

MINUTES OF THE HOUSE COMMITTEE ON FEDERAL & STATE AFFAIRSThe meeting was called to order by Representative Robert H. Miller at  
Chairpersonnoon a.m./p.m. on April 7, 1988 in room 526S of the Capitol.

All members were present except:

Representatives, Hensley, Roe, Roper, Peterson, &amp; Rolfs

Committee staff present:

Mary Torrence, Revisor's Office  
Emolene Correll, Research Department  
Lynda Hutfles, Secretary

Conferees appearing before the committee:

The meeting was called to order by Chairman Miller.

SB686 - AIDSThe Department of Health & Environment distributed "Testing Activity Reports from States Requiring Reporting of HIV Positive". See attachment A.The committee had two balloon copies to work from - Health & Environment (Attachment B) and Representative Sebelius (Attachment C.) It was decided to work mainly from Representative Sebelius balloon which deletes HIV testing.Representative Sebelius made a motion, seconded by Representative Aylward, to delete mandatory reporting of HIV positives. The motion carried.

There was discussion of Health &amp; Environment approval of testing laboratories. Emolene Correll told the committee there is a bill in conference committee which could be amended to deal with the approval.

There was discussion concerning the reporting of HIV positives. Eliminating this reporting and Representative Ramirez made a motion, seconded by Representative Sughrue, to reconsider the motion to delete mandatory HIV testing. The motion lost.

Representative Sebelius explained changes in sec. 4 dealing with disclosure of information concerning a patient with AIDS to other health care providers. New Sec. 7 deletes entire Buehler bill dealing with penalties. Stricken language should be reinserted in (2)(b). Sec. 8 reflects House action and is a more narrow language which covers infectious or contagious diseases along with AIDS.

The committee conceptually agreed to restore and amend the bill to make it clear that AIDS is not included in the infectious and contagious disease statutes, but that it be made clear that the AIDS legislation has created statutes to deal specifically with AIDS.

Representative Sebelius made a motion, seconded by Representative Sifers, to amend SB686 as discussed in Balloon attachment B. The motion carried.Representative Sprague made a motion, seconded by Representative Sebelius, to add in New Section 2 in line 56 "The provision of this section shall not apply to a physician who, while performing the duties of medical director of a life insurance company, becomes aware that a person is suffering from or has died from AIDS." The motion carried.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON FEDERAL & STATE AFFAIRS,

room 526s, Statehouse, at Noon a.m./p.m. on April 7, 1988, 19   .

Representative Aylward made a motion, seconded by Representative Bryant, to add a penalty for anyone who spreads the AIDS disease knowingly. This penalty being a Class A misdemeanor. The motion lost.

Representative Sebelius made a motion, seconded by Representative Jenkins, to report SB686 favorably as amended. The motion carried unanimously.

There was written testimony submitted by the Kansas Association of Local Health Departments (See attachment D) and Darrel Newkirk, Director of the KCK-Wyandotte County Health Department (See attachment E).

The meeting was adjourned.

April 7, 1988

TESTING ACTIVITY REPORTS FROM STATES  
REQUIRING REPORTING OF HIV POSITIVE

Alabama - Mike Kerr  
205-261-5017

Effective Date of Required Reporting: August 1987

Numbers Tested:

1987 (January-March) -- 1,369  
1988 (January-March) -- 1,514

Arizona - Cedric Johnson  
602-230-5843

Effective Date of Required Reporting: January 1987

Numbers Tested:

1985 (July-December) -- 421  
1986 -- 969  
1987 -- 1,971

Colorado - Cathy Raveski  
303-331-8321

Effective Date of Required Reporting: November 1985

Numbers Tested:

1985 (July-December) -- 4,321  
1986 -- 6,199  
1987 -- 17,340

Idaho - John Perry  
208-334-5941

Effective Date of Required Reporting: April 1986

Impact - None initially. Testing has increased to 1000 per month. Were testing 100-130 per month prior to law.

Minnesota - Steve Schletty  
612-623-5414

Effective Date of Required Reporting: October 1985

Numbers Tested: (Testing began July 1985)

1985 (July-December)	--	1,709
1986	--	5,711
1987	--	8,954

Missouri - Elaine Calvin  
314-751-6144

Effective Date of Required Reporting: October 1987

Numbers Tested:

1985 (April-December)	--	1,429
1986	--	2,620
1987	--	14,508
1988 (January-March)	--	6,591

South Carolina - Pat Hermann  
803-734-5482

Effective Date of Required Reporting: February 1986

Numbers Tested:

1985 (May-December)	--	873
1986	--	1,897
1987	--	7,526

As Amended by House Committee

[As Amended by Senate Committee of the Whole]

As Amended by Senate Committee

Session of 1988

## SENATE BILL No. 686

By Committee on Public Health and Welfare

2-23

0023 AN ACT relating to infectious and contagious diseases; con-  
0024 cerning AIDS; requiring reporting cases of HIV and AIDS to  
0025 the secretary of health and environment; granting certain  
0026 powers to and imposing certain duties upon the secretary;  
0027 providing for confidentiality of certain information; declaring  
0028 certain acts unlawful and providing penalties for violations;  
0029 requiring testing of persons convicted of certain crimes and  
0030 providing counseling for certain victims thereof; requiring  
0031 notification of death from AIDS to accompany certain  
0032 dead bodies transported for disposition; amending K.S.A.  
0033 65-125 and repealing the existing section.

0034 *Be it enacted by the Legislature of the State of Kansas:*

0035 New Section 1. As used in ~~sections 1 to 6 7, inclusive~~, and  
0036 amendments thereto, unless the context clearly requires other-  
0037 wise:

0038 (a) "AIDS" means the disease acquired immune deficiency  
0039 syndrome.

0040 (b) "HIV" means the human immunodeficiency virus or any  
0041 other identified causative agent of AIDS.

0042 (c) "Secretary" means the secretary of health and environ-  
0043 ment.

0044 (d) "Seropositive" means the presence of antibody to HIV as  
0045 detected by appropriate laboratory tests.

0046 "Physician" means any person licensed to practice medi-  
0047 cine and surgery.

0048 New Sec. 2. (a) Whenever any physician has information  
0049 indicating that a person has tested positive for HIV or is suffering

this Act

(e) "AIDS test" means a test approved by the secretary of health and environment to detect antibodies to the probable causative agent for the disease acquired immune deficiency syndrome.

(f) "A positive reaction" means a positive AIDS test with a positive confirmatory test as specified by the secretary.

(g)

AIDS tests shall be performed in the state public health laboratory or in a laboratory approved by the secretary.

New Sec. 3.

Preferable language: a positive reaction

ATTACH B

0050 from or has died from AIDS, such knowledge or information  
 0051 shall be reported immediately to the secretary of health and  
 0052 environment, together with the name and address of the person  
 0053 who has tested positive for HIV or who has or is suspected of  
 0054 having AIDS, or the name and former address of the deceased  
 0055 individual who tested positive for HIV or who had or was  
 0056 suspected of having such a disease.

Preferable language: a positive reaction

Preferable language: a positive reaction

0057 (b) Any physician who reports the information required to be  
 0058 reported under subsection (a) in good faith and without malice to  
 0059 the secretary of health and environment shall have immunity  
 0060 from any liability, civil or criminal, that might otherwise be  
 0061 incurred or imposed in an action resulting from such report. Any  
 0062 such physician shall have the same immunity with respect to  
 0063 participation in any judicial proceeding resulting from such  
 0064 report.

0065 (c) Information required to be reported under subsection (a)  
 0066 of this section and information relating to HIV or AIDS obtained  
 0067 through laboratory tests conducted by the department of health  
 0068 and environment relating to HIV or AIDS and persons suffering  
 0069 therefrom or infected therewith shall be confidential and shall  
 0070 not be disclosed or made public, upon subpoena or otherwise,  
 0071 beyond the disclosure necessary under subsection (a) of this  
 0072 section or subsection (a) of section ~~5~~ and amendments thereto or  
 0073 the usual reporting of laboratory test results to persons specifi-  
 0074 cally designated by the secretary of health and environment as  
 0075 authorized to obtain such information, except such information  
 0076 may be disclosed:

0077 1) If no person can be identified in the information to be  
 0078 disclosed and the disclosure is for statistical purposes;

0079 2) if all persons who are identifiable in the information to be  
 0080 disclosed consent in writing to its disclosure;

0081 3) if the disclosure is necessary, and only to the extent  
 0082 necessary, as specified by rules and regulations of the secretary,  
 0083 to protect the public health;

0084 4) if a medical emergency exists and the disclosure is to  
 0085 medical personnel qualified to treat AIDS, except that any in-  
 0086 formation disclosed pursuant to this paragraph shall be disclosed

0087 only to the extent necessary to protect the health or life of a  
0088 named party; or

0089 (5) if the information to be disclosed is required in a court  
0090 proceeding involving a minor and the information is disclosed in  
0091 camera.

0092 New Sec. ~~5~~. 4 (a) The secretary of health and environment  
0093 shall investigate cases of persons who have ~~(tested positive)~~ for  
0094 HIV or who have AIDS and maintain a supervision over such  
0095 cases during their continuance. The secretary may adopt and  
0096 enforce rules and regulations for the prevention and control of  
0097 HIV and AIDS and for such other matters relating to cases of  
0098 persons who have ~~(tested positive)~~ for HIV or who have AIDS as  
0099 may be necessary to protect the public health.

4

Preferable language: a positive reaction

Preferable language: a positive reaction

0100 (b) Any information relating to persons who have ~~(tested)~~  
0101 ~~(positive)~~ for HIV or persons who have AIDS which is required to  
0102 be disclosed or communicated under subsection (a) of this sec-  
0103 tion shall be confidential and shall not be disclosed or made  
0104 public beyond the disclosure necessary under subsection (a) of  
0105 this section or subsection (a) of section ~~4~~ and amendments  
0106 thereto to persons specifically designated by the secretary as  
0107 authorized to obtain such information, except as otherwise per-  
0108 mitted by subsection (c) of section ~~4~~ and amendments thereto.

3

Preferable language: a positive reaction

3

3

0109 (c) The secretary may enter into agreements with any county  
0110 or joint board of health to perform duties required to be per-  
0111 formed by the secretary under subsection (a) as specified by such  
0112 agreement. The confidentiality requirements of subsection (b)  
0113 shall apply to any duties performed pursuant to such an agree-  
0114 ment.

0115 New Sec. ~~4~~. 5 (a) Notwithstanding any other law to the con-  
0116 trary, a physician who knows that a patient has or may be  
0117 infected with the etiologic agent for acquired immunodeficiency  
0118 *immune deficiency* syndrome or that a patient has tested positive  
0119 for the presence of the HIV antigen or seropositive for the  
0120 presence of the antibody to HIV ~~may~~ [shall] disclose such infor-  
0121 mation to other health care personnel who because of their  
0122 involvement with the care of the patient are subject to risk of  
0123 exposure to HIV. The information shall be confidential and shall

5

0124 not be disclosed by such health care personnel except as may be  
0125 necessary in providing treatment for such patient.

0126 (b) Any physician who discloses information in accordance  
0127 with the provisions of this section in good faith and without  
0128 malice shall have immunity from any liability, civil or criminal,  
0129 that might otherwise be incurred or imposed in an action re-  
0130 sulting from such disclosure. Any such physician shall have the  
0131 same immunity with respect to participation in any judicial  
0132 proceeding resulting from such disclosure.

0133 New Sec. ~~5~~. Any person violating, refusing or neglecting to  
0134 obey any provision of sections 1 to ~~4~~, inclusive, of this act or of  
0135 the rules and regulations adopted by the secretary of health and  
0136 environment for the prevention and control of HIV and AIDS  
0137 shall be guilty of a class C misdemeanor.

0138 New Sec. ~~6~~. (a) The secretary shall prepare for distribution  
0139 to the district courts of the state educational material explaining  
0140 the nature, causes and effects of HIV and AIDS and other  
0141 information relating to HIV and AIDS as may be appropriate.  
0142 The clerks of the district courts or judges thereof, when applied  
0143 to for a marriage license, shall provide copies of such educational  
0144 material to the parties to the proposed marriage.

0145 ~~(b)~~ New Sec. ~~7~~. The secretary shall establish and maintain  
0146 test sites throughout the state where the ~~anonymous anyony-~~  
0147 ~~mous~~ testing for HIV may be undertaken.

0148 New Sec. ~~7-6~~. (a) ~~As used in this section-~~

0149 (1) ~~"AIDS test" means a test approved by the secretary of~~  
0150 ~~health and environment to detect antibodies to the probable~~  
0151 ~~causative agent for the disease acquired immune deficiency~~  
0152 ~~syndrome.~~

0153 (2) ~~"A positive reaction" means a positive AIDS test with a~~  
0154 ~~positive confirmatory test as specified by the secretary.~~

0155 (b) ~~Upon conviction of a person for rape under K.S.A. 21-3502~~  
0156 ~~and amendments thereto, indecent liberties with a child under~~  
0157 ~~K.S.A. 21-3503 and amendments thereto, aggravated indecent~~  
0158 ~~liberties with a child under K.S.A. 21-3504 and amendments~~  
0159 ~~thereto, eriminal sodomy under K.S.A. 21-3505 and amendments~~  
0160 ~~thereto, aggravated eriminal sodomy under K.S.A. 21-3506 and~~

6

5

Note:

Penalty provision is not consistent throughout the Act.  
Lines 231-232 - Class A misdemeanor  
Lines 264-266 - Class C misdemeanor

7

8

9

delete



0161 amendments thereto, sexual battery under K.S.A. 1987 Supp.  
 0162 21-3517 and amendments thereto, aggravated sexual battery  
 0163 under K.S.A. 1987 Supp. 21-3518 and amendments thereto, in-  
 0164 cest under K.S.A. 21-3602 and amendments thereto or aggravated  
 0165 incest under K.S.A. 21-3603 and amendments thereto, the court  
 0166 upon motion of the victim or county or district attorney may  
 0167 order the convicted person to submit to an AIDS test. If the test  
 0168 results in a positive reaction, the court shall order the convicted  
 0169 person to submit to a secondary, corroborative AIDS test. If the  
 0170 test results in a negative reaction, the court shall order the  
 0171 convicted person to submit to another AIDS test six months after  
 0172 the first test was administered.

(a)

(b)

(b)

0173 ~~(b)~~ At the time of appearance before a magistrate under  
 0174 K.S.A. 22-2901 and amendments thereto, the magistrate shall  
 0175 inform every person arrested and charged with a crime of the  
 0176 availability of AIDS testing and counseling and shall cause the  
 0177 alleged victim of a crime, if any, to be notified that AIDS testing  
 0178 and counseling is available.

(c)

0179 ~~(c)~~ Upon conviction of a person for any crime which the court  
 0180 determines from the facts of the case involved or was likely to  
 0181 have involved the transmission of body fluids from one person to  
 0182 another, the court shall order the convicted person to submit to  
 0183 an AIDS test. If an AIDS test is ordered under this subsection ~~(c)~~,  
 0184 the victim of the crime, if any, who is not a minor shall designate  
 0185 a health care provider or counselor to receive such information  
 0186 on behalf of the victim. If the victim is a minor, the parent or  
 0187 legal guardian of the victim shall designate the health care  
 0188 provider or counselor to receive such information.

(b)

0189 ~~(e)~~ ~~(d)~~ The results of any AIDS test ordered under this sec-  
 0190 tion shall be disclosed to the convicted person and to the person  
 0191 designated under subsection ~~(c)~~ by the victim or victims of the  
 0192 crimes for which the person was convicted. If a victim is a minor,  
 0193 the test results shall be disclosed to the parent or legal guardian  
 0194 of the minor crime or by the parent or legal guardian of a victim if  
 0195 the victim is a minor. If a secondary, corroborative AIDS test  
 0196 ordered under this section results in a positive reaction, the  
 0197 results shall be reported to the secretary of health and environ-

Note on New Sec. 9 (b) and (c):

AIDS serologic testing can identify a true "positive" or infected person, only through a two-step process: a sensitive screening test followed by a specific confirmatory test. The first step - the sensitive screening test - can accurately identify persons who are not infected with HIV. However, if "positive" test results are reported prior to a specific confirmatory test there is the risk of a false "positive" test result.

0198 ment and such counseling as directed by the secretary of health  
0199 and environment shall be provided to the victim or victims.

(d)

0200 ~~(d)~~ ~~(e)~~ The costs of any test ordered under this section and  
0201 the cost of any counseling provided under this section shall be  
0202 paid from amounts appropriated for such purposes upon warrants  
0203 of the director of accounts and reports issued pursuant to vouch-  
0204 ers approved by the secretary of health and environment or a  
0205 person designated by the secretary. Restitution to the state for  
0206 payment of such costs shall be included by the court in any order  
0207 requiring the convicted person to pay restitution.

(e)

0208 ~~(e)~~ ~~(f)~~ When a court orders a convicted person to submit to an  
0209 AIDS test under this section, the withdrawal of the blood may be  
0210 performed only by: (1) A person licensed to practice medicine  
0211 and surgery or a person acting under the supervision of any such  
0212 licensed person; (2) a ~~registered~~ licensed professional nurse or a  
0213 licensed practical nurse; or (3) a qualified medical technician.  
0214 No person authorized by this subsection to withdraw blood, no  
0215 person assisting in the performance of the AIDS test nor any  
0216 medical care facility where blood is withdrawn or tested that has  
0217 been ordered by the court to withdraw or test blood shall be  
0218 liable in any civil or criminal action when the act is performed in  
0219 a reasonable manner according to generally accepted medical  
0220 practices in the community where performed.

(f)

0221 ~~(f)~~ ~~(g)~~ The results of tests and reports to the secretary of  
0222 health and environment required under this section, and infor-  
0223 mation contained therein, shall be confidential and shall not be  
0224 divulged to or open to inspection by any person other than the  
0225 person or persons conducting a test of the blood, the secretary of  
0226 health and environment or the secretary's authorized represent-  
0227 atives, the convicted person, the victim or victims of the crime  
0228 and such persons as otherwise authorized by state or federal law.  
0229 Any person who divulges or opens to inspection such results or  
0230 reports, or information therein, to any person not authorized by  
0231 this section to receive the same is guilty of a class A misde-  
0232 meanor.

(g)

0233 ~~(g)~~ ~~(h)~~ The secretary of health and environment shall adopt  
0234 such rules and regulations as necessary to implement the provi-

Note: Penalty provision is not consistent throughout the Act.  
Line 137 - Class C misdemeanor  
Lines 264-266 - Class C misdemeanor

0235 sions of this section.

0236 ~~New Sec. 9.~~ (a) When a person who has been diagnosed as  
 0237 having AIDS an infectious or contagious disease dies, the  
 0238 attending physician or, if there is no attending physician, a  
 0239 family member or person making arrangements for the disposi-  
 0240 tion of the dead body who knows of such diagnosis, shall indi-  
 0241 cate, on a form promulgated by the secretary, that the deceased  
 0242 person had AIDS an infectious or contagious disease. The  
 0243 completed form shall accompany the body when it is trans-  
 0244 ported for disposition.

0245 (b) Any person who transports a dead body for disposition  
 0246 and who has been notified pursuant to the provisions of subsec-  
 0247 tion (a) that the deceased person had been diagnosed as having  
 0248 AIDS an infectious or contagious disease shall present notifi-  
 0249 cation thereof accompanying the dead body to any embalmer,  
 0250 funeral director or other person taking possession of the dead  
 0251 body.

0252 (c) Any person who completes the form required in subsec-  
 0253 tion (a) in good faith and without malice shall have immunity  
 0254 from any liability, civil or criminal, that might otherwise be  
 0255 incurred or imposed in an action resulting from such report.

0256 (d) Any information relating to AIDS an infectious or  
 0257 contagious disease which is required to be disclosed or commu-  
 0258 nicated under subsections (a) and (b) of this section shall be  
 0259 confidential and shall not be disclosed or made public beyond  
 0260 the disclosure necessary under subsections (a) and (b) of this  
 0261 section.

0262 [(e) Any person required to perform duties specified under  
 0263 subsection (a) or (b) who knowingly refuses or omits to perform  
 0264 such duties is guilty of a class C misdemeanor. Any person who  
 0265 violates any provision of subsection (d) shall be guilty of a class  
 0266 C misdemeanor.]

0267 (f) As used in this section, "infectious or contagious disease"  
 0268 means the disease acquired immune deficiency syndrome,  
 0269 human immunodeficiency virus and any other causative agent of  
 0270 acquired immune deficiency syndrome and any disease desig-  
 0271 nated as infectious or contagious by the secretary of health and

(10)

Note on New Sec. 10:

New Sec. 10 may promote a false sense of security through its requirement that bodies of persons who died of an infectious or contagious disease be so identified. Whereas this may intensify precautions when dealing with these bodies, it may lead to relaxed precautions with bodies which are infected but are dead as a result of other causes, including accidents, heart disease, etc.

Note: Penalty provision is not consistent throughout the Act.  
 Line 137 - Class C misdemeanor  
 Lines 231-232 - Class A misdemeanor

0272 environment by rules and regulations under K.S.A. 65-128 and  
0273 amendments thereto.

0274 Sec. 8 ~~10~~. K.S.A. 65-128 is hereby amended to read as fol-  
0275 lows: 65-128. (a) For the protection of the public health and for  
0276 the control of infectious or contagious diseases, the secretary of  
0277 health and environment by rules and regulations shall designate  
0278 such diseases as are infectious or contagious in their nature, and  
0279 the secretary of health and environment is authorized to adopt  
0280 rules and regulations for the isolation and quarantine of such  
0281 diseases and persons afflicted with or exposed to such diseases  
0282 as may be necessary to prevent the spread and dissemination of  
0283 diseases dangerous to the public health.

0284 ~~(b)~~ As used in K.S.A. 65-118, 65-119, 65-122, 65-123, 65-126  
0285 and 65-129, and any amendments thereto, "infectious or con-  
0286 tagious disease" means any disease designated by the secretary  
0287 of health and environment as an infectious or contagious disease  
0288 in accordance with subsection (a) of this section but shall not  
0289 include the disease acquired immune deficiency syndrome or  
0290 human immunodeficiency virus or any other causative agent of  
0291 acquired immune deficiency syndrome.

0292 ~~Sec. 9 11~~ : K.S.A. 65-128 is hereby repealed.

0293 Sec. 10 ~~12 10~~. This act shall take effect and be in force from  
0294 and after its publication in the statute book.

As Amended by House Committee

[As Amended by Senate Committee of the Whole]

As Amended by Senate Committee

Session of 1988

## SENATE BILL No. 686

By Committee on Public Health and Welfare

2-23

0023 AN ACT relating to infectious and contagious diseases; con-  
0024 cerning AIDS; requiring reporting cases of ~~HIV and~~ AIDS to  
0025 the secretary of health and environment; granting certain  
0026 powers to and imposing certain duties upon the secretary;  
0027 providing for confidentiality of certain information; declaring  
0028 certain acts unlawful and providing penalties for violations;  
0029 requiring testing of persons convicted of certain crimes and  
0030 providing counseling for certain victims thereof; *requiring*  
0031 *notification of death from AIDS to accompany certain*  
0032 *dead bodies transported for disposition; amending K.S.A.*  
0033 *65-128 and repealing the existing section.*

0034 *Be it enacted by the Legislature of the State of Kansas:*

0035 New Section 1. As used in sections 1 to ~~6~~ 7, inclusive, and  
0036 amendments thereto, unless the context clearly requires other-  
0037 wise:

0038 (a) "AIDS" means the disease acquired immune deficiency  
0039 syndrome.

0040 (b) "HIV" means the human immunodeficiency virus or any  
0041 other identified causative agent of AIDS.

0042 (c) "Secretary" means the secretary of health and environ-  
0043 ment.

0044 ~~(d) "Seropositive" means the presence of antibody to HIV as~~  
0045 ~~detected by appropriate laboratory tests.~~

0046 (e) "Physician" means any person licensed to practice medi-  
0047 cine and surgery.

0048 New Sec. 2. (a) Whenever any physician has information  
0049 indicating that a person ~~has tested positive for HIV or~~ is suffering

"Positive reaction to an AIDS test" means a positive test, approved by the secretary, to detect antibodies to the probable causative agent for AIDS, with a positive confirmatory test as specified by the secretary.

(d)

Sebelius

C

ATTACH C

0050 from or has died from AIDS, such knowledge or information  
0051 shall be reported immediately to the secretary of health and  
0052 environment, together with the name and address of the person  
0053 who has ~~tested positive for HIV or who has~~ or is suspected of  
0054 having AIDS, or the name and former address of the deceased  
0055 individual ~~who tested positive for HIV or~~ who had ~~or was~~  
0056 suspected of having such a disease.

0057 (b) Any physician who reports the information required to be  
0058 reported under subsection (a) in good faith and without malice to  
0059 the secretary of health and environment shall have immunity  
0060 from any liability, civil or criminal, that might otherwise be  
0061 incurred or imposed in an action resulting from such report. Any  
0062 such physician shall have the same immunity with respect to  
0063 participation in any judicial proceeding resulting from such  
0064 report.

0065 (c) Information required to be reported under subsection (a)  
0066 of this section and information ~~relating to HIV or AIDS~~ obtained  
0067 through laboratory tests conducted by the department of health  
0068 and environment ~~relating to~~ [HIV or] ~~AIDS and persons suffering~~  
0069 ~~therefrom~~ for infected therewith shall be confidential and shall  
0070 not be disclosed or made public, upon subpoena or otherwise,  
0071 beyond the disclosure necessary under subsection (a) of this  
0072 section or subsection (a) of section 3 and amendments thereto or  
0073 the usual reporting of laboratory test results to persons specifi-  
0074 cally designated by the secretary of health and environment as  
0075 authorized to obtain such information, except such information  
0076 may be disclosed:

0077 (1) If no person can be identified in the information to be  
0078 disclosed and the disclosure is for statistical purposes;

0079 (2) if all persons who are identifiable in the information to be  
0080 disclosed consent in writing to its disclosure;

0081 (3) if the disclosure is necessary, and only to the extent  
0082 necessary, as specified by rules and regulations of the secretary,  
0083 to protect the public health;

0084 (4) if a medical emergency exists and the disclosure is to  
0085 medical personnel qualified to treat AIDS, except that any in-  
0086 formation disclosed pursuant to this paragraph shall be disclosed

0087 only to the extent necessary to protect the health or life of a  
 0088 named party; or  
 0089 (5) if the information to be disclosed is required in a court  
 0090 proceeding involving a minor and the information is disclosed in  
 0091 camera.

0092 New Sec. 3. (a) The secretary of health and environment  
 0093 shall investigate cases of persons ~~who have tested positive for~~  
 0094 ~~HIV or~~ who have AIDS and maintain a supervision over such  
 0095 cases during their continuance. The secretary may adopt and  
 0096 enforce rules and regulations for the prevention and control of  
 0097 ~~HIV and~~ AIDS and for such other matters relating to cases of  
 0098 persons ~~who have tested positive for HIV or~~ who have AIDS as  
 0099 may be necessary to protect the public health.

0100 (b) Any information relating to ~~persons who have tested~~  
 0101 ~~positive for HIV or~~ persons who have AIDS which is required to  
 0102 be disclosed or communicated under subsection (a) of this sec-  
 0103 tion shall be confidential and shall not be disclosed or made  
 0104 public beyond the disclosure necessary under subsection (a) of  
 0105 this section or subsection (a) of section 2 and amendments  
 0106 thereto to persons specifically designated by the secretary as  
 0107 authorized to obtain such information, except as otherwise per-  
 0108 mitted by subsection (c) of section 2 and amendments thereto.

0109 (c) The secretary may enter into agreements with any county  
 0110 or joint board of health to perform duties required to be per-  
 0111 formed by the secretary under subsection (a) as specified by such  
 0112 agreement. The confidentiality requirements of subsection (b)  
 0113 shall apply to any duties performed pursuant to such an agree-  
 0114 ment.

0115 New Sec. 4. (a) Notwithstanding any other law to the con-  
 0116 trary, a ~~physician~~ <sup>person</sup> who knows that a patient has ~~or may be~~  
 0117 ~~infected with the etiologic agent for acquired immunodeficiency~~  
 0118 ~~immune deficiency syndrome or that a patient has tested positive~~  
 0119 ~~for the presence of the HIV antigen or seropositive for the~~  
 0120 ~~presence of the antibody to HIV may [shall] disclose such infor-~~  
 0121 ~~mation to other health care personnel who because of their~~  
 0122 ~~involvement with the care of the patient are subject to risk of~~  
 0123 ~~exposure to HIV.~~ The information shall be confidential and shall

AIDS or has had a positive reaction to an AIDS  
 test may disclose such information to other health  
 care ~~personnel~~ <sup>personnel</sup> involved in medical or surgical  
 procedures which place such ~~personnel~~ <sup>health care person</sup> in contact  
 with bodily fluids of such patient

0124 not be disclosed by such health care <sup>provided</sup> personnel except as may be  
 0125 necessary in providing treatment for such patient.

0126 (b) Any physician who discloses information in accordance  
 0127 with the provisions of this section in good faith and without  
 0128 malice shall have immunity from any liability, civil or criminal,  
 0129 that might otherwise be incurred or imposed in an action re-  
 0130 sulting from such disclosure. Any such physician shall have the  
 0131 same immunity with respect to participation in any judicial  
 0132 proceeding resulting from such disclosure.

0133 New Sec. 5. Any person violating, refusing or neglecting to  
 0134 obey any provision of sections 1 to 4, inclusive, of this act or of  
 0135 the rules and regulations adopted by the secretary of health and  
 0136 environment for the prevention and control of ~~[HIV and]~~ AIDS  
 0137 shall be guilty of a class C misdemeanor.

0138 New Sec. 6. (a) The secretary shall prepare for distribution  
 0139 to the district courts of the state educational material explaining  
 0140 the nature, causes and effects of ~~[HIV and]~~ AIDS and other  
 0141 information relating to ~~[HIV and]~~ AIDS as may be appropriate.  
 0142 The clerks of the district courts or judges thereof, when applied  
 0143 to for a marriage license, shall provide copies of such educational  
 0144 material to the parties to the proposed marriage.

0145 ~~(a) New Sec. 7. The secretary shall establish and maintain~~  
 0146 ~~test sites throughout the state where the anonymous anony-~~  
 0147 ~~mous testing for HIV may be undertaken.~~

0148 ~~New Sec. 7 8. (a) As used in this section:~~

0149 (1) "AIDS test" means a test approved by the secretary of  
 0150 health and environment to detect antibodies to the probable  
 0151 causative agent for the disease acquired immune deficiency  
 0152 syndrome.

0153 (2) "A positive reaction" means a positive AIDS test with a  
 0154 positive confirmatory test as specified by the secretary.

0155 ~~(b) Upon conviction of a person for rape under K.S.A. 21-3502~~  
 0156 ~~and amendments thereto, indecent liberties with a child under~~  
 0157 ~~K.S.A. 21-3503 and amendments thereto, aggravated indecent~~  
 0158 ~~liberties with a child under K.S.A. 21-3504 and amendments~~  
 0159 ~~thereto, criminal sodomy under K.S.A. 21-3505 and amendments~~  
 0160 ~~thereto, aggravated criminal sodomy under K.S.A. 21-3506 and~~



0161 amendments thereto, sexual battery under K.S.A. 1987 Supp.  
0162 21-3517 and amendments thereto, aggravated sexual battery  
0163 under K.S.A. 1987 Supp. 21-3518 and amendments thereto, in-  
0164 cest under K.S.A. 21-3602 and amendments thereto or aggravated  
0165 incest under K.S.A. 21-3603 and amendments thereto, the court  
0166 upon motion of the victim or county or district attorney may  
0167 order the convicted person to submit to an AIDS test. If the test  
0168 results in a positive reaction, the court shall order the convicted  
0169 person to submit to a secondary, corroborative AIDS test. If the  
0170 test results in a negative reaction, the court shall order the  
0171 convicted person to submit to another AIDS test six months after  
0. the first test was administered.

0173 ~~(b) At the time of appearance before a magistrate under~~  
0174 ~~K.S.A. 22-2901 and amendments thereto, the magistrate shall~~  
0175 ~~inform every person arrested and charged with a crime of the~~  
0176 ~~availability of AIDS testing and counseling and shall cause the~~  
0177 ~~alleged victim of a crime, if any, to be notified that AIDS testing~~  
0178 ~~and counseling is available.~~

0179 ~~(c) Upon conviction of a person for any crime which the court~~  
0180 ~~determines from the facts of the case involved or was likely to~~  
0181 ~~have involved the transmission of body fluids from one person to~~  
0182 ~~another, the court shall order the convicted person to submit to~~  
0183 ~~an AIDS test. If an AIDS test is ordered under this subsection (c),~~  
0184 ~~the victim of the crime, if any, who is not a minor shall designate~~  
0185 ~~a health care provider or counselor to receive such information~~  
0186 ~~on behalf of the victim. If the victim is a minor, the parent or~~  
0187 ~~legal guardian of the victim shall designate the health care~~  
0188 ~~provider or counselor to receive such information.~~

0189 ~~(e) (d) The results of any AIDS test ordered under this sec-~~  
0190 ~~tion shall be disclosed to the convicted person and to the person~~  
0191 ~~designated under subsection (c) by the victim or victims of the~~  
0192 ~~crimes for which the person was convicted. If a victim is a minor,~~  
0193 ~~the test results shall be disclosed to the parent or legal guardian~~  
0194 ~~of the minor crime or by the parent or legal guardian of a victim if~~  
0195 ~~the victim is a minor. If a secondary, corroborative AIDS test~~  
0196 ~~ordered under this section results in a positive reaction, the~~  
0197 ~~results shall be reported to the secretary of health and environ-~~

0198 ~~Intent and such counseling as directed by the secretary of health~~  
0199 ~~and environment shall be provided to the victim or victims.~~

0200 ~~(d) (e) The costs of any test ordered under this section and~~  
0201 ~~the cost of any counseling provided under this section shall be~~  
0202 ~~paid from amounts appropriated for such purposes upon warrants~~  
0203 ~~of the director of accounts and reports issued pursuant to vouch-~~  
0204 ~~ers approved by the secretary of health and environment or a~~  
0205 ~~person designated by the secretary. Restitution to the state for~~  
0206 ~~payment of such costs shall be included by the court in any order~~  
0207 ~~requiring the convicted person to pay restitution.~~

0208 ~~(e) (f) When a court orders a convicted person to submit to an~~  
0209 ~~AIDS test under this section, the withdrawal of the blood may be~~  
0210 ~~performed only by: (1) A person licensed to practice medicine~~  
0211 ~~and surgery or a person acting under the supervision of any such~~  
0212 ~~licensed person; (2) a registered licensed professional nurse or a~~  
0213 ~~licensed practical nurse; or (3) a qualified medical technician.~~  
0214 ~~No person authorized by this subsection to withdraw blood, no~~  
0215 ~~person assisting in the performance of the AIDS test nor any~~  
0216 ~~medical care facility where blood is withdrawn or tested that has~~  
0217 ~~been ordered by the court to withdraw or test blood shall be~~  
0218 ~~liable in any civil or criminal action when the act is performed in~~  
0219 ~~a reasonable manner according to generally accepted medical~~  
0220 ~~practices in the community where performed.~~

0221 ~~(f) (g) The results of tests and reports to the secretary of~~  
0222 ~~health and environment required under this section, and infor-~~  
0223 ~~mation contained therein, shall be confidential and shall not be~~  
0224 ~~divulged to or open to inspection by any person other than the~~  
0225 ~~person or persons conducting a test of the blood, the secretary of~~  
0226 ~~health and environment or the secretary's authorized represent-~~  
0227 ~~atives, the convicted person, the victim or victims of the crime~~  
0228 ~~and such persons as otherwise authorized by state or federal law.~~  
0229 ~~Any person who divulges or opens to inspection such results or~~  
0230 ~~reports, or information therein, to any person not authorized by~~  
0231 ~~this section to receive the same is guilty of a class A misde-~~  
0232 ~~meanor.~~

0233 ~~(g) (h) The secretary of health and environment shall adopt~~  
0234 ~~such rules and regulations as necessary to implement the prov-~~

0235 sions of this section.]

0236 ~~New Sec. 9.~~ (a) When a person who has been diagnosed as  
 0237 having AIDS an infectious or contagious disease dies, the  
 0238 attending physician or, if there is no attending physician, a  
 0239 family member or person making arrangements for the disposi-  
 0240 tion of the dead body who knows of such diagnosis, shall indi-  
 0241 cate, on a form promulgated by the secretary, that the deceased  
 0242 person had AIDS an infectious or contagious disease. The  
 0243 completed form shall accompany the body when it is trans-  
 0244 ported for disposition.

0245 (b) Any person who ~~transports~~ <sup>do not delete</sup> a dead body for disposition  
 0246 and who has been notified pursuant to the provisions of subsec-  
 0247 tion (a) that the deceased person had been diagnosed as having  
 0248 AIDS an infectious or contagious disease shall present notifi-  
 0249 cation thereof accompanying the dead body to any embalmer,  
 0250 funeral director or other person taking possession of the dead  
 0251 body.

0252 (c) Any person who completes the form required in subsec-  
 0253 tion (a) in good faith and without malice shall have immunity  
 0254 from any liability, civil or criminal, that might otherwise be  
 0255 incurred or imposed in an action resulting from such report.

0256 (d) Any information relating to AIDS an infectious or  
 0257 contagious disease which is required to be disclosed or commu-  
 0258 nicated under subsections (a) and (b) of this section shall be  
 0259 confidential and shall not be disclosed or made public beyond  
 0260 the disclosure necessary under subsections (a) and (b) of this  
 0261 section.

0262 [(e) Any person required to perform duties specified under  
 0263 subsection (a) or (b) who knowingly refuses or omits to perform  
 0264 such duties is guilty of a class C misdemeanor. Any person who  
 0265 violates any provision of subsection (d) shall be guilty of a class  
 0266 C misdemeanor.]

0267 (f) As used in this section, "infectious or contagious disease"  
 0268 means the disease acquired immune deficiency syndrome,  
 0269 ~~human immunodeficiency virus and any other causative agent of~~  
 0270 ~~acquired immune deficiency syndrome~~ and any disease desig-  
 0271 nated as infectious or contagious by the secretary of health and

do not strike

0272 environment by rules and regulations under K.S.A. 65-128 and  
0273 amendments thereto.

0274 Sec. 8 10. K.S.A. 65-128 is hereby amended to read as fol-  
0275 lows: 65-128. (a) For the protection of the public health and for  
0276 the control of infectious or contagious diseases, the secretary of  
0277 health and environment by rules and regulations shall designate  
0278 such diseases as are infectious or contagious in their nature, and  
0279 the secretary of health and environment is authorized to adopt  
0280 rules and regulations for the isolation and quarantine of such  
0281 diseases and persons afflicted with or exposed to such diseases  
0282 as may be necessary to prevent the spread and dissemination of  
0283 diseases dangerous to the public health.

0284 (b) As used in K.S.A. 65-118, 65-119, 65-122, 65-123, 65-126  
0285 and 65-129, and any amendments thereto, "infectious or con-  
0286 tagious disease" means any disease designated by the secretary  
0287 of health and environment as an infectious or contagious disease  
0288 in accordance with subsection (a) of this section but shall not  
0289 include the disease acquired immune deficiency syndrome or  
0290 human immunodeficiency virus or any other causative agent of  
0291 acquired immune deficiency syndrome.

0292 Sec. 9 11. K.S.A. 65-128 is hereby repealed. 9

0293 Sec. 10 12. This act shall take effect and be in force from  
0294 and after its publication in the statute book.



KANSAS ASSOCIATION OF LOCAL HEALTH DEPARTMENTS

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"... Public Health in Action"

FY 1989

AIDS PREVENTION AND CONTROL

I. Issue Definition

The public health aspects of acquired immunodeficiency syndrome (AIDS) should be handled as other communicable diseases in that positive blood tests should be reported to health departments and contact follow-up should take place. Mandatory blood tests should be required under some circumstances and all medical information should be kept confidential as it is with other communicable diseases.

II. Background

AIDS is a fatal disease caused by a virus that is transmitted by sexual intercourse and blood, the latter usually is through sharing of contaminated needles by intravenous drug abuse. Since AIDS was first reported in the United States in mid. 1981, public health services has received reports of about 36,058 cases with a case fatality ratio of 58%. Approximately 70% of the cases has occurred in homosexual/bisexual men and 17% have occurred in intravenous drug abusers. While the percent of cases in these groups has remained constant, there has been a significant increase in heterosexual cases. AIDS is a public health problem that merits serious concern and is a major priority of the U.S. Public Health Service. The AIDS virus is spread by sexual contact and needle sharing and may be transmitted from infected mother to infant during pregnancy or birth, or shortly after birth (probably through breast milk). The risk of infection with the virus is increased by having multiple sexual partners, either homosexual or heterosexual. Through June 18, 1987 there have been 74 AIDS cases in Kansas with a case fatality ratio of 64%.

The current recommendations for the prevention and control of AIDS is through education in schools, the workplace and the general public and through anonymous testing of individuals in high risk groups. There is no contact follow-up. Positive blood tests are not reported to local or State health officials and no contact follow-up is made. The number of people estimated to be infected with the AIDS virus in the

United States is about 1.5 million. All of these individuals are assumed to be capable of spreading the virus sexually (heterosexually or homosexually) or by sharing needles and syringes or other implements for intravenous drug use. Scientists predict that 20%-30% of those infected with the AIDS virus will develop AIDS within five years. Traditionally the control of communicable diseases has been to report known cases to official public health agencies, so their contacts can be investigated. Also, individuals who are infected and capable of transmitting the infection are reported to public health officials so their contacts can be investigated.

### III. Options

- A. Continue with education and anonymous testing and hope that it diminishes further spread of the AIDS virus.
- B. Continue education and voluntary anonymous testing of high risk individuals and mandate testing of immigrants and prisoners in local jails and State prisons.
- C. Supply increased funding for AIDS with the following priorities.
  - 1. Support the continued testing, counseling, and education of individuals with high-risk behaviors.
  - 2. Support public health departments in their effort to do contact follow-up of cases and those with positive HIV test results.
  - 3. Offer voluntary testing in clinics for family planning and sexually transmitted diseases and for anyone thought to be at risk.
  - 4. Mandate testing in prisons and jails.
  - 5. Provide voluntary testing for individuals not in high-risk groups.
  - 6. Continue with education about AIDS in schools, workplaces, and for the general public.

### IV. Recommendation

The Kansas Association of Local Health Departments recommends option C. AIDS is a sexually transmitted disease and testing, counseling, education and follow-up are necessary public health components. Testing in prisons and jails would be productive in segregating positive individuals from those who tested negative. Because drug abuse and homosexual activity occurs during incarceration, separation of the prisoners could prevent transmission of the infection and prevent the

treatment costs which will fall back on local or State governments operating the prisons and jails.

Many of the patients attending family planning and sexually transmitted disease clinics may be in high risk categories and therefore testing should be offered and followed by counseling about the risks of promiscuity. The follow-up of positive HIV tests will help public health authorities control the spread of this infection. These practices have been successful in syphilis and other communicable diseases.

V. Fiscal Impact

The cost of performing the procedures under option C would be high but case treatment costs are extremely high. The cost to draw the blood for the test and provide counseling is estimated at \$15.00 per person. The number of positive tests will probably be small and the number of contacts to be followed should not be overwhelming.

VI. Legislative Implications

Legislation would be needed to mandate testing in prisons and jails. There may be the need to strengthen the anti-discrimination laws to protect individuals who are found to be positive on mandated and voluntary testing.

VII. Impact on Other Agencies

Option C and accompanying legislation would have an impact on the KDHE laboratory and epidemiology unit, local health departments that would test and counsel individuals, State Prisons and County jails, and private physicians that would do voluntary testing.

VIII. Supporting Documents

Surgeon General's report on Acquired Immune Deficiency Syndrome. Facts about AIDS-winter 1987-U.S. Public Health Service. Public Health and the Law-AIDS Screening, Confidentiality, and the Duty to Warn. Larry Gostin, J.D. and William J. Curran, J.D., LLM, SMHYG. APHA 77;361-365, 1987.

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TESTIMONY BEFORE THE HOUSE  
PUBLIC HEALTH AND WELFARE COMMITTEE  
REGARDING SB 686

My name is Darrel Newkirk and I'm the Director of the Kansas City, Kansas-Wyandotte County Health Department. I'm here today to testify in support of SB 686. However, there are two important areas not addressed in SB 686 that I feel need to be amended into the bill.

The first matter concerns the reporting of HIV positive individuals to the State Health Department by approved laboratories performing the HIV antibody test.

There are basically two reasons why we in public health need this provision concerning this very serious public health disease. First, we need to know the number of individuals who are infected with this virus so that we can do rational public health planning. Without accurate data of the population infected with the AIDS virus, we in public health and you in the legislature cannot make adequate plans to deal with this epidemic. Without this reporting information, we are really "shooting in the dark."

The second and most important reason we need this information reported is because reporting is essential to preventing the transmission of this virus. If we in public health don't know who is infected with this virus, how can we work with these individuals and their sex contacts to prevent the further spread of this virus?

REPORTING OF INFECTED INDIVIDUALS so that they can be counselled and worked with in a confidential manner is a basic, fundamental principle of communicable disease control that has worked successfully in controlling other infectious diseases. For example, reporting of positive syphilis tests by laboratories in our state has been extremely important in reducing the number of people infected with syphilis. Once we know a person is infected, we in public health, with the cooperation of the person's private doctor, counsel the patient privately, confidentially about his/her infection and what precautions should be taken to prevent the spread of syphilis to another person. Part of this process involves asking the patient to notify his/her sex partners that they may have been exposed to a sexually transmitted disease and advising them that they should come in for testing and counselling. With the patient's permission we contact their sex partners with this information (if the patient doesn't want to). In any event, being able to work with the sex partners of patients infected with syphilis has been extremely important in breaking the chain of transmission of syphilis and other sexually transmitted diseases.

The HIV infection is no different. The chain of transmission can be broken! The spread of the AIDS virus can be prevented if we use the same public health principles which have been followed in successfully controlling other infectious diseases. One of those principles is



knowing who has the infection. If we don't know who has the infection, how can public health people in this state do their job to prevent the transmission of this virus? Without this information, we in public health, including you in the legislature, are like the boxer going into the ring blindfolded and with one hand tied behind his back. I ask you then for the good of all the people of Kansas--both those who are infected with the AIDS virus and particularly those who are not infected--to incorporate into SB 686 an amendment which requires confidential reporting of individuals who are infected with this virus so that public health in this state can do its job that it knows can be done and should be done to stop the spread of this deadly virus.

The other weakness in SB 686 presently is the lack of anti-discrimination provisions. Individuals who are infected with the AIDS virus and those who have been diagnosed as having ARC or the disease AIDS should be protected from discrimination in employment, education, housing, etc. The confidential reporting of individuals who have the disease AIDS or who are infected with the AIDS virus should be coupled hand in glove with provisions to prevent any discrimination against them because of this infection.

In conclusion, I urge you as representatives of the people of Kansas, to give the public health professionals in Kansas the ammunition we need to fight the spread of this deadly virus--SB 686 and these two important amendments.

Darrel D. Newkirk, MD, MPH  
Director of Health  
Kansas City, Kansas-Wyandotte Co. Health Dept.