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Issues - Criminalization Fax 5/21/99

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*Helene - This is
just, we are starting
to track this stuff
more carefully.*

NOTE TO ERIC P. GOOSBY, M.D.

FROM: Brian R. McCormick
Office of HIV/AIDS Policy

SUBJECT: Status of Missouri SB 477 and Colorado SB 119 regarding the disclosure of HIV
test results in criminal proceedings-**INFORMATION**

*But
regards
Deborah*

Overview

This note is to make you aware of several pieces of legislation pending in states that would release identifiable public health information to non-public health personnel and treat all instances of knowing HIV transmission as being of malicious intent. These bills have potentially serious implications for our HIV surveillance activities and policies concerning HIV confidentiality.

While we have become aware of these two recent examples, this trend is clearly growing and other states may be considering similar proposals.

Missouri SCS/Senate Bill 477

Introduced on February 22, 1999, Missouri SB 477 amends that section of Missouri law governing permissible disclosures of an individual's HIV status or the results of any individual's HIV testing. The bill allows such disclosures to "Peace officers...and prosecuting attorneys...who possess a compelling need for disclosure of the information for the investigation of and adjudication of a criminal proceeding...."

Senate Bill 477 also amends the provision concerning the disclosure of HIV test results to the victims of any sexual offenses which include sexual intercourse as an element of the crime. The bill would direct the Department of Corrections to also inform the parents or guardians of any victims who are unemancipated minors.

As of April 12, 1999, this bill had been passed by the Senate and by the House Public Health Committee. It is waiting to be reported to the House floor.

Colorado Senate Bill 99-119

Introduced on January 21, 1999, Colorado SB 119 revises the state criminal code to require that any person convicted of prostitution or patronizing a prostitute, or a comparable municipal ordinance, submit to an HIV test. The results of that test would be given to that person and the district attorney and be kept confidential, unless the person is revealed to be HIV positive and subsequently charged with the violation of other laws, or the prosecuting attorney (if of another jurisdiction) seeks the information for evaluation, charging, and sentencing.

The bill also requires that the testing be done in an on-going health care facility and that the tester provide any evidence that indicates whether or not the person had been notified of HIV infection prior to the offense. If any person with such prior knowledge is convicted of a prostitution-related offense, the court can order that person to undergo (and pay for, unless indigent) substance or alcohol abuse and mental health assessment and treatment.

Senate Bill 119 also requires that any adult or juvenile bound over for trial on a sexual offense submit to an HIV test. The results of that test are to be kept confidential by the district attorney, except for pleading and sentencing. If the person tests positive, the district attorney can contact the Department of Health to determine whether or not that person was aware of their infection prior to the offense. If this is the case, the district attorney can file an indictment and seek a mandatory jail sentence. If the person is convicted of the substantive offense as well, and the court determines that the person had prior knowledge of his or her infection, the judge must sentence the person to at least three times the upper limit of the range of incarceration for that offense, up to the remainder of the person's natural life. All these actions would be kept confidential from any jury.

As of April 26, 1999, this bill had been passed by the Senate, amended by the House and repassed by the Senate. It does not appear that it has yet been passed by the House in its final form.

CC: Deborah von Zinkernagel

Office of HIV/AIDS Policy

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You need to be aware,
We have bill text here.