

105TH CONGRESS
1ST SESSION

S. 503

To prevent the transmission of the human immunodeficiency virus (commonly known as HIV), and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 20, 1997

Mr. NICKLES introduced the following bill; which was read twice and referred to the Committee on Labor and Human Resources

A BILL

To prevent the transmission of the human immunodeficiency virus (commonly known as HIV), and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “HIV Prevention Act
5 of 1997”.

6 **SEC. 2. FINDINGS.**

7 The Congress finds as follows:

8 (1) The States should recognize that the terms
9 “acquired immune deficiency syndrome” and
10 “AIDS” are obsolete. In the case of individuals who

1 are infected with the human immunodeficiency virus
2 (commonly known as HIV), the more important
3 medical fact for the individuals and for the protec-
4 tion of the public health is the fact of infection, and
5 not just the later development of AIDS (the stage at
6 which the infection causes symptoms). The term
7 “HIV disease”, meaning infection with HIV regard-
8 less of whether the infection has progressed to
9 AIDS, more correctly defines the medical condition.

10 (2) The medical, public health, political, and
11 community leadership must focus on the full course
12 of HIV disease rather than concentrating on later
13 stages of the disease. Continual focus on AIDS rath-
14 er than the entire spectrum of HIV disease has left
15 our Nation unable to deal adequately with the epi-
16 demic. Federal and State data collection efforts
17 should focus on obtaining data as early as possible
18 after infection occurs, while continuing to collect
19 data on the symptomatic stage of the disease.

20 (3) Recent medical breakthroughs may enable
21 doctors to treat HIV disease as a chronic disease
22 rather than as a terminal disease. Early intervention
23 in the progression of the infection is imperative to
24 prolonging and improving the lives of individuals
25 with the disease.

1 (4) The Centers for Disease Control and Pre-
 2 vention has recommended partner notification as a
 3 primary prevention service. The health needs of the
 4 general public, and the care and protection of those
 5 who do not have the disease, should be balanced
 6 with the needs of individuals with the disease in a
 7 manner that allows for the infected individuals to re-
 8 ceive optimal medical care and for public health
 9 services to protect the uninfected.

10 (5) Individuals with HIV disease have an obli-
 11 gation to protect others from being exposed to HIV
 12 by avoiding behaviors that place others at risk of be-
 13 coming infected. The States should have in effect
 14 laws providing that intentionally infecting others
 15 with HIV is a felony.

16 **SEC. 3. PREVENTION OF TRANSMISSION OF HIV.**

17 (a) REQUIREMENTS FOR STATES.—A State shall
 18 demonstrate to the satisfaction of the Secretary that the
 19 law or regulations of the State are in accordance with the
 20 following:

21 (1) REPORTING OF CASES.—The State requires
 22 that, in the case of a health professional or other en-
 23 tity that provides for the performance of a test for
 24 HIV on an individual, the entity confidentially re-
 25 port positive test results to the State public health

1 officer, together with any additional necessary infor-
2 mation, in order to carry out the following purposes:

3 (A) The performance of statistical and epi-
4 demiological analyses of the incidence in the
5 State of cases of such disease.

6 (B) The performance of statistical and epi-
7 demiological analyses of the demographic char-
8 acteristics of the population of individuals in
9 the State who have the disease.

10 (C) The assessment of the adequacy of
11 preventive services in the State with respect to
12 the disease.

13 (D) The performance of the functions re-
14 quired in paragraph (2).

15 (2) FUNCTIONS.—The functions described in
16 this paragraph are the following:

17 (A) PARTNER NOTIFICATION.—

18 (i) IN GENERAL.—The State requires
19 that the public health officer of the State
20 carry out a program of partner notification
21 to inform individuals that the individuals
22 may have been exposed to HIV.

23 (ii) DEFINITION.—For purposes of
24 this paragraph, the term “partner” in-
25 cludes—

1 (I) the sexual partners of individ-
2 uals with HIV disease;

3 (II) the partners of such individ-
4 uals in the sharing of hypodermic nee-
5 dles for the intravenous injection of
6 drugs; and

7 (III) the partners of such individ-
8 uals in the sharing of any drug-relat-
9 ed paraphernalia determined by the
10 Secretary to place such partners at
11 risk of HIV infection.

12 (B) COLLECTION OF INFORMATION.—The
13 State requires that any information collected
14 for purposes of partner notification be sufficient
15 for the following purposes:

16 (i) To provide the partners of the in-
17 dividual with HIV disease with an appro-
18 priate opportunity to learn that the part-
19 ners have been exposed to HIV.

20 (ii) To provide the partners with
21 counseling and testing for HIV disease.

22 (iii) To provide the individual who has
23 the disease with information regarding
24 therapeutic measures for preventing and
25 treating the deterioration of the immune

1 system and conditions arising from the dis-
 2 ease, and to provide the individual with
 3 other preventive information.

4 (iv) With respect to an individual who
 5 undergoes testing for HIV disease but does
 6 not seek the results of the testing, and who
 7 has positive test results for the disease, to
 8 recall and provide the individual with coun-
 9 seling, therapeutic information, and other
 10 information regarding preventative health
 11 services appropriate for the individual.

12 (C) COOPERATION IN NATIONAL PRO-
 13 GRAM.—The State cooperates with the Director
 14 of the Centers for Disease Control and Preven-
 15 tion in carrying out a national program of part-
 16 ner notification, including the sharing of infor-
 17 mation between the public health officers of the
 18 States.

19 (3) TESTING OF CERTAIN INDICTED INDIVID-
 20 UAL.—With respect to a defendant against whom an
 21 information or indictment is presented for a crime in
 22 which by force or threat of force the perpetrator
 23 compels the victim to engage in sexual activity, the
 24 State requires the following:

1 (A) IN GENERAL.—That the defendant be
2 tested for HIV disease if—

3 (i) the nature of the alleged crime is
4 such that the sexual activity would have
5 placed the victim at risk of becoming in-
6 fected with HIV; or

7 (ii) the victim requests that the de-
8 fendant be so tested.

9 (B) TIMING.—That if the conditions speci-
10 fied in subparagraph (A) are met, the defend-
11 ant undergo the test not later than 48 hours
12 after the date on which the information or in-
13 dictment is presented, and that as soon there-
14 after as is practicable the results of the test be
15 made available to—

16 (i) the victim;

17 (ii) the defendant (or if the defendant
18 is a minor, to the legal guardian of the de-
19 fendant);

20 (iii) the attorneys of the victim;

21 (iv) the attorneys of the defendant;

22 (v) the prosecuting attorneys;

23 (vi) the judge presiding at the trial, if
24 any; and

1 (vii) the principal public health official
 2 for the local governmental jurisdiction in
 3 which the crime is alleged to have oc-
 4 curred.

5 (C) FOLLOW-UP TESTING.—That if the de-
 6 fendant has been tested pursuant to subpara-
 7 graph (B), the defendant, upon request of the
 8 victim, undergo such follow-up tests for HIV as
 9 may be medically appropriate, and that as soon
 10 as is practicable after each such test the results
 11 of the test be made available in accordance with
 12 subparagraph (B) (except that this subpara-
 13 graph applies only to the extent that the indi-
 14 vidual involved continues to be a defendant in
 15 the judicial proceedings involved, or is convicted
 16 in the proceedings).

17 (D) CONSIDERATION OF RESULTS.—That,
 18 if the results of a test conducted pursuant to
 19 subparagraph (B) or (C) indicate that the de-
 20 fendant has HIV disease, such fact may, as rel-
 21 evant, be considered in the judicial proceedings
 22 conducted with respect to the alleged crime.

23 (4) TESTING OF CERTAIN INDIVIDUALS.—

24 (A) PATIENTS.—With respect to a patient
 25 who is to undergo a medical procedure that

would place the health professionals involved at risk of becoming infected with HIV, the State—

(i) authorizes such health professionals in their discretion to provide that the procedure will not be performed unless the patient undergoes a test for HIV disease and the health professionals are notified of the results of the test; and

(ii) requires that, if such test is performed and the patient has positive test results, the patient be informed of the results.

(B) FUNERAL-RELATED SERVICES.—The State authorizes funeral-services practitioners in their discretion to provide that funeral procedures will not be performed unless the body involved undergoes a test for HIV disease and the practitioners are notified of the results of the test.

(5) INFORMING OF FUNERAL-SERVICE PRACTITIONERS.—The State requires that, if a health care entity (including a hospital) transfers a body to a funeral-services practitioner and such entity knows that the body is infected with HIV, the entity notify the funeral-services practitioner of such fact.

1 (6) HEALTH INSURANCE ISSUERS.—

2 (A) IN GENERAL.—The State requires
3 that, if a health insurance issuer requires an
4 applicant for such insurance to be tested for
5 HIV disease as a condition of issuing such in-
6 surance, the applicant be afforded an oppor-
7 tunity by the health insurance issuer to be in-
8 formed, upon request, of the HIV status of the
9 applicant.

10 (B) DEFINITION.—For purposes of this
11 paragraph, the term “health insurance issuer”
12 means an insurance company, insurance service,
13 or insurance organization (including a health
14 maintenance organization) which is licensed to
15 engage in the business of insurance in the State
16 and which is subject to State law which regu-
17 lates insurance.

18 (C) RULE OF CONSTRUCTION.—This para-
19 graph may not be construed as affecting the
20 provisions of section 514 of the Employee Re-
21 tirement Income Security Act of 1974 (29
22 U.S.C. 1154) with respect to group health
23 plans.

24 (7) ADOPTION.—The State requires that, if an
25 adoption agency is giving significant consideration to

1 approving an individual as an adoptive parent of a
 2 child and the agency knows whether the child has
 3 HIV disease, such prospective adoptive parent be af-
 4 farded an opportunity by the agency to be informed,
 5 upon request, of the HIV status of the child.

6 (b) SENSE OF CONGRESS REGARDING HEALTH PRO-
 7 FESSIONALS WITH HIV DISEASE.—It is the sense of Con-
 8 gress that, with respect to health professionals who have
 9 HIV disease—

10 (1) the health professionals should notify their
 11 patients that the health professionals have the dis-
 12 ease in medical circumstances that place the patients
 13 at risk of being infected with HIV by the health pro-
 14 fessionals; and

15 (2) the States should encourage the medical
 16 profession to develop guidelines to assist the health
 17 professionals in so notifying patients.

18 (c) APPLICABILITY OF REQUIREMENTS.—

19 (1) IN GENERAL.—Except as provided in para-
 20 graph (2), this section shall apply to States upon the
 21 expiration of the 120-day period beginning on the
 22 date of the enactment of this Act.

23 (2) DELAYED APPLICABILITY FOR CERTAIN
 24 STATES.—In the case of the State involved, if the
 25 Secretary determines that a requirement established

1 by subsection (a) cannot be implemented in the
 2 State without the enactment of State legislation,
 3 then such requirement applies to the State on and
 4 after the first day of the first calendar quarter that
 5 begins after the close of the first regular session of
 6 the State legislature that begins after the date of the
 7 enactment of this Act. For purposes of the preceding
 8 sentence, in the case of a State that has a 2-year
 9 legislative session, each year of such session is
 10 deemed to be a separate regular session of the State
 11 legislature.

12 (d) DEFINITIONS.—In this section:

13 (1) HIV.—The term “HIV” means the human
 14 immunodeficiency virus.

15 (2) HIV DISEASE.—The term “HIV disease”
 16 means infection with HIV and includes any condi-
 17 tion arising from such infection.

18 (3) SECRETARY.—The term “Secretary” means
 19 the Secretary of Health and Human Services.

20 (e) RULE OF CONSTRUCTION.—Part D of title XXVI
 21 of the Public Health Service Act (42 U.S.C. 300ff–71 et
 22 seq.) is amended by inserting after section 2675 the fol-
 23 lowing section:

1 **“SEC. 2675A. RULE OF CONSTRUCTION.**

2 “With respect to an entity that is an applicant for
3 or a recipient of financial assistance under this title, com-
4 pliance by the entity with any State law or regulation that
5 is consistent with section 3 of the HIV Prevention Act
6 of 1997 may not be considered to constitute a violation
7 of any condition under this title for the receipt of such
8 assistance.”.

9 **SEC. 4. SENSE OF CONGRESS REGARDING INTENTIONAL**
10 **TRANSMISSION OF HIV.**

11 It is the sense of Congress that the States should
12 have in effect laws providing that, in the case of an indi-
13 vidual who knows that he or she has HIV disease, it is
14 a felony for the individual to infect another with HIV if
15 the individual engages in the behaviors involved with the
16 intent of so infecting the other individual.

17 **SEC. 5. SENSE OF CONGRESS REGARDING CONFIDENTIAL-**
18 **ITY.**

19 It is the sense of the Congress that strict confidential-
20 ity should be maintained in carrying out the provisions
21 of section 3 of the this Act.

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