for no less than the minimum term of imprisonment provided in the section; and

(3) the minimum term of imprisonment may not otherwise be reduced.

(f) A defendant convicted of vehicle theft in the second degree in violation of AS

11.46.365(a)(1) shall be sentenced to a definite term of imprisonment of at least 72 hours but not more than one year.

HB

269

SENATE COMMITTEE REPORT

DATE: 2/1/06

FURTHER:

DATE TURNED
IN TO OFFICE: _____

Judiciary Committee considered HOUSE BILL NO. 269

HB 269 HAZARDOUS SUBSTANCE RELEASE LIABILITY

"An Act relating to contribution actions relating to the release of a hazardous substance; and providing for an effective date."

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 # _____




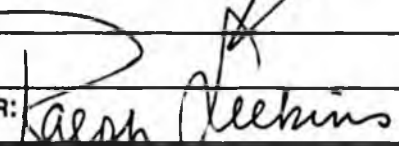
NEW FISCAL NOTE(S):

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			
Robert G. Guess	X			
	X			
	X			
CHAIR: 	✓			

ALASKA STATE SENATE



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Interim:
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Fairbanks, Alaska 99701
(907) 456-8161
Senator_Ralph_Seekins@legis.state.ak.us

SENATE JUDICIARY COMMITTEE

Senator Ralph Seekins, Chairman

Letter of Intent SCSHB269(JUD)

February 15, 2006

It is the intent of the Senate Judiciary Committee in enacting this measure to clarify the language of AS 46.03.822(j) to ensure that responsible parties who have conducted voluntary environmental cleanups in the past, or may do so in the future, may bring a contribution action against other responsible parties either before, during, or after a civil action under AS 46.03.822(a).

Voluntary cleanups form the vast majority of cleanups conducted in the State of Alaska. Voluntary cleanups allow the state to focus its limited resources on monitoring cleanup actions instead of undertaking costly administrative or judicial enforcement actions to force cleanups, or to undertake clean ups at the public expense.

The United States Supreme Court, in *Cooper Industries v. Aviall Services* found that a responsible party could not bring a contribution action under 42 U.S.C. 9613(f)(1) unless it had been sued by a state, the federal government, or had entered into a formal administrative settlement of its liability. The *Aviall* decision is in conflict with the reasoning of an earlier Alaska Supreme Court decision, *Federal Deposit Insurance Corporation v. Laidlaw Transit*, and, in the absence of legislative action, responsible parties in Alaska may be fearful to rely on *Laidlaw* for assurance regarding the proper interpretation of AS 46.03.822, the state's statute modeled on 42 U.S.C. 9601-9675.

Therefore, it is the purpose of this Act to respond to the *Aviall* and *Laidlaw* decisions by clarifying language of AS 46.03.822(j) so that those responsible parties who conducted voluntary cleanups in the past, or may do so in the future, may bring a contribution action against other responsible parties.

Representative Jay Ramras
Co-Chair, House Resources
V-Chair, Economic Develop.
Tourism & Trade

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Alaska State Legislature



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House District 10

House of Representatives Sponsor Statement **HB 269**

House Bill 269 addresses contribution actions relating to the costs of environmental cleanups and the damages associated with hazardous substance releases. Current statutes impose joint and several liability associated with hazardous substance releases. They are known as responsible parties. A party who incurs cleanup costs and damages may bring a court action against other potentially responsible parties to have them pay for their fair share of the environmental cleanup.

Voluntary cleanups form the vast majority of the cleanups conducted in the State of Alaska. Voluntary cleanups allow the State of Alaska to focus its limited resources on monitoring responsible party cleanup actions, instead of undertaking costly administrative or judicial enforcement actions to force cleanups, or undertaking cleanups at public expense. The right to these contribution actions creates an important incentive for voluntary cleanups, by allowing responsible parties to undertake effective cleanups themselves, and then be able to share the costs and other related damages with other responsible parties, who may be unwilling to voluntarily undertake or assist with the cleanup.

The United States Supreme Court, in *Cooper Industries v. Aviall Services*, found that a responsible party could not bring a contribution action until such time as it has been sued by the state or federal government, or had entered into a formal administrative settlement of liability. The *Aviall* decision has created confusion as to the contribution rights of responsible parties who undertake voluntary cleanups, and has placed in jeopardy the process of voluntary cleanups under AS 46.03.822.

Furthermore, the *Aviall* decision is in conflict with an earlier Alaska Supreme Court decision in, *Federal Deposit Insurance Corporation v. Laidlaw Transit*, and, in the absence of legislative action, responsible parties in Alaska may be fearful of undertaking voluntary cleanups at their own expense.

The purpose of HB 269, is to respond to the *Aviall* and *Laidlaw* decisions by clarifying the language in AS 46.03.822(j), ensuring that responsible parties who conduct voluntary cleanups may bring contribution actions against other responsible parties.

24-LS0879AG
Bullock
1/31/06

SENATE CS FOR HOUSE BILL NO. 269()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FOURTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES RAMRAS, Gara

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to contribution actions relating to the release of a hazardous
2 substance; and providing for an effective date."

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

4 * Section 1. AS 46.03.822(j) is amended to read:

5 (j) A person may seek contribution from any other person who is liable under
6 (a) of this section during or after a civil action under (a) of this section or after the
7 issuance of a potential liability determination by the department. Actions under
8 this subsection shall be brought under the Alaska Rules of Civil Procedure and are
9 governed by state law. In resolving claims for contribution under this section, the court
10 may allocate damages and costs among liable parties using equitable factors
11 determined to be appropriate by the court. This subsection does not diminish the right
12 of a person to bring an action for contribution in the absence of a civil action under (a)
13 of this section.

14 * Sec. 2. AS 46.03.822(m) is amended by adding a new paragraph to read:

1 (2) "potential liability determination" means an administrative
2 determination issued by the department notifying a person of the person's potential
3 liability under (a) of this section as the result of the release or threatened release of
4 hazardous substances and includes a

5 (A) letter notifying the person that the person is a potentially
6 responsible party;

7 (B) notice to a person of state interest in a release or threatened
8 release of a hazardous substance;

9 (C) request to the person for site characterization or cleanup;

10 (D) notice of violation; and

11 (E) similar notification by the department of a person's
12 potential liability under this section.

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

15 APPLICABILITY. The changes made by secs. 1 and 2 of this Act apply to liability
16 for the release or threatened release of a hazardous substance that occurred

17 (1) before the effective date of this Act and for which a final judgment
18 regarding liability was not entered before the effective date of this Act; or

19 (2) on or after the effective date of this Act.

20 * Sec. 4. This Act takes effect immediately under AS 01.10.070(c).

It is the intent of the Senate Judiciary Committee in enacting this measure to clarify the language of AS 46.03.822(j) to ensure that responsible parties who have conducted voluntary environmental cleanups in the past, or may do so in the future, may bring a contribution action against other responsible parties either before, during, or after a civil action under AS 46.03.822(a).

Voluntary cleanups form the vast majority of cleanups conducted in the State of Alaska. Voluntary cleanups allow the state to focus its limited resources on monitoring cleanup actions instead of undertaking costly administrative or judicial enforcement actions to force cleanups, or to undertake clean ups at the public expense.

The United States Supreme Court, in *Cooper Industries v. Aviall Services* found that a responsible party could not bring a contribution action under 42 U.S.C. 9613(f)(1) unless it had been sued by a state, the federal government, or had entered into a formal administrative settlement of its liability. The *Aviall* decision is in conflict with the reasoning of an earlier Alaska Supreme Court decision, *Federal Deposit Insurance Corporation v. Laidlaw Transit*, and, in the absence of legislative action, responsible parties in Alaska may be fearful to rely on *Laidlaw* for assurance regarding the proper interpretation of AS 46.03.822, the state's statute modeled on 42 U.S.C. 9601-9675.

Therefore, it is the purpose of this Act to respond to the *Aviall* and *Laidlaw* decisions by clarifying language of AS 46.03.822(j) so that those responsible parties who conducted voluntary cleanups in the past, or may do so in the future, may bring a contribution action against other responsible parties.

Representative Jay Ramras
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V-Chair, Economic Develop.
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House District 10

House of Representatives Sectional Summary HB 269 Work Order 24-LS0879\G

Section 1. Ensures that a party may seek contribution from any other person who is liable for the contamination after the issuance of a potential liability determination by the Department of Environmental Conservation.

Section 2. Defines "potential liability determination".

Section 3. States that the changes made in sections 2 and 3 apply to liability for the release or threatened release of hazardous substances that occurred before or after this law takes effect.

Section 4. States that this Act will take effect immediately.

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number: 3
 Bill Version: HB 269
 (S) Publish Date: 2/1/06

Revision Date/Time (Note if correction): _____ Dept. Affected: LAW
 Title: "An Act relating to contribution actions relating RDU: CIVIL
to the release of a hazardous substance... Component: Environmental
 Sponsor: Representative Ramras
 Requester: House Resources Component No. _____

Expenditures/Revenues (Thousands of Dollars)

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

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

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

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
 Check 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 would remove uncertainty caused by the United States Supreme court's December 2004 decision in Cooper Industries v. Aviall Services concerning the contribution rights of persons conducting voluntary cleanups under the state's hazardous substance liability law. HB 269 clarifies that parties responsible for hazardous substance cleanup costs and damages can seek contribution under AS 46.03.822(j) from other responsible parties in the absence of a lawsuit brought by the state or others to force cleanup. Without such clarifying legislation, the Department of Law could incur an increase in costs in the future. The uncertainty caused by Aviall would likely force the state to pursue additional costly administrative or judicial enforcement actions to force cleanups or to undertake cleanups at public expense in the absence of voluntary cleanups by private parties. The likelihood and magnitude of these unanticipated and unbudgeted costs to the Department of Law is not known. However,

Prepared by: Kathryn Daughhetea, Director Phone: 465-3673
 Division: Administrative Services Division Date/Time: 1/20/06 3:20 PM
 Approved by: Kathryn Daughhetea for David Marquez, Attorney General Date: 1/20/2006
 Agency: Department of Law

FISCAL NOTE # 3

STATE OF ALASKA
2006 LEGISLATIVE SESSION

BILL NO. HB 269

ANALYSIS CONTINUATION

enactment of this legislation would prevent these costs from occurring in the future by removing the uncertainty caused by the Aviall ruling as it applies to the state's hazardous substance liability statute.

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number: 4
 Bill Version: HB 269
 (S) Publish Date: 2/1/06

Revision Date/Time (Note if correction): _____ Dept. Affected: Dept of Environmental Conservation
 Title: An Act relating to contribution actions relating to RDU: Spill Prevention and Response
the release of a hazardous substance Component: Contaminated Sites
 Sponsor: Representative Ramras
 Requester: Senate Resources Committee Component No.: 2386

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	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
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FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (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	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)

Passage of HB269 would not result in any fiscal impact to the Department because it preserves the voluntary cleanup program now in place.

Prepared by: Larry Dietrick
 Division: Spill Prevention and Response
 Approved by: Kurt Fredriksson
 Agency: Department of Environmental Conservation

Phone: 465-5250
 Date/Time: 1/20/06 5:30 PM
 Date: 1/20/2006

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: HB 269
 (H) Publish Date: 4/28/05

Revision Date/Time (Note if correction): _____ Dept. Affected: Environmental Conservation
 Title: An Act relating to contribution actions relating to RDU: Spill Prevention and Response
the release of a hazardous substance Component: Contaminated Sites
 Sponsor: Representative Ramras
 Requester: Resources, Judiciary Component No.: 2386

Expenditures/Revenues (Thousands of Dollars)

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

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

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
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FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2005) cost: 0.0

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

POSITIONS

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

ANALYSIS: (Attach a separate page if necessary)

Passage of HB 269 would not result in any fiscal impact to the Department because it preserves the voluntary cleanup program now in place.

Prepared by: Larry Dietrick
 Division: Spill Prevention and Response
 Approved by: Kurt Fredriksson
 Agency: Department of Environmental Conservation

Phone: 465-5250
 Date/Time: 4/20/2005 12:45 p.m.
 Date: 4/20/2005 12:45 p.m.

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 2
Bill Version: HB 269
(H) Publish Date: 4/26/05

Revision Date/Time (Note if correction): _____ Dept. Affected: LAW
Title: "An Act relating to contribution actions relating RDU: CIVIL
to the release of a hazardous substance..." Component: Environmental
Sponsor: Representative Ramras
Requester: House Resources Component No. _____

Expenditures/Revenues (Thousands of Dollars)

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

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

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

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

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

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill would remove uncertainty caused by the United States Supreme Court's December 2004 decision in Cooper Industries v. Aviall Services concerning the contribution rights of persons conducting voluntary cleanups under the state's hazardous substance liability law. HB 269 clarifies that parties responsible for hazardous substance cleanup costs and damages can seek contribution under AS 46.03.822(j) from other responsible parties in the absence of a lawsuit brought by the state or others to force cleanup. Without such clarifying legislation, the Department of Law could incur an increase in costs in the future. The uncertainty caused by Aviall would likely force the state to pursue additional costly administrative or judicial enforcement actions to force cleanups or to undertake cleanups at public expense in absence of voluntary cleanups by private parties. The likelihood and magnitude of these unanticipated

Prepared by: Kathryn Daughhatee, Director Phone 465-3673
Division: Administrative Services Division Date/Time 4/20/05 12:03 PM
Approved by: Kathryn Daughhatee for David Márquez, Attorney General Date 4/20/2005
Agency: Department of Law

FISCAL NOTE #2

BILL NO. HB 269

STATE OF ALASKA
2005 LEGISLATIVE SESSION

ANALYSIS CONTINUATION

and unbudgeted costs to the Department of Law is not known. However, enactment of this legislation would prevent these costs from occurring in the future by removing the uncertainty caused by the Aviall ruling as it applies to the state's hazardous substance liability statute.

Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 300 U. S. 821, 837.

SUPREME COURT OF THE UNITED STATES

Syllabus

**COOPER INDUSTRIES, INC. v. AVIALL SERVICES,
INC.**

**CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE FIFTH CIRCUIT**

No. 02–1192. Argued October 6, 2004—Decided December 13, 2004

The enabling clause of §113(f)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as added by the Superfund Amendments and Reauthorization Act of 1986 (SARA), provides that any person “may” seek contribution from any other person liable or potentially liable under CERCLA §107(a) “during or following any civil action” under CERCLA §106 (which authorizes the Federal Government to compel responsible parties to clean up contaminated areas, see *Kry Tronic Corp. v. United States*, 511 U. S. 809, 814), or CERCLA §107(a) (which empowers the Government to recover its response costs from potentially responsible persons (PRPs)). Section 113(f)(1)’s saving clause provides: “Nothing in this subsection shall diminish the right of any person to bring an action for contribution in the absence of a civil action under” §106 or §107. SARA also created a separate express right of contribution, §113(f)(3)(B), for “[a] person who has resolved its liability to the United States or a State for some or all of a response action or for some or all of the costs of such action in an administrative or judicially approved settlement.”

Cooper Industries, Inc., owned four Texas properties until 1981, when it sold them to Aviall Services, Inc. After operating those sites for several years, Aviall discovered that both it and Cooper had contaminated them when hazardous substances leaked into the ground and ground water. Aviall notified the State of the contamination, but neither the State nor the Federal Government took judicial or administrative measures to compel cleanup. Aviall cleaned up the properties under the State’s supervision and sold them to a third party, but remains contractually responsible for \$5 million or more in cleanup

Syllabus

costs. Aviall filed this action against Cooper to recover such costs. The original complaint asserted, *inter alia*, a claim for cost recovery under §107(a) and a separate claim for contribution under §113(f)(1). Aviall later amended the complaint to, among other things, combine its two CERCLA claims into a single, joint claim that, pursuant to §113(f)(1), sought contribution from Cooper as a PRP under §107(a). Granting Cooper summary judgment, the District Court held that Aviall had abandoned its freestanding §107 claim, and that contribution under §113(f)(1) was unavailable because Aviall had not been sued under §106 or §107. The Fifth Circuit ultimately reversed, holding that §113(f)(1) allows a PRP to obtain contribution from other PRPs regardless of whether the PRP has been sued under §106 or §107. The court reasoned in part that "may" in §113(f)(1)'s enabling clause did not mean "may only."

Held: A private party who has not been sued under CERCLA §106 or §107(a) may not obtain contribution under §113(f)(1) from other liable parties. Pp. 6–12.

(a) Section 113(f)(1) does not authorize Aviall's suit. This Court disagrees with Aviall's argument that the word "may" in §113(f)(1)'s enabling clause should be read permissively, such that "during or following" a civil action is one, but not the exclusive, instance in which a person may seek contribution. First, the natural meaning of "may" in this context is that it authorizes certain contribution actions that satisfy the subsequent specified condition—*i.e.*, those that occur "during or following" a specified civil action—and no others. Second, reading §113(f)(1) to authorize contribution actions at any time, regardless of the existence of a §106 or §107(a) civil action, would render entirely superfluous the section's explicit "during or following" condition, as well as §113(f)(3)(B), which permits contribution actions after settlement. This Court is loath to allow such a reading. See, *e.g.*, *Hibbs v. Winn*, 542 U. S. ___, ___. Congress would not have bothered to specify conditions under which a person may bring a contribution claim, and at the same time allowed contribution actions absent those conditions. Section §113(f)(1)'s saving clause does not change the Court's conclusion. That clause's sole function is to clarify that §113(f)(1) does nothing to "diminish" any cause(s) of action for contribution that may exist independently of §113(f)(1), thereby rebutting any presumption that the express right of contribution provided by the enabling clause is the exclusive contribution cause of action available to a PRP. The saving clause, however, does not itself establish a cause of action, nor expand §113(f)(1) to authorize contribution actions not brought "during or following" a §106 or §107(a) civil action, nor specify what causes of action for contribution, if any, exist outside §113(f)(1). Reading the clause to authorize §113(f)(1) contribution ac-

Syllabus

tions not just "during or following" a civil action, but also before such an action, would again violate the settled rule that the Court must, if possible, construe a statute to give every word some operative effect. In light of provisions specifying two 3-year limitations periods for contribution actions beginning at the date of judgment, §113(g)(3)(A), and at the date of settlement, §113(g)(3)(B), the absence of any such provision for cases in which a judgment or settlement never occurs also supports the conclusion that, to assert a contribution claim under §113(f), a party must satisfy the conditions of either §113(f)(1) or §113(f)(3)(B). Given the clear meaning of CERCLA's text, there is no need to resolve the parties' disputes about CERCLA's purpose or to consult that purpose at all. See *Oncale v. Sundowner Offshore Services, Inc.*, 523 U. S. 75, 79. Because Aviall has never been subject to a civil action under §106 or §107(a), it has no §113(f)(1) claim. Pp. 6–9.

(b) The Court declines to address in the first instance Aviall's claim that it may recover costs under §107(a)(4)(B) even though it is a PRP. In view of the importance of the §107 issue, the question whether Aviall waived a freestanding §107 claim, and the absence of briefing and decisions by the courts below, this Court is not prepared to resolve the §107 question solely on the basis of dictum in *Key Tronic*. Pp. 9–11.

(c) In addition, the Court declines to decide whether Aviall has an implied right to contribution under §107. To the extent that Aviall chooses to frame its §107 claim on remand as an implied right of contribution (as opposed to a right of cost recovery), the Court notes that it has visited the subject before, see, e.g., *Texas Industries, Inc. v. Radcliff Materials, Inc.*, 451 U. S. 630, 638–647, and that, in enacting §113(f)(1), Congress explicitly recognized a particular set (claims "during or following" the specified civil actions) of the contribution rights previously implied by courts from provisions of CERCLA and the common law, cf. *Transamerica Mortgage Advisors, Inc. v. Lewis*, 444 U. S. 11, 19. Pp. 11–12.

312 F. 3d 677, reversed and remanded.

THOMAS, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and O'CONNOR, SCALIA, KENNEDY, SOUTER, and BREYER, JJ., joined. GINSBURG, J., filed a dissenting opinion, in which STEVENS, J., joined.

Opinion of the Court

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D. C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

SUPREME COURT OF THE UNITED STATES

No. 02-1192

**COOPER INDUSTRIES, INC., PETITIONER v. AVIALI-
SERVICES, INC.**

**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE FIFTH CIRCUIT**

[December 13, 2004]

JUSTICE THOMAS delivered the opinion of the Court.

Section 113(f)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA)¹ allows persons who have undertaken efforts to clean up properties contaminated by hazardous substances to seek contribution from other parties liable under CERCLA. Section 113(f)(1) specifies that a party may obtain contribution “during or following any civil action” under CERCLA §106 or §107(a). The issue we must decide is whether a private party who has not been sued under §106 or §107(a) may nevertheless obtain contribution under §113(f)(1) from other liable parties. We hold that it may not.

I

Under CERCLA, 94 Stat. 2767, the Federal Government may clean up a contaminated area itself, see §104, or it may compel responsible parties to perform the cleanup,

¹Section 113(f)(1) is codified at 42 U. S. C. §9613(f)(1). We refer throughout, for the most part, to sections of CERCLA rather than the U. S. C. *de.*

Opinion of the Court

see §106(a). See *Key Tronic Corp. v. United States*, 511 U. S. 809, 814 (1994). In either case, the Government may recover its response costs under §107, 42 U. S. C. §9607 (2000 ed. and Supp. I), the "cost recovery" section of CERCLA. Section 107(a) lists four classes of potentially responsible persons (PRPs) and provides that they "shall be liable" for, among other things, "all costs of removal or remedial action incurred by the United States Government . . . not inconsistent with the national contingency plan." §107(a)(4)(A).³ Section 107(a) further provides that PRPs shall be liable for "any other necessary costs of response incurred by any other person consistent with the national contingency plan." §107(a)(4)(B).

After CERCLA's enactment in 1980, litigation arose over whether §107, in addition to allowing the Government and certain private parties to recover costs from PRPs, also allowed a PRP that had incurred response costs to recover costs from other PRPs. More specifically, the question was whether a private party that had incurred response costs, but that had done so voluntarily and was not itself subject to suit, had a cause of action for cost recovery against other PRPs. Various courts held that §107(a)(4)(B) and its predecessors authorized such a cause of action. See, e.g., *Wickland Oil Terminals v. Asarco, Inc.*, 792 F. 2d 887, 890-892 (CA9 1986); *Walls v. Waste Resource Corp.*, 761 F. 2d 311, 317-318 (CA6 1985); *Philadelphia v. Stepan Chemical Co.*, 544 F. Supp. 1135, 1140-1143 (ED Pa. 1982).

After CERCLA's passage, litigation also ensued over the separate question whether a private entity that had been sued in a cost recovery action (by the Government or by

³The national contingency plan specifies procedures for preparing and responding to contaminations and was promulgated by the Environmental Protection Agency (EPA) pursuant to CERCLA §106, 42 U. S. C. §9606 (2000 ed. and Supp. I). The plan is codified at 40 CFR pt. 300 (2004).

Opinion of the Court

another PRP) could obtain contribution from other PRPs. As originally enacted in 1980, CERCLA contained no provision expressly providing for a right of action for contribution. A number of District Courts nonetheless held that, although CERCLA did not mention the word "contribution," such a right arose either impliedly from provisions of the statute, or as a matter of federal common law. See, e.g., *United States v. New Castle County*, 642 F. Supp. 1258, 1263–1269 (Del. 1986) (contribution right arises under federal common law); *Colorado v. ASARCO, Inc.*, 808 F. Supp. 1484, 1488–1493 (Colo. 1985) (same); *Wehner v. Syntex Agribusiness, Inc.*, 616 F. Supp. 27, 31 (ED Mo. 1985) (contribution right is implied from §107(e)(2)). That conclusion was debatable in light of two decisions of this Court that refused to recognize implied or common-law rights to contribution in other federal statutes. See *Texas Industries, Inc. v. Radcliff Materials, Inc.*, 451 U. S. 630, 638–647 (1981) (refusing to recognize implied or common-law right to contribution in the Sherman Act or the Clayton Act); *Northwest Airlines, Inc. v. Transport Workers*, 451 U. S. 77, 90–99 (1981) (refusing to recognize implied or common-law right to contribution in the Equal Pay Act of 1963 or Title VII of the Civil Rights Act of 1964).

Congress subsequently amended CERCLA in the Superfund Amendments and Reauthorization Act of 1986 (SARA), 100 Stat. 1613, to provide an express cause of action for contribution, codified as CERCLA §113(f)(1):

"Any person may seek contribution from any other person who is liable or potentially liable under section 9607(a) of this title, during or following any civil action under section 9606 of this title or under section 9607(a) of this title. Such claims shall be brought in accordance with this section and the Federal Rules of Civil Procedure, and shall be governed by Federal law.

Opinion of the Court

In resolving contribution claims, the court may allocate response costs among liable parties using such equitable factors as the court determines are appropriate. Nothing in this subsection shall diminish the right of any person to bring an action for contribution in the absence of a civil action under section 9606 of this title or section 9607 of this title." *Id.*, at 1647, as codified in 42 U. S. C. §9613(f)(1).

SARA also created a separate express right of contribution, §113(f)(3)(B), for "[a] person who has resolved its liability to the United States or a State for some or all of a response action or for some or all of the costs of such action in an administrative or judicially approved settlement." In short, after SARA, CERCLA provided for a right to cost recovery in certain circumstances, §107(a), and separate rights to contribution in other circumstances, §§113(f)(1), 113(f)(3)(B).³

II

This case concerns four contaminated aircraft engine maintenance sites in Texas. Cooper Industries, Inc., owned and operated those sites until 1981, when it sold them to Aviall Services, Inc. Aviall operated the four sites for a number of years. Ultimately, Aviall discovered that both it and Cooper had contaminated the facilities when petroleum and other hazardous substances leaked into the ground and ground water through underground storage tanks and spills.

Aviall notified the Texas Natural Resource Conservation Commission (Commission) of the contamination. The

³In *Key Tronic Corp. v. United States*, 511 U. S. 809 (1994), we observed that §107 and §113 created "similar and somewhat overlapping" remedies. *Id.*, at 816. The cost recovery remedy of §107(a)(4)(B) and the contribution remedy of §113(f)(1) are similar at a general level in that they both allow private parties to recoup costs from other private parties. But the two remedies are clearly distinct.

Opinion of the Court

Commission informed Aviall that it was violating state environmental laws, directed Aviall to clean up the site, and threatened to pursue an enforcement action if Aviall failed to undertake remediation. Neither the Commission nor the EPA, however, took judicial or administrative measures to compel cleanup.

Aviall cleaned up the properties under the State's supervision, beginning in 1984. Aviall sold the properties to a third party in 1995 and 1996, but remains contractually responsible for the cleanup. Aviall has incurred approximately \$5 million in cleanup costs; the total costs may be even greater. In August 1997, Aviall filed this action against Cooper in the United States District Court for the Northern District of Texas, seeking to recover cleanup costs. The original complaint asserted a claim for cost recovery under CERCLA §107(a), a separate claim for contribution under CERCLA §113(f)(1), and state-law claims. Aviall later amended the complaint, combining its two CERCLA claims into a single, joint CERCLA claim. That claim alleged that, pursuant to §113(f)(1), Aviall was entitled to seek contribution from Cooper, as a PRP under §107(a), for response costs and other liability Aviall incurred in connection with the Texas facilities.⁴ Aviall continued to assert state-law claims as well.

Both parties moved for summary judgment, and the District Court granted Cooper's motion. The court held that Aviall, having abandoned its §107 claim, sought contribution only under §113(f)(1). The court held that §113(f)(1) relief was unavailable to Aviall because it had

⁴Aviall asserts that it framed its claim in the manner compelled by Fifth Circuit precedent holding that a §113 claim is a type of §107 claim. *Geraghty & Miller, Inc. v. Conoco, Inc.*, 234 F. 3d 917, 924 (CA5 2000); see also, e.g., *Centerior Serv. Co. v. Acme Scrap Iron & Metal Corp.*, 163 F. 3d 344, 349–353 (CA6 1998); *Sun Co., Inc. v. Browning-Ferris, Inc.*, 124 F. 3d 1187, 1191 (CA10 1997); *Pinal Creek Group v. Newmont Mining Corp.*, 118 F. 3d 1298, 1301–1302 (CA9 1997).

Opinion of the Court

not been sued under CERCLA §106 or §107. Having dismissed Aviall's federal claim, the court declined to exercise jurisdiction over the state-law claims.

A divided panel of the Court of Appeals for the Fifth Circuit affirmed. 263 F. 3d 134 (2001). The majority, relying principally on the "during or following" language in the first sentence of §113(f)(1), held that "a PRP seeking contribution from other PRPs under §113(f)(1) must have a pending or adjudged §106 administrative order or §107(a) cost recovery action against it." *Id.*, at 145. The dissent reasoned that the final sentence of §113(f)(1), the saving clause, clarified that the federal common-law right to contribution survived the enactment of §113(f)(1), even absent a §106 or §107(a) civil action. *Id.*, at 148-150 (opinion of Wiener, J.).

On rehearing en banc, the Fifth Circuit reversed by a divided vote, holding that §113(f)(1) allows a PRP to obtain contribution from other PRPs regardless of whether the PRP has been sued under §106 or §107. 312 F. 3d 677 (2002). The court held that "[s]ection 113(f)(1) authorizes suits against PRPs in both its first and last sentence[,] which states without qualification that 'nothing' in the section shall 'diminish' any person's right to bring a contribution action in the absence of a section 106 or section 107(a) action." *Id.*, at 681. The court reasoned in part that "may" in §113(f)(1) did not mean "may only." *Id.*, at 686-687. Three members of the en banc court dissented for essentially the reasons given by the panel majority. *Id.*, at 691-693 (opinion of Garza, J.). We granted certiorari, 540 U. S. 1099, and now reverse.

III

A

Section 113(f)(1) does not authorize Aviall's suit. The first sentence, the enabling clause that establishes the right of contribution, provides: "Any person *may* seek

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contribution . . . *during or following* any civil action under section 9606 of this title or under section 9607(a) of this title," 42 U. S. C. §9613(f)(1) (emphasis added). The natural meaning of this sentence is that contribution may only be sought subject to the specified conditions, namely, "during or following" a specified civil action.

Aviall answers that "may" should be read permissively, such that "during or following" a civil action is one, but not the exclusive, instance in which a person may seek contribution. We disagree. First, as just noted, the natural meaning of "may" in the context of the enabling clause is that it authorizes certain contribution actions—ones that satisfy the subsequent specified condition—and no others.

Second, and relatedly, if §113(f)(1) were read to authorize contribution actions at any time, regardless of the existence of a §106 or §107(a) civil action, then Congress need not have included the explicit "during or following" condition. In other words, Aviall's reading would render part of the statute entirely superfluous, something we are loath to do. See, e.g., *Hibbs v. Winn*, 542 U. S. ____, __ (2004) (slip op., at 10). Likewise, if §113(f)(1) authorizes contribution actions at any time, §113(f)(3)(B), which permits contribution actions after settlement, is equally superfluous. There is no reason why Congress would bother to specify conditions under which a person may bring a contribution claim, and at the same time allow contribution actions absent those conditions.

The last sentence of §113(f)(1), the saving clause, does not change our conclusion. That sentence provides: "Nothing in this subsection shall diminish the right of any person to bring an action for contribution in the absence of a civil action under section 9606 of this title or section 9607 of this title." 42 U. S. C. §9613(f)(1). The sole function of the sentence is to clarify that §113(f)(1) does nothing to "diminish" any cause(s) of action for contribution that may exist independently of §113(f)(1). In other words, the

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sentence rebuts any presumption that the express right of contribution provided by the enabling clause is the exclusive cause of action for contribution available to a PRP. The sentence, however, does not itself establish a cause of action; nor does it expand §113(f)(1) to authorize contribution actions not brought "during or following" a §106 or §107(a) civil action; nor does it specify what causes of action for contribution, if any, exist outside §113(f)(1). Reading the saving clause to authorize §113(f)(1) contribution actions not just "during or following" a civil action, but also before such an action, would again violate the settled rule that we must, if possible, construe a statute to give every word some operative effect. See *United States v. Nordic Village, Inc.*, 503 U. S. 30, 35-36 (1992).

Our conclusion follows not simply from §113(f)(1) itself, but also from the whole of §113. As noted above, §113 provides two express avenues for contribution: §113(f)(1) ("during or following" specified civil actions) and §113(f)(3)(B) (after an administrative or judicially approved settlement that resolves liability to the United States or a State). Section 113(g)(3) then provides two corresponding 3-year limitations periods for contribution actions, one beginning at the date of judgment, §113(g)(3)(A), and one beginning at the date of settlement, §113(g)(3)(B). Notably absent from §113(g)(3) is any provision for starting the limitations period if a judgment or settlement never occurs, as is the case with a purely voluntary cleanup. The lack of such a provision supports the conclusion that, to assert a contribution claim under §113(f), a party must satisfy the conditions of either §113(f)(1) or §113(f)(3)(B).

Each side insists that the purpose of CERCLA bolsters its reading of §113(f)(1). Given the clear meaning of the text, there is no need to resolve this dispute or to consult the purpose of CERCLA at all. As we have said: "[I]t is ultimately the provisions of our laws rather than the

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principal concerns of our legislators by which we are governed." *Oncale v. Sundowner Offshore Services, Inc.*, 523 U. S. 75, 79 (1998). Section 113(f)(1), 100 Stat. 1647, authorizes contribution claims only "during or following" a civil action under §106 or §107(a), and it is undisputed that Aviall has never been subject to such an action.⁶ Aviall therefore has no §113(f)(1) claim.

B

Aviall and *amicus* Lockheed Martin contend that, in the alternative to an action for contribution under §113(f)(1), Aviall may recover costs under §107(a)(4)(B) even though it is a PRP. The dissent would have us so hold. We decline to address the issue. Neither the District Court, nor the Fifth Circuit panel, nor the Fifth Circuit sitting en banc considered Aviall's §107 claim. In fact, as noted above, Aviall included separate §107 and §113 claims in its original complaint, but then asserted a "combined" §107/§113 claim in its amended complaint. The District Court took this consolidated claim to mean that Aviall was relying on §107 "not as an independent cause of action," but only "to the extent necessary to maintain a viable §113(f)(1) contribution claim." Civ. Action No. 3:97-CV-1926-D (ND Tex., Jan. 13, 2000), App. to Pet. for Cert. 94a, n. 2. Consequently the court saw no need to address any freestanding §107 claim. The Fifth Circuit panel likewise concluded that Aviall no longer advanced a standalone §107 claim. 263 F. 3d, at 137, n. 2. The en banc court found it unnecessary to decide whether Aviall had waived the §107 claim, because it held that Aviall could rely instead on §113. 312 F. 3d, at 685, n. 15. Thus, the court did not address the waiver issue, let alone the merits

⁶Neither has Aviall been subject to an administrative order under §106; thus, we need not decide whether such an order would qualify as a "civil action under section 9606 . . . or under section 9607(a)" of CERCLA. 42 U. S. C. §9613(f)(1).