

## **MINUTES**

### **MONTANA SENATE 53rd LEGISLATURE - REGULAR SESSION**

#### **COMMITTEE ON JUDICIARY**

**Call to Order:** By Sen. Bill Yellowtail, Chair, on January 6, 1993, at 10:05 a.m.

#### **ROLL CALL**

##### **Members Present:**

Sen. Bill Yellowtail, Chair (D)  
Sen. Steve Doherty, Vice Chair (D)  
Sen. Sue Bartlett (D)  
Sen. Chet Blaylock (D)  
Sen. Bob Brown (R)  
Sen. Bruce Crippen (R)  
Sen. Eve Franklin (D)  
Sen. Lorents Grosfield (R)  
Sen. Mike Halligan (D)  
Sen. John Harp (R)  
Sen. David Rye (R)  
Sen. Tom Towe (D)

**Members Excused:** NONE

**Members Absent:** NONE

**Staff Present:** Valencia Lane, Legislative Council  
Rebecca Court, Committee Secretary

**Please Note:** These are summary minutes. Testimony and discussion are paraphrased and condensed.

##### **Committee Business Summary:**

Hearing: SB 12  
SB 29  
Executive Action: SB 14  
SB 1

#### **HEARING ON SB 12**

##### **Opening Statement by Sponsor:**

Senator Gage, District 5, opened SB 12. Senator Gage informed the Committee of the intent of SB 12 by reading from Exhibit #1.

##### **Proponents' Testimony:**

Cathy Kendall of the Board of Crime Control explained how SB 12 would bring compliance with federal law. Under this federal law the state can potentially lose up to \$200,000 in funds if the

state does not come into compliance with federal acts.

Cathy Kendall stated that under the Board of Crime Control they administer victims assistance programs. This statute allows, at the request of the victim, a defendant convicted of a certain sex offense to be tested and the results of those tests be released to the victim as well as the defendant. This refers to both adult and juvenile offenders convicted of these crimes.

The services required by the federal legislation are already in place in the state through the department of health with the sexually transmitted clinics, for HIV testing. Listing of sites are in Exhibit #2.

Bill Fleiner, Montana Sheriffs and Peace Officers Association stated they are supportive of SB 12. They feel that it will help the victim as well as the law enforcement office investigating incest and sexual abuse on youth.

**Opponents' Testimony:**

Scott Crichton, American Civil Liberties Union of Montana, read from Exhibit #3.

**Questions From Committee Members and Responses:**

Senator Towe asked about Section 2. Bruce Desonia of Montana Department of Health replied that they support striking the word "AIDS" and substituting "HIV." Anyone infected with AIDS is also infected with HIV.

Senator Towe asked Cathy Kendall who would pay for the testing and counseling of the victims and the perpetrators. Ms. Kendall told the Committee the Department of Health will pay through the testing sites in the state, unless the persons are able to pay.

Senator Doherty questioned how many individuals are in prison or in jail that this would apply to. Cathy Kendall responded there is no information today as to the number of perpetrators under community supervision.

Senator Doherty and Senator Halligan inquired about the confidentiality of the testing results and what impact SB 12 would have on the existing confidentiality statues regarding HIV testing. Cathy Kendall stated it allows the victim and perpetrator the results of the testing, no other person. Under the AIDS Prevention Act, the right of confidentiality is not lost.

Senator Crippen inquired as to how reliable the tests are. Bruce Desonia responded the tests are very specific and rarely show false positive.

Senator Halligan inquired about the availability of further

counseling, if needed. Cathy Kendall relied, yes, it is available after all the requirements of the existing compensation are met.

Senator Bartlett asked if the victims are limited to one request for a test, and are the victims encouraged to postpone their own testing until sufficient time has passed for the infections to make themselves known. Cathy Kendall relied if SB 14 is adopted they will work with the Department of Health to develop some rules and procedures.

**Closing by Sponsor:**

Senator Gage closed by saying the intent of SB 14 is to preserve funding that comes to the state of Montana from the federal government, to give victims the feeling they have not been victimized by an incurable disease. Senator Gage further stated that this is a good bill that will help public safety, the citizens of Montana and give relief to people who are victims of sexual crimes.

**HEARING ON SB 29**

**Opening Statement by Sponsor:**

Senator Towe, District 46, opened with a letter by a constituent, Bob Court. Exhibit #4. Senator Towe told the committee SB 29 would increase the penalty for sex offenders engaged in gang rape with a minimum penalty of 10 years to a maximum of 25 years and may be fined not more than \$100,000. SB 29 increases the penalty for the offense. Senator Towe stated society should look at this offense as being more serious and it should be treated more seriously because of the communal nature of the crime.

**Proponents' Testimony:**

Diane Sands, Montana Womens Lobby, supports SB 29. Ms. Sands stated if SB 29 passes, there is no evidence that indicates there will be a reduction of violence against women, but feels that this would be an appropriate penalty for this kind of sexual assault.

**Opponents' Testimony:**

NONE

**Questions From Committee Members and Responses:**

NONE

**Closing by Sponsor:**

Senator Towe closed SB 29.

**EXECUTIVE ACTION ON SB 14**

**Motion:** Senator Towe moved the amendment to read "adult" on line 7 and "adult" on line 14.

Senator Towe moved line 17 be amended further by striking the word "lead" and insert the word "hard projectile." Senator Towe then withdrew the motion, requesting Ms. Lane to check the definition out further.

**Discussion:**

Chair Yellowtail asked Valencia Lane, to tell the Committee about the information she received from Pat Graham, Director of Fish, Wildlife, and Parks pertaining to the definition of firearms and authorization in SB 14. Exhibit #5.

Valencia Lane stated the only amendment that has been proposed to SB 14, is the request of changing the word "person" to "adult."

Senator Doherty questioned firearms being defined as gun powder and lead since steel shot is used in hunting.

Senator Yellowtail inquired as to a definition of firearms. Valencia Lane replied there was no general definition of firearms.

**Vote:** Motion to amend SB 14 CARRIED UNANIMOUSLY.

**EXECUTIVE ACTION ON SB 1**

**Motion:**

Senator Crippen moved that the code commissioner draft committee bills 6, 7, and 8 to reflect the intent of those listed on the suggestive list of legislation. Exhibit #6.

Senator Crippen withdrew motion on committee bills 6, 7, and 8.

**Discussion:**

Greg Petesch, Code Commissioner, answered questions pertaining to exhibit #6.

**Motion/Vote:**

Senator Towe asked for a division to segregate section 5 and six. Motion CARRIED UNANIMOUSLY to request committee bills one through four.

**Motion/Vote:**

Senator Blaylock moved to request draft bills for section 5 and 6. Motion CARRIED with roll call vote. (8 senators voting YES; 3 senators voting NO)

**Discussion:**

Mr. Petesch informed the Committee of two inconsistencies with the

law governing Courts of Limited Jurisdiction that were not included in the Code Commissioner Bill. Mr. Petesch stated he would prefer not to have the Code Commissioner Bill amended and to have the bill reprinted. There would be two amendments that would conform jurisdiction for city courts.

**Motion:**


Senator Towe moved to adopt the committee bill.

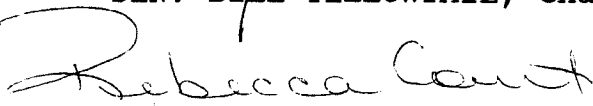
**Vote:**

Motion CARRIED UNANIMOUSLY to request the committee bill.

**ADJOURNMENT**

**Adjournment:** 11:25 a.m.

  
SEN. BILL YELLOWTAIL, Chair

  
REBECCA COURT, Secretary

BY/rc

# ROLL CALL

SENATE COMMITTEE

Judiciary

DATE 1-6-92

NAME	PRESENT	ABSENT	EXCUSED
Senator Yellowtail	X		
Senator Doherty	X		
Senator Brown	X		
Senator Crippen	X		
Senator Grosfield	X		
Senator Halligan	X		
Senator Harp	X		
Senator Towe	X		
Senator Bartlett	X		
Senator Blaylock			
Senator Blaylock	X		
Senator Rye	X		
Franklin	X		
Lane	X		

FC8

Attach to each day's minutes

## ROLL CALL VOTE

SENATE COMMITTEE                      Judiciary

BILL NO. SBI

DATE 1-6-93

TIME 11:20

A.M. P.M.

NAME \_\_\_\_\_

YES

NO

[illegible]

Rebecca Hunt  
SECRETARY

Bill Yellowtail  
CHAIR

MOTION: carried to request

draft bills for section 57

At request of Board of Crime Control, a bill to amend Montana's sexually transmitted disease testing statutes to comply with federal law.

The 101<sup>st</sup> Congress enacted provision that state statutes must be enacted and enforced providing for HIV testing of certain sex offenders if States are to continue to receive full federal funding under the Edward Byrne Memorial State and Local Law Enforcement Assistance Formula Grant Program in fiscal year 94. Montana's funds under this program amount to \$2,209,000.

The provision is Section 1804 of the Crime Control Act of 1990 and states failing to comply will lose 10% of their formula grant amount equating to about \$220,900 this year and 10% of future year's allocations.

Section 1804 requires a state law which requires the State at the request of a victim of a sexual act:

- administer to the defendant convicted under state law of such sexual act, a test to detect in the defendant the presence of HIV
- disclose the results of the test to the defendant and to the victim
- provide the victim counseling regarding HIV, HIV testing and referral to appropriate health care and support services
- such state statute must be in place by October 1, 1993

The federal agency overseeing this requirement provided a Guidance Document in April 1992 which outlines the requirements and contains a worksheet to analyze whether or not existing legislation or proposed bills meet the federal requirements. The Attorney General's office used the worksheet to determine that our existing statutes do not comply. Hence this bill proposal. The Legislative Council was provided the worksheet so that the bill could be drafted to comply.

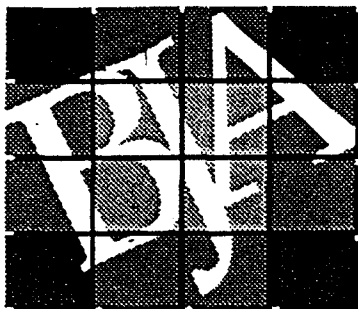
The bill is not intended to increase criminal sanctions, to further penalize any person with HIV. It is intended to help control the spread of disease and to help ameliorate the traumatic aftermath of a sex offense so that victims may know if they have been exposed to a deadly disease so they may seek treatment and, in turn, may further help limit the spread of the disease to others.

The services required in the federal legislation and in SB 12, that is testing, counseling, and referral to treatment are already in place. There should be minimal, if any, added costs to the state or other jurisdictions.

SENATE JUDICIARY  
RECEIVED  
1-6-93  
SB 12

SENATE JUDICIARY  
EXHIBIT NO. \_\_\_\_\_





Bureau of Justice Assistance

# Testing Certain Offenders for Human Immunodeficiency Virus

Guidance for States on Section 1804 Requirements

EXHIBIT 1  
DATE 1-6-93  
SB12

## **Testing Certain Offenders for Human Immunodeficiency Virus:**

### **Guidance for the States on Section 1804 Requirements**

#### **I. Introduction**

This information is compiled and distributed by the Bureau of Justice Assistance (BJA), Office of Justice Programs, in order to provide guidance to the States, Territories, and other jurisdictional units (all hereafter referred to as States) in meeting their obligations to require testing programs for detecting the human immunodeficiency virus (HIV) in certain sex offenders. Under a provision enacted by the 101st Congress, State statutes must be enacted and enforced providing for such testing if States are to continue to receive full Federal funding under the Edward Byrne Memorial State and Local Law Enforcement Assistance Formula Grant Program in Fiscal Year 1994.

The Federal statute decreasing the amount of the formula grant for those States not observing a statutory HIV testing requirement is meant to set a minimum standard. Obviously, States may have broader requirements than set out in the Federal statute shown below, without jeopardizing their continued full funding. However, States will want to be certain that their statutes at least meet all the required elements of the Federal legislation, particularly those States whose testing acts antedate the Federal provision.

#### **II. Background**

With the frightening spread of acquired immune deficiency syndrome (AIDS) and its HIV precursor, transmitted as they are by sexual contact, another often terrifying concern has been introduced into the lives of victims of the crimes of sexual abuse or rape.

In an effort to eliminate at least part of the traumatic aftermath of such a crime upon its victims, a number of State legislatures in recent years have enacted statutes which generally require that persons convicted of sexual abuse offenses (as rape is now often denominated) must undergo HIV testing in order that their victims can at least know that they have not been exposed to the deadly virus, or if, tragically, they have been so exposed, they can seek medical treatment and take steps to protect others from the further spread of the epidemic.

By the end of 1990, about one-third of the States had enacted such statutes. Individual provisions, however, varied in form and detail. For example in some cases, the testing process was mandatory for all persons convicted of sexual abuse. In others, it was triggered only at the request of a victim. In some States, only the person convicted and the victim were entitled to the test results, while in others spouses of the victim and the convicted defendant, if any, also received the findings.

In 1990, Congress decided that the States without this legislation should be persuaded to adopt mandatory HIV testing in instances of criminal sexual abuse. In the words of the House sponsor of the measure, Congresswoman Martin of Illinois, the provision was offered "because rape victims should not have to live in fear about exposure to the AIDS virus. . . . [A]ll States should make it possible for rape victims to find out if they have been placed at risk. They have the right to know. . . . We can. . . demonstrate our compassion by preventing further traumatization of these victims who also face the possibility of exposure to the AIDS virus."

### III. The Statute

Accordingly, in Sec. 1804 of the Crime Control Act of 1990 (hereafter referred to as Section 1804), Congress amended Sec. 506 of title I of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, hereafter referred to as the Act, by adding a subsection (f), as follows:

(f)(1) For any fiscal year beginning more than 2 years after the effective date of this subsection-

(A) 90 percent of the funds allocated under subsection (a)<sup>1</sup>, taking into consideration subsection (e)<sup>2</sup> but without regard to this subsection, to a State described in paragraph (2) shall be distributed by the Director to such State; and

(B) 10 percent of such amount shall be allocated equally among States that are not affected by the operation of subparagraph (A).

(2) Paragraph (1)(A) refers to a State that does not have in effect, and does not enforce, in such fiscal year, a law that requires the State at the request of the victim of a sexual act-

(A) to administer, to the defendant convicted under State law of such sexual act, a test to detect in such defendant the presence of the etiologic agent for acquired immune deficiency syndrome;

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<sup>1</sup>Sec 506(a) of Title I of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, 42 U.S.C. 3756(a), sets out the formula for determining the sums to be distributed to the States under the formula grant provisions of the Edward Byrne Memorial State and Local Law Enforcement Assistance Programs.

<sup>2</sup>Section 506(e) of Title I of the Act, 42 U.S.C. § 3756(e), refers to funds allocated to the States, but not distributed to them, which thus become available for the discretionary grant program as provided in Sec. 510 - 518 of the Act, 42 U.S.C. § 3760-3764.

(B) to disclose the results of such test to such defendant and to the victim of such sexual act; and

(C) to provide to the victim of such sexual act counseling regarding HIV disease, HIV testing, in accordance with applicable law, and referral for appropriate health care and support services.

(3) For purposes of this subsection-

(A) the term "convicted" includes adjudicated under juvenile proceedings; and

(B) the term "sexual act" has the meaning given such term in subparagraph (A) or (B) of section 2245(1) [sic<sup>1</sup>] of title 18, United States Code.

Section 1804 was codified as 42 U.S.C. § 3756(f).

#### IV. Effective Date

Section 1804 became effective on November 29, 1990, with the enactment of the Crime Control Act of 1990. Thus, in order for a State to receive its full formula amount for the fiscal year beginning two years after passage of the 1990 Act, its HIV testing statute incorporating the Section 1804 standards must be in place for Fiscal Year 1994<sup>4</sup>, which begins October 1, 1993.

#### V. The Financial Effect of Sec. 1804

Section 1804 thus requires that 10% of a State's formula grant be withheld and transferred elsewhere if that State by the Fiscal Year 1994 deadline has failed to place in effect, as well as actually enforce, the elements of the HIV testing standards created by Section 1804.

There is no waiver procedure incorporated within the statute. Consequently, BJA will be unable to waive or postpone to a later year the 10% reduction in funds for any State which should fail to comply.

Any Federal funds which must be withheld from the States because of noncompliance with the Section 1804 mandate must be allocated equally among States which have complied. Thus in addition to qualifying for continued full formula grant funding under the Act, States which enact and enforce their own statute meeting the Section 1804 standards, become eligible to share equally with other complying States in the accumulated monies withheld from States which have failed to comply.

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<sup>3</sup>See the comment in Paragraph 7 of Division VI, "Definition of the Term 'Sexual Act.' "

<sup>4</sup>Fiscal Year 1994 is the first full "fiscal year beginning more than two years after the effective date of" Section 1804. See §506(f)(1) of title I of the Act, 42 U.S.C. § 3756(f)(1).

## VI. The Section 1804 Standards

As set out above, the State statutes now in place or to be adopted must meet the minimum standards required by Section 1804. Of course, the States may enact and enforce broader requirements or standards.

However, States should regard each element of the Section 1804 standards as being required for inclusion in their State statute in order to maintain their full funding. These elements are:

### 1. *Victim Request.*

The State statute must require that the State make mandatory the testing process at the request of any victim of a sexual act (as defined below) for which the person to be tested was convicted in State court.

If the State statute requires all persons so convicted to be tested *without exception* (regardless of the absence of a victim request), then this element may be regarded as being met, since it is broader, or more inclusive in nature than Section 1804 requires. However, the requirement would not be met if the State statute would allow the person otherwise to be tested to avoid the testing process, even though the victim requested it.

### 2. *Administration of the Test.*

The State statute must provide for an agency of the State to direct the test to be administered, although the actual physical testing may be delegated to another, such as a physician, laboratory, etc. Typically, the State statute would provide for the sentencing judge to order the testing either before sentencing (perhaps as part of the order for a pre-sentence investigation) or as part of the sentencing order itself.

The State statute must direct that the procedure itself specifically test for the presence of the etiologic agent for AIDS, or HIV.

### 3. *The Person to be Tested.*

Congress required in Section 1804 that the State statute must provide that any person "convicted under State law" of a sexual act is obliged to be tested for AIDS or its HIV precursor at the victim's request. This includes persons entering pleas of guilty to a criminal sexual act (as hereafter defined), as well as those being found guilty following a jury trial or a trial to the court. It also includes juveniles thus adjudicated (see paragraph 6 below).

#### *4. Disclosure of the Test Results.*

The State statute must provide for the disclosure, at the request of the victim, of the test results to both the victim and the person convicted. Some States have chosen to provide the test results to others as well, such as the spouses, if any, of the victim and the defendant.

#### *5. Victim Services.*

Congress required in Section 1804 that the State statutes include a provision for making certain services available to the victims of these sexual acts at their request. These services are:

1. counseling regarding HIV disease;
2. HIV testing in accordance with applicable law; and
3. referral for appropriate health care and support services.

If the language of a State statute does not incorporate the specific language of Section 1804, it must at least be so broad as to make it clear that these victims are entitled as a matter of right to request and receive the counseling, testing, and referral services specified by Congress.

Section 1804 implies that these services are to be provided at the expense of State or local governments, rather than at the victim's expense. State offices administering the Edward Byrne Memorial State and Local Law Enforcement Assistance Formula Grant Program should be prepared to inform BJA as to the sources of the funds to pay for these services and the authority therefore.

#### *6. Definition of the Term "Convicted" as Including Juveniles.*

In paragraph (3)(A) of Section 1804, Congress provided that "the term 'convicted' includes adjudicated under juvenile proceedings".

Thus, in order to be in compliance with Section 1804, State HIV testing statutes must provide that not only adult defendants convicted of defined sexual acts are required to be tested by the State at the request of the victim, but that juveniles similarly adjudicated are also required to be so tested.

#### *7. Definition of the Term "Sexual Act."*

In paragraph (3)(B) of Section 1804, Congress defined the term "sexual act" as the meaning given such term in 18 U.S.C. § 2245(1)(A) or (B). Clearly Congress intended to define "sexual act" as that meaning given the term in 18 U.S.C. § 2245(2)(A) or (B), which provides:

(2) the term "sexual act" means-

(A) contact between the penis and the vulva or the penis and the anus, and for purposes of this subparagraph contact involving the penis occurs upon penetration, however, [sic] slight;

(B) contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus; . . . .

The language of the State HIV testing statute should, where possible, incorporate these definitions. However, since Section 1804 requires that the person tested must be "convicted under State law", if State statutory criminal law defines the term "sexual act" in a less inclusive manner, we do not believe this fact would automatically mean that a State is in non-compliance, because it does not appear from the language of Section 1804 or its statutory history, that Congress intended to require States to change their definitions of substantive criminal acts in order to receive their full formula grant.

#### VII. State Determination of Compliance with Section 1804

All State Offices should promptly review their State's statutory provisions regarding required HIV testing for sex offenders together with any other pertinent State statutory and case law. These materials should be compared with Section 1804 as set out in Division III above and as explained in Division VI immediately above. BJA suggests that this review be conducted by those providing legal advice to the State Office.

It is the responsibility of each State Office to conduct this review and comparison and to make a determination that State statutory law either is now in compliance or is not yet in compliance with the Section 1804 standards.

For those States whose legislatures have not yet enacted a mandatory HIV testing statute for sex offenders, State Office legal advisors will no doubt wish to review any bills which may be pending, making the same comparisons. Should it appear that a proposed bill does not include all elements of the Section 1804 standards, the State Office will want to make that fact known to the appropriate State legislative committees or individual legislators.

Finally, for those States without any existing or proposed legislation complying with Section 1804, BJA suggests that the State Offices make the appropriate legislative committees and/or legislators aware of the Section 1804 requirements promptly.

To assist the States in assessing the degree of their Section 1804 compliance, a worksheet is included as an Appendix to these materials. BJA believes that the worksheet will serve as a useful tool in that endeavor and suggests that each State Office make use of it in arriving at its own determination as to Section 1804 compliance.

If, after conducting its own review, a State Office still has a question as to whether State law is in compliance with the Section 1804 standards, it may request BJA to review

its enacted statutory materials. However, a State should not request a BJA review until after conducting its own study based on the information contained in these materials. Nor should a State request a BJA review if it is apparent from a completed worksheet that it does not yet comply with all of the elements of the Section 1804 standards.



1-6-93  
SB 12

## Appendix

# Worksheet

For Fiscal Year 1994, States and other Jurisdictions (for convenience hereafter referred to as States) must be in compliance with the HIV mandatory testing standards for certain offenders established by Sec. 1804 of the Crime Control Act of 1990, 42 U.S.C. § 3756(f) (hereafter referred to as Section 1804) in order to receive continued full funding under the Edward Byrne Memorial State and Local Law Enforcement Assistance Formula Grant Program.

The purpose of this worksheet is to assist the States in providing a self-assessment of their compliance with Section 1804. It need not be returned.

### 1. Victim Request.

Does the State statute require an HIV testing procedure at the request of any victim of a sexual act for which the person to be tested was convicted in State court (or make such a test mandatory for *all* persons thus convicted regardless of victim request)?

\_\_\_\_ Yes      \_\_\_\_ No

*What statutory section(s), subsection(s), paragraph(s), or subparagraph(s) or non-statutory materials provide this authority?*

### 2. Administration of the Test.

Does the State statute require an agency of the State (such as a court, health department, correctional authority, etc.) to direct that a test be administered in such cases?

\_\_\_\_ Yes      \_\_\_\_ No

Does the State statute specifically require testing in these cases for the presence of acquired immune deficiency syndrome (AIDS) or its precursor, human immunodeficiency virus (HIV).

\_\_\_\_ Yes      \_\_\_\_ No

*What statutory section(s), subsection(s), paragraph(s), or subparagraph(s) or non-statutory materials provide this authority?*

### 3. The Person to be Tested.

Does the State statute require persons to be tested who have been convicted under State law of a defined sexual act?

☐ Yes, in all cases      ☐ Yes, but only at the request of a victim      ☐ No

Does this either specifically or by definitional inclusion encompass persons found guilty of the offense by a jury or court, as well as those entering a pleas of guilty? (*Note: Because Question 6 below concerns the definition of juveniles as persons "convicted," please disregard that issue for Question 3).*

☐ Yes      ☐ No

*What statutory section(s), subsection(s), paragraph(s), or subparagraph(s) or non-statutory materials provide this authority?*

### 4. Disclosure of the Test Results.

Does the State statute provide for disclosure of the test results to the both the victim and the person tested?

☐ Yes      ☐ No

*What statutory section(s), subsection(s), paragraph(s), or subparagraph(s) or non-statutory materials provide this authority?*

### 5. Victim Services.

Does the State statute provide for making the following services available to the victims of these sexual acts at their request:

1. Counseling regarding HIV disease?

☐ Yes      ☐ No

2. HIV testing in accordance with applicable law?

☐ Yes      ☐ No

3. Referral for appropriate health care and support services?

☐ Yes      ☐ No

*What statutory section(s), subsection(s), paragraph(s), or subparagraph(s) or non-statutory materials provide this authority?*

What are the sources of the funds to pay for these services?

EXHIBIT 1  
1-6-93  
SB 12

*What statutory section(s), subsection(s), paragraph(s), or subparagraph(s) or non-statutory materials provide this authority?*

**6. Definition of the term "convicted" as including Juveniles.**

Does the State statute require HIV testing for juveniles who have been adjudicated under State law of committing sexual acts as it does with adults?

       Yes             No

*What statutory section(s), subsection(s), paragraph(s), or subparagraph(s) or non-statutory materials provide this authority?*

**7. Definition of the term "Sexual Act."**

Does the State statute define "sexual act" as having the meaning (either literal or approximate) as that given the term in 18 U.S.C. § 2245(2)(A) or (B)? (See Division 7 of the "Guide for the States").

       Yes             No

*What statutory section(s), subsection(s), paragraph(s), or subparagraph(s) or non-statutory materials provide this authority?*

# INFORMATION ABOUT SEXUALLY TRANSMITTED DISEASES

CLINIC 1201-13  
BUTTE 3  
1-6-93  
12

This brochure was developed by the Montana Department of Health and Environmental Sciences, Helena, Montana

## MONTANA STD CLINICS

### City-County Health Departments

Billings 256-6821  
Great Falls 761-1190  
Helena 443-2584  
Kalispell 756-5684  
Missoula 523-4750

### Family Planning Clinics

Anaconda 563-7861  
Bozeman 587-0681  
Butte 723-6507  
Dillon 683-4771  
Havre 265-6744  
Helena 442-3830  
Lewistown 538-6291  
Miles City 232-3307

### Planned Parenthood

Billings 656-9980  
Billings 248-2373  
Great Falls 454-3431  
Missoula 728-5490

Montana AIDS Hotline 1-800-233-6668

National STD Hotline 1-800-227-8922

ALSO HIV-testing sites  
(11) in addition to above  
Butte (H.D.)  
Glendive (H.D.)  
Wolf Butte (H.D.)  
Havre (H.D.)

Following a sexual assault, you probably have concerns and questions about many subjects. This brochure is intended to provide you with the information you need about sexually transmitted diseases, or "STD's."

If you do not understand this information, or wish more complete information, ask your physician or another health care professional to assist you.

## WHAT ARE SEXUALLY TRANSMITTED DISEASES (STD'S)?

Sexually transmitted diseases are diseases you can catch by having sexual contact with someone who has the disease. You may have heard of some of them and some may be unfamiliar to you. The most well-known STD's include *gonorrhea*, *syphilis trichomoniasis* ("trich"), *genital herpes*, *genital warts*, *hepatitis B*, *chlamydia*, *non-gonococcal urethritis (NGU)*, and *Human Immunodeficiency Virus (HIV)*. Each of these diseases may be transmitted by sexual contact. Left untreated, some of these STD's can cause serious complications.

## HOW DO I KNOW IF I HAVE BEEN INFECTED?

The victim should be initially evaluated for STD within 24 hours of the assault, if possible, and evaluation should include the following:

- Cultures for *N. gonorrhoeae* and *C. trachomatis* from specimens from any sites of penetration or attempted penetration.

- Collection of a blood sample for a serologic test for syphilis and for storage of a serum sample for possible future testing. Serologic testing for HIV and hepatitis B infection should be considered.

- For women, examination of vaginal specimens for *T. vaginalis* and for evidence of bacterial vaginosis (BV).

- Pregnancy test for the evaluation and management of pregnancy risk.

Additional tests may be performed in 14-21 days, to repeat studies. A third visit may be scheduled at 8-12 weeks to repeat initial serologic studies, including tests for antibodies to syphilis and/or hepatitis B, and/or HIV.

## WHAT IS THE RISK OF CATCHING AN STD AS THE RESULT OF A SEXUAL ASSAULT?

While any sexual activity involves a risk of getting an STD, certain diseases are more easily acquired than others. Your risk of infection increases if more than one infected person has assaulted you and/or if the same infected person assaults you more than once. Preventive treatment and follow-up testing is important.

## IF I CAUGHT SOMETHING FROM THE ASSAULT, CAN I GIVE IT TO MY SEXUAL PARTNERS?

Yes. For this reason we recommend that you not have sexual contact where body fluids are exchanged until after you have completed all phases of the evaluation. If you do have sex, the use of condoms by a man will very much reduce the risk of an STD being passed on.

## WHAT DO I NEED TO KNOW ABOUT TESTING?

Follow-up testing is available through most physicians. There are also public health facilities in Montana which provide STD testing free of charge. Their locations are listed in this brochure. Some individuals choose to be tested through these clinics, where the information may not become a part of their general health care or insurance records. The most important thing to remember is that follow-up testing is critical.

## ARE THERE SYMPTOMS I SHOULD WATCH FOR?

Some STD's have no symptoms, so, WITH OR WITHOUT SYMPTOMS, YOU SHOULD TALK TO A PHYSICIAN OR GO TO A TEST SITE WITHIN THREE WEEKS OF THE ASSAULT. Symptoms that may occur include unusual bleeding or discharge, redness, itching, soreness, blisters or sores, or burning with urination.

## WHAT ABOUT AIDS/HIV?

With all of the media coverage of AIDS, many sexual assault victims are fearful of catching HIV, the virus which leads to AIDS. It is important to know that AIDS is a difficult disease to catch and the risk resulting from a single sexual penetration is very small. Penetration and some exchange of bodily fluid, particularly blood or semen, are the only way for HIV to be transmitted during a sexual assault. If this did not happen to you, you probably do not need to be tested for HIV.

The most recent information available from the U.S. Centers of Disease Control recommends that sexual assault victims be tested approximately 12 weeks following the assault. This testing will be quite conclusive and most individuals will not need to be tested again. While AIDS is a frightening disease, it is important to remember that there are almost no cases of AIDS which can be traced to a single sexual assault, despite tens of thousands of assaults each year.

## CAN I FIND OUT IF THE OFFENDER HAS HIV OR OTHER DISEASES?

Montana law does allow victims of sexual assault to request testing of convicted offenders. Finding out information about the individual who sexually assaulted you is not the best way of predicting whether you may have contracted a disease. The nature of the assault, the stage of any disease, your own immunity and other factors make your own test result much more important than the results of any tests on an offender.

## HOW CAN I GET MORE INFORMATION?

If you have questions or concerns about STD's, ask your physician or your local health department. For more information about testing, contact one of the STD clinics listed on the back. Always seek expert medical advice if you believe that you may have contracted an STD.



RECEIVED  
SUBMIT NO. 3  
DATE 1-6-93  
BILL NO. 12

P. O. BOX 3012 • BILLINGS, MONTANA 59103 • (406) 248-1086 • FAX (406) 248-7763

SB 12                      January 6, 1993

Mr. Chair, Members of the Committee:

For the record, I am Scott Crichton, executive Director for the ACLU of Montana.

The ACLU of Montana would like to provide some background information for the Committee's consideration as it deliberates about SB 12. The statement of intent may be well meaning but is factually misleading. Requiring persons convicted of sexual abuse offenses to undergo HIV testing does not insure that the victim will definitively know whether she or he has been exposed.

Testing the convicted rapist is not going to give the victim reliable information. In fact, it may provide either a false sense of security or alarm. The amount of time that has passed since the offense was committed, and the activities of the convicted person in the interim may, among other factors, affect the test results.

The only way victim can find out if she or he has been infected is to test onesself. As you may be aware, there is a window of a six month period generally from time of infection to the time of sero conversion that would yield a positive test result.

Advocacy groups for the victims of sexual assaults have gone on record opposing mandatory testing, asserting that victims need to get more control over their lives after being violated and that mandatory testing provides false security and does not facilitate healing.

A report put out by the Center for Women Policy Studies, entitled "More Harm Than Help: The Ramifications for Rape Survivors of Mandatory HIV Testing of Rapists" articulates better than I can in a short testimony the rationale for opposing such testing. Other groups that came together to oppose similar legislation proposed in U.S. Senate hearings cosigned a letter in June of 1991. These groups included the NOW Legal Defense Fund, the National Women's Health Network, the National Women's Law Center, The National Association of Protection and Advocacy Systems, and the National Association of Social Workers

The National Coalition Against Sexual Assault sent a separate letter to oppose all forms of mandatory HIV testing in 1990, but they also stressed the importance of the availability of free, anonymous or confidential HIV testing and counseling for the survivors of sexual assaults.

To close. the ACLU of Montana encourages this committee to take a broader view of sexual assault victims to make sure the victim gets factually correct counseling, a clear explanation of how HIV transmission works, and an honest understanding of the relatively low risk of getting HIV infection in one sexual encounter, setting HIV apart from than other sexually transmitted diseases.

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DATE 1-6-93  
BILL NO. SB29Bob Court  
2909 Greick Lane  
Billings, Mont  
59103

Legislative Council  
State Capitol  
Helena, Mont. 59620  
Re: Bill Drafting Request

Ladies And Gentlemen:

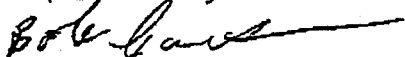
I have asked Mr. Tomas Towe to submit a bill, to you in regard to the crime of gang rape. I feel at this time that the ~~law~~<sup>law</sup> is not sufficiently strong enough to deter gang rape at this time.

I would come to Helena testify and answer any questions on my strong beliefs in this matter except I am on dialysis, and oxygen here in Billings and also being on fixed income it is impossible for me to travel outside of Billings.

Please note communications to you dated Oct 30, 1991 and enclosure copy of the bill as written up by Mr. Towe.

My interest is on lines 9 through 14. I would also like to see submitted in this language a no parole entrance for the first 5 years. My reasons for such a strong bill are many, but will shorten it up to say the no matter what the reputation or lifestyle of a lady, or her social standing, there is no reason for more than one person to rape her for sexual pleasure knowing that the law will go easy on those convicted of this crime. I feel this is animal behavior and should come to a stop. I bore witness to a gang rape in 1957 and when this crime came to court the rapist got off with just a small fine and it was ruled that boys will be boys and the lady was just Carney Trash. I was awarded damages for being beaten to the point I was hospitalized. She was not even given this benefit. I am asking that this bill be given consideration and passed as drafted

Respectfully



R.W. (Bob) Court



**Montana Department  
of  
Fish, Wildlife & Parks**



Helena, MT 59620  
January 5, 1993

Senator Bernie Swift  
Montana State Senate  
Helena, MT 59620

Dear Senator Swift:

We have researched the questions asked by the Senate Judiciary Committee. With regard to the definition of "authorization," it may be desirable from the perspective of the adult taking another child hunting to have written permission. From a department enforcement perspective, it can be either written or verbal. It is not defined in the statute. We are not proposing an amendment to address this.

There is no prohibition on youth bow hunting as there is for firearms. "Firearms" is defined as "loaded with powder and lead." There is no need to amend this or any other statute to address youth bow hunting with another adult.

Sincerely,

Patrick J. Graham  
Director

PJG/sa

cc: Members of the Senate Judiciary Committee

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1-6-93  
14

SENATE JUDICIARY

EXHIBIT NO. 6

DATE 1-6-93

BILL NO. 1

### SUGGESTED LEGISLATION

Prepared by Gregory J. Petesch, Code Commissioner

(Does not include topics on which past bills were introduced)

One of the duties of the Code Commissioner is to prepare a report indicating recommendations for legislation. The Code Commissioner bill has traditionally contained only nonsubstantive material necessary to correct errors and inconsistencies in the Montana Code Annotated. I have determined that the following items require the determination of substantive questions and are therefore not proper for inclusion in the Code Commissioner bill. The following items are recommended for legislative consideration. Please contact me if you would like to submit a bill drafting request on any item.

1. Amend 2-3-203 to remove the collective bargaining exception to the open-meeting law, which was declared unconstitutional in Great Falls Tribune Co., Inc. v. Great Falls Public Schools, No. 91-474, Mont. , P.2d (1992).

2. Amend 39-71-414(6)(a), concerning subrogation of third-party payments to a workers' compensation insurer, which was determined to violate Article II, section 16, of the Montana Constitution in Francetich v. State Fund, 49 St. Rep. 222, 827 P.2d 1279 (1992).

3. Amend 40-6-108(1)(b) to clarify the statute of limitations for paternity actions by illegitimate children, which was determined to violate the equal protection clause in Arizona v. Sasse, 245 Mont. 340, 801 P.2d 598 (1990). The provision addresses litigation to address the nonexistence of a presumed paternity.

4. Repeal 69-4-404, which was declared unconstitutional in McTaggart v. Montana Power Co., 184 Mont. 329, 602 P.2d 992 (1979). The statute addresses the sharing of the cost between the utility and the landowner of relocating an overhead power line.

5. Amend 69-14-116 to remove the rear-end telemetry system requirement, which was declared unconstitutional in Burlington Northern Railroad Co. v. State, CV-91-38-H-CCL, U.S. District Court (1992).

6. Repeal 82-4-224, which was declared unconstitutional in Western Energy Co. v. Genie Land Co., 227 Mont. 74, 737 P.2d 478 (1987). The statute requires surface owner consent for stripmining.

DATE 1-6-92

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: S.B. 12, S.B. 29

Name	Representing	Bill No.	Check One	
			Support	Oppose
Cathy KENDALL	Crime Control	SB 12	X	
Bill FEINER	Mont Sheriffs & Peace Officers Assoc	SB 12	X	
Bruce Deserica	MT. Dept. Health	SB 12	monito	
Diane Sands	mt Women's Lfth	SB 29	X	
Scott Croth	ACLU	SB 12		X
Ed Wall	MBCC	SB 12	✓	

## VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY