




Office of the Governor of Guam

P.O. Box 2950 Hagåtña, Guam 96932  
TEL: (671) 472-8931 • FAX: (671) 477-4826 • EMAIL: governor@mail.gov.gu

Office of the People's Speaker  
vicente (ben) c. pangelinan

MAY 26 2004

TIME: 5:20 (1) AM (1) PM  
RECEIVED BY: 

Felix Perez Camacho  
Governor

Kaleo Scott Moylan  
Lieutenant Governor

26 MAY 2004

Honorable Vicente C. Pangelinan  
Speaker  
*I Mina Bente Siete na Liheslaturan Guåhan*  
155 Hesler Street  
Hagåtña, Guam 96932

Dear Mr. Speaker:

Transmitted herewith is Bill No. 178, "AN ACT TO AMEND §120.60 OF TITLE 8, GUAM CODE ANNOTATED, RELATIVE TO PROVIDING SERVICES TO VICTIMS OF CRIMINAL SEXUAL CONDUCT," which I have signed into law on May 6, 2004 as **Public Law 27-90**.

I applaud *I Mina Bente Siete na Liheslaturan Guåhan* support for Bill No. 178. Bill No. 178 is in response to a Congressional mandate attached to the Edward Byrne Memorial State and Local Law Enforcement Formula Grant Program. States that are not in compliance with the Congressional mandate lose ten percent (10%) of their grant award. Bill No. 178 amends current law to meet this mandate.

Prior to submission to *I Liheslaturan Guåhan* for introduction, the bill had been pre-approved by the Union States Department of Justice ("DOJ"). Hopefully the amendment to my version of the Bill will not have a negative impact.

The Bill provides that DPHSS and DMHSA's Healing Hearts Rape Crises Center are responsible for providing services to rape victims at no cost to the victim. The cost for providing free services to victims is presently being funded by Guam's Edward Byrne Grant. As previously mentioned, this language was pre-approved by DOJ. At the end of the Bill, *I Liheslaturan Guåhan* inserted the clause "nor shall provision of the services or treatment required by this Section relieve any health insurer of its duty to provide coverage."

Hopefully, DOJ will find that the legislation in its current form meets the Congressional mandate, as there exists an earlier provision that states services will be provided to the victim free of charge. At stake is One Hundred Thousand Dollars

(\$100,000) in federal funds. To date, Guam has lost an accumulative balance of over One Million Dollars (\$1,000,000) in federal funds for this program.

*Sins eru yan Magåhet,*

A handwritten signature in black ink, appearing to read 'F. Camacho', with a long horizontal flourish extending to the right.

**FELIX P. CAMACHO**

*I Maga' lähen Guåhan*

Governor of Guam

Attachment: copy attached of signed bill

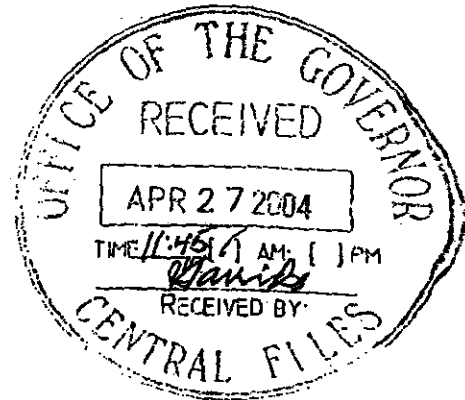
cc: The Honorable Tina Rose Muña-Barnes  
Senator and Legislative Secretary



**MINA' BENTE SIETE NA LIHESLATURAN GUAHAN**  
TWENTY-SEVENTH GUAM LEGISLATURE  
155 Hessler Place, Hagåtña, Guam 96910

April 27, 2004


The Honorable Felix P. Camacho  
*I Maga'lahaen Guahan*  
*Ufisinan I Maga'lahi*  
*Hagåtña, Guam 96910*



Dear *Maga'lahi* Camacho:

Transmitted herewith are Bill Nos. 178(LS), 193(COR), 256(LS), 261(LS) and 277(COR), and Substitute Bill Nos. 17(LS), 115(COR), 119(COR), 146(LS), 172(LS), 175(LS), 177(LS), 183(COR), 220(COR), 230(LS), 231(LS), 249(COR), 255(LS) and 258(LS) which were passed by *I Mina' Bente Siete Na Liheslaturan Guahan* on April 23, 2004.

Sincerely,

  
TINA ROSE MUNA BARNES  
Legislative Secretary

Enclosures (19)

CFI- 0404- 2294

I MINA'BENTE SIETE NA LIHESLATURAN GUÅHAN  
2004 (SECOND) Regular Session

CERTIFICATION OF PASSAGE OF AN ACT TO I MAGA'LAHEN GUÅHAN

This is to certify that **Bill No. 178 (LS), "AN ACT TO AMEND §120.60 OF TITLE 8, GUAM CODE ANNOTATED, RELATIVE TO PROVIDING SERVICES TO VICTIMS OF CRIMINAL SEXUAL CONDUCT,"** was on the 23<sup>rd</sup> day of April, 2004, duly and regularly passed.

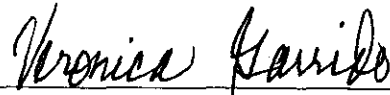
Attested:

  
Tina Rose Muña Barnes  
Senator and Legislative Secretary


\_\_\_\_\_  
vicente (ben) c. pangelinan  
Speaker

.....

This Act was received by *I Maga'lahen Guåhan* this 27 day of April, 2004,  
at 11:45 o'clock A..M.

  
Assistant Staff Officer  
*Maga'lahi's Office*

APPROVED:

  
FELIX P. CAMACHO  
*I Maga'lahen Guåhan*

Date: May 6, 2004

Public Law No. 27-90

I MINA'BENTE SIETE NA LIHESLATURAN GUÅHAN  
2003 (FIRST) Regular Session

**Bill No. 178 (LS)**

As amended on the Floor.

Introduced by:

Committee on Rules and Health  
by request of *I Maga'lahaen Guåhan*,  
the Governor of Guam, in accordance  
with the Organic Act of Guam,  
as amended.

**AN ACT TO AMEND §120.60 OF TITLE 8, GUAM CODE  
ANNOTATED, RELATIVE TO PROVIDING SERVICES TO  
VICTIMS OF CRIMINAL SEXUAL CONDUCT.**

1 **BE IT ENACTED BY THE PEOPLE OF GUAM:**

2 **Section 1. Legislative Findings and Intent.** *I Liheslaturan Guåhan*  
3 finds that concerted efforts are necessary to provide comprehensive  
4 protection to the public in response to the increasing cases of criminal  
5 sexual conduct being reported and prosecuted. Public Law 22-116  
6 mandates individuals convicted of criminal sexual conduct to submit to  
7 testing for sexually transmitted diseases, while Public Law 23-71 makes  
8 such testing applicable to minors convicted or adjudicated of having  
9 committed an act or acts of criminal sexual conduct or placed in a deferred  
10 admission status for criminal sexual conduct. *I Liheslaturan Guåhan* further  
11 finds that services for victims of criminal sexual conduct must be well-  
12 defined in the law in order to provide the necessary protection to the public  
13 and to fully comply with Federal regulations.

14 **Section 2.** §120.60 of Title 8, Guam Code Annotated, is hereby  
15 *amended to read:*

1           **“§120.60. Medical examinations of those convicted of**  
2 **criminal sexual abuse and services to victims of criminal sexual**  
3 **conduct.** (a) Any person convicted of criminal sexual conduct shall  
4 submit to the necessary medical examinations for determining  
5 whether such convicted person is infected with the Human  
6 Immunodeficiency Virus (‘HIV’) or with any other sexually  
7 transmitted disease such as, but not limited to, the examination of  
8 such convicted person’s blood, urine, genital discharge or lesions.  
9 The Department of Public Health and Social Services shall administer  
10 and analyze such necessary medical examinations in accordance with  
11 standard medical procedures, and the results of such examinations  
12 shall be furnished to the victim of such conduct and to the convicted  
13 person.

14           (b) The Department of Public Health and Social Services with  
15 the assistance of the Sexual Abuse and Rape Crisis Center shall  
16 provide services to victims of criminal sexual conduct. Such services  
17 to the victim shall be free of charge, and shall include, but are not  
18 limited to:

19           (1) pre and post HIV testing, counseling on HIV prevention  
20 and other sexually transmitted diseases (STD), and ensuring  
21 that the victim understands the implications of HIV and STD  
22 testing, their benefits and results of the test(s);

23           (2) HIV or any other sexually transmitted disease testing in  
24 accordance with standard medical procedures and  
25 applicable law; and

1                   (3) providing referrals for appropriate health care and  
2                   support services.

3                   Such treatment shall *not* be construed to interfere with or diminish  
4                   any medical support already provided by any health insurer, agency  
5                   or office; nor shall provision of the services or treatment required by  
6                   this Section relieve any health insurer of its duty to provide  
7                   coverage.”



**FILE COPY**

**MINA' BENTE SIETE NA LIHESLATURAN GUÅHAN**  
TWENTY-SEVENTH GUAM LEGISLATURE  
155 Hessler Place, Hagåtña, Guam 96910

March 4, 2004

(Date)

Memorandum

To: Senator Leon Guerrero

From: Clerk of the Legislature

Subject: Committee Report on Bill No. 178(LS)

Pursuant to Section 7.04 of Rule VII of the 27<sup>th</sup> Standing Rules, transmitted herewith is a copy of the Committee Report on Bill No. 178(LS), for which you are the prime sponsor.

Should you have any questions or need further information, please contact the undersigned at 472-3464/5.

  
PATRICIA C. SANTOS

Attachment







# Committee on Judiciary & Transportation

*I Mina' Bente Siete Na Liheslaturan Guahan*

*Twenty-Seventh  
Guam Legislature*

March 3, 2004

**CHAIRMAN:**  
Senator F Randall  
Cunliffe

The Honorable Vicente C. Pangelinan  
Speaker  
I Mina' Bente Siete Na Liheslaturan Guahan  
155 Hesler Street  
Hagåtña, Guam 96910

**Vice Chairman:**  
Senator John M.  
Quinata

Dear Speaker Pangelinan:

**Members:**  
Senator Robert  
Klitzkie

The Committee on Judiciary & Transportation, to which **BILL 178 (LS)** "AN ACT TO AMEND §120.60 OF TITLE 8, GUAM CODE ANNOTATED, RELATIVE TO PROVIDING SERVICES TO VICTIMS OF CRIMINAL SEXUAL CONDUCT" was referred, wishes to report its findings **TO PASS**.

Senator Lou A.  
Leon Guerrero

The voting record is as follows:

Senator Jesse  
Anderson Lujan

Senator Tina R.  
Muña-Barnes

**TO PASS** 7

Senator Rory J.  
Respicio

**NOT TO PASS** 0

Senator Antoinette  
(Toni) D. Sanford

**TO ABSTAIN** 0

Copies of the Committee Report and other pertinent documents are attached with this correspondence. Thank you for your consideration.

*Office Address:*  
Ada's  
Commercial &  
Professional Center

Sincerely,

138 E. Marine Dr.  
Hagatna, Guam  
(USA) 96910

F RANDALL CUNLIFFE  
CHAIRMAN

*Mailing Address:*  
155 Hessler St.  
Hagåtña, Guam 96910

Attachments

Tel: 671.477.5310  
Fax: 671.477.5300

cc: Senator Lou Leon Guerrero, Chairperson  
Committee on Rules & Health

*Email:*  
frcunliffe@netpci.com

I MINA' BENTE SIETE NA LIHESLATURAN GUAHAN



# Committee on Judiciary & Transportation

*I Mina' Bente Siete Na Liheslaturan Guåhan*

February 23, 2004

*Twenty-Seventh  
Guam Legislature*

## MEMORANDUM

**CHAIRMAN:**  
Senator F Randall  
Cunliffe

**TO:** JUDICIARY & TRANSPORTATION COMMITTEE MEMBERS

**Vice Chairman:**  
Senator John M.  
Quinata

**FROM:** JUDICIARY & TRANSPORTATION COMMITTEE CHAIRMAN

**Members:**  
Senator Robert  
Klitzkie

**SUBJECT:** BILL 178(LS)

Senator Lou A.  
Leon Guerrero

Transmitted for your information and action is the committee report on **Bill 178(LS) – AN ACT TO AMEND §120.60 OF TITLE 8, GUAM CODE ANNOTATED, RELATIVE TO PROVIDING SERVICES TO VICTIMS OF CRIMINAL SEXUAL CONDUCT** – As Substituted by the Committee on Judiciary & Transportation.

Senator Jesse  
Anderson Lujan

This memorandum is accompanied by the following:

Senator Tina R.  
Muña-Barnes

1. Committee Voting Sheet
2. Committee Report
3. Bill 178(LS)
4. Public Hearing Sign-in Sheet
5. Notice of Public Hearing

Senator Rory J.  
Respicio

Senator Antoinette  
(Toni) D. Sanford

Please take the appropriate action on the attached voting sheet. Should you have any questions regarding the report or the accompanying documents, please do not hesitate to contact me or my Committee Director, Mr. Joshua Tenorio.

**Office Address:**  
Ada's  
Commercial &  
Professional Center

138 E. Marine Dr.  
Hagatna, Guam  
(USA) 96910

**Mailing Address:**  
155 Hessler St.  
Hagåtña, Guam 96910

**Tel:** 671.477.5310  
**Fax:** 671.477.5300

**Email:** [COJAT@email.com](mailto:COJAT@email.com)

Sincerely,


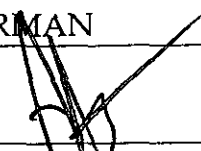
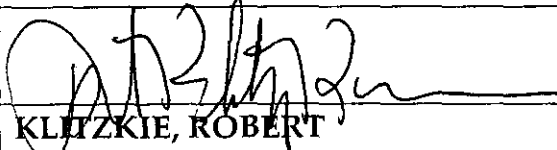

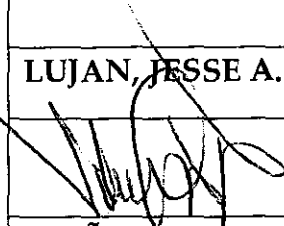
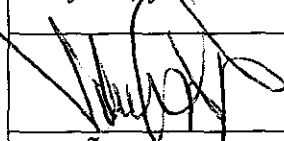
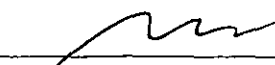


F. RANDALL CUNLIFFE

Attachments

# COMMITTEE ON JUDICIARY & TRANSPORTATION

## VOTING RECORD SHEET

Bill 178(LS) – AN ACT TO AMEND §120.60 OF TITLE 8, GUAM CODE ANNOTATED, RELATIVE TO PROVIDING SERVICES TO VICTIMS OF CRIMINAL SEXUAL CONDUCT

COMMITTEE MEMBERS	TO PASS	NOT TO PASS	TO ABSTAIN
	✓		
CUNLIFFE, F. RANDALL CHAIRMAN			
	✓		
QUINATA, JOHN M. "J.Q." VICE CHAIRMAN			
	✓		
KLITZKIE, ROBERT			
	✓		
LEON GUERRERO, LOU A.			
	✓		
LUJAN, JESSE A.			
	✓		
MUÑA-BARNES, TINA R.			
			
RESPICIO, RORY J.			
	✓		
SANFORD, ANTOINETTE "TONI" D.			

***MINA' BENTE SIETE NA LIHESLATURAN GUÅHAN***  
**COMMITTEE ON JUDICIARY & TRANSPORTATION**  
**SENATOR F. RANDALL CUNLIFFE - CHAIRMAN**



# **COMMITTEE REPORT**

ON

**BILL: 178(LS) - "AN ACT TO AMEND SECTION 120.60 OF TITLE 8, GUAM CODE ANNOTATED, RELATIVE TO PROVIDING SERVICES TO VICTIMS OF CRIMINAL SEXUAL CONDUCT"**

Introduced by the Chairperson, Committee on Rules & Health  
By Request of I Maga'lahaen Guåhan, the Governor of Guam,  
In Accordance with the Organic Act of Guam

**February 18, 2004**

## OVERVIEW

The Committee on Judiciary and Transportation held a public hearing at 9:00 a.m. on November 14, 2003. Among the items on the agenda was the following measure:

**Bill 178(LS)** – “AN ACT TO AMEND §120.60 OF TITLE 8, GUAM CODE ANNOTATED, RELATIVE TO PROVIDING SERVICES TO VICTIMS OF CRIMINAL SEXUAL CONDUCT”

Date of Introduction:	September 12, 2003
Author/Sponsor:	Chairwoman, Committee on Rules & Health, By Request of I Maga' Lahen Guåhan, the Governor of Guam, in Accordance with the Organic Act of Guam, as amended
Date of Referral:	September 29, 2003
Date Received:	September 30, 2003

### SENATORS PRESENT AT THE PUBLIC HEARING WERE:

Committee Chairman F. Randall Cunliffe  
Senator Lou Leon Guerrero, sponsor of the bill  
Senator Robert Klitzkie  
Senator Rory J. Respicio

### I. SYNOPSIS OF BILL

Bill 178(LS) was introduced by Senator Lou Leon Guerrero, Chairwoman of the Committee on Rules & Health by request of I Maga' Lahen Guåhan, Governor of Guam for the purpose of aligning Guam law relative to providing victims of criminal sexual conduct with the following services:

1. Pre and post HIV testing, counseling on HIV prevention and other sexually transmitted diseases (STD), and ensuring that the victim understands the implications of HIV and STD testing, their benefits and results of the tests;
2. HIV or any other sexually transmitted disease testing in accordance with standard medical procedures and applicable law; and
3. Providing referrals for appropriate health care and support services.

All such treatment shall not be construed to interfere with or diminish any medical support already provided by any health insurer, agency or office.

## II. SUMMARY OF TESTIMONY

The transcript of the hearing for Bill 178(LS) is attached with this committee report. No individuals or organizations provided oral testimony. However, the following organizations and government agencies submitted written testimony in favor of the passage of Bill 178(LS). Copies of these written testimonies are attached with this Committee Report. They are as follows:

1. Department of Mental Health & Substance Abuse
2. Catholic Social Services
3. Bureau of Statistics & Plans

### (1) Department of Mental Health & Substance Abuse

Director J. Peter Roberto, Director of the Department of Mental Health & Substance Abuse submitted written testimony in favor of passage of Bill 178 (LS). Director Roberto informed the Committee of the services provided by the Healing Hearts Crisis Center (HHCC), formerly known as the Rape Crisis Center. Director Roberto stated that HHCC is already offering the services stipulated in the legislation as Criminal Sexual Assault and Abuse is a major problem on the island. Director Roberto further stated the need to continue providing the services to victims on all levels: primary, secondary, and tertiary.

### (2) Catholic Social Services

Executive Director Cerila M. Rapadas, Executive Director of Catholic Social Services submitted testimony in favor of Bill 178(LS). However, Director Rapadas expressed concern that the language contained in the legislation "Such services to the victim shall be free of charge, and shall include but are not limited to:" may be used by health insurance providers to exclude coverage for not only examinations but treatment for victims of criminal sexual conduct. Director Rapadas expressed her position that sexual assault victims be protected from any added burden caused by the exclusion of such services by health insurance providers. Director Rapadas reiterated her position that a person's insurer should remain the primary payer for any treatment not related to the STD.

### (3) Bureau of Statistics & Plans

Director Manuel Q. Cruz of the Bureau of Statistics and Plans, formerly known as the Bureau of Planning, submitted testimony in support of Bill No. 178. Director Cruz stated that the proposed legislation ensures Guam's federal compliance with Section 1804 of the Omnibus Crime Control Act of 1990. Director Cruz further stated that from 1994 to 2004, a total of \$1,356,114 in federal funds from the Edward Byrne Memorial State and Local Law Enforcement Assistance Grant Program was withheld for non-compliance with federal law. The penalty assigned to Guam's non compliance is 10% withheld from Guam's total grant award annually. No less than \$105,000 and no more than \$147,700 have been withheld during each year. Director Cruz noted the passage of Public Laws 23-

71 and 22-116 which were enacted to meet other federally mandates. The language proposed by the Office of the Governor as introduced by Chairwoman Lou Leon Guerrero of the Legislative Committee on Rules & Health has been pre-reviewed for compliance by the U.S. Office of General Council and was found to meet the federal mandate. Director Cruz further stated that passage of Bill 178(LS) will ensure that victims of sexual assaults are provided these services AT NO COST and consistent with the federal mandate.

### **III. FINDINGS AND RECOMMENDATION**

The Committee on Judiciary & Transportation finds that passage of Bill 178(LS) will benefit the people of Guam by guaranteeing free HIV Testing, Counseling and other services for victims of Criminal Sexual Conduct. The Committee further finds that Bill 178(LS) will prevent the further penalization (10% withheld) of Guam's share of grant funds from the Edward Byrne Memorial State and Local Law Enforcement Assistance Grant Program due to the non-compliance of Guam Statute and will result in a windfall of more than One Hundred Thousand Dollars prior to the next grant award for Guam. The Committee finds that the language as approved by the U.S. Office of General Council includes a provision that does not interfere with or diminish any medical support already provided by any health insurer, agency or office.

The Committee therefore recommends full passage of Bill 178(LS).

**Committee on Judiciary & Transportation**  
**November 14, 2003**  
**Testimony on Bill No. 178**

Bill No. 178 (LS) – At the request of I Maga' Lahren Guahan

AN ACT TO AMEND SECTION 120.60 OF TITLE 8, GUAM CODE ANNOTATED,  
RELATIVE TO PROVIDING SERVICES TO VICTIMS OF CRIMINAL SEXUAL  
CONDUCT.

**Chairman:** The next bill is Bill No. 178, an act to amend section 120.60 of Title 8, Guam Code Annotated, relative to providing services to victims of criminal sexual conduct. No one has signed up to discuss this bill. Senator Lou would you like to discuss this matter?

**Leon Guerrero:** Yes. Thank you, Mr. Chair, just for the record, this is a bill that actually became law in the 23<sup>rd</sup> Guam Legislature, and what this bill does, which was submitted at the request of the Governor, just changes ... there's some modifications where, where the services will then be provided, and I certainly don't have a problem having it provided by the Department of Public Health and Social Services. It also to spell out what other added things are the responsibility as a result of the victim being sexually abused, or raped. There are certain health hazards, and certainly STD and HIV, and so forth, are some of that, so there is a written testimony by the Catholic Social Service. They were concerned about the language that sets up such services to the victims, shall be free of charge, and a way that maybe the health insurance companies could say, well, we're not going to cover any treatment and so forth, but if you would read on the last two lines, it says such treatment shall not be construed to interfere with or diminish any medical support already provided by any health insurance agency or office. I think it needs more stronger language that needs to be written, to make sure this is not to advocate the responsibility of the health insurance, it's just to provide for the victim some kind of way of services that will less stressful for them, as you know they are already stressed by the sexual abuse and so forth. That's the basically the gist of this piece of legislation.

**Chairman:** Thank you, Senator Lou. I would note that Cecilia M. Rapadas, the Executive Director of Catholic Social Services, has submitted written testimony, asking us to look at that issue. We will do that. Senator Klitzkie did you have anything on this bill?

**Klitzkie:** No, Mr. Chairman.

**Chairman:** Thank you, then we'll move on to the last matter before the Committee this morning, Bill 185...



DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE  
DIPATTAMENTON SALUT HINASSO YAN ABUSON AMOT



FELIX PEREZ CAMACHO  
Governor

KALEO SCOTT MOYLAN  
Lieutenant Governor

GOVERNMENT OF GUAM  
AGANA GUAM 96910

J. PETER ROBERTO  
Director

November 13, 2003

DMHSA 03-11031

MEMORANDUM

Senator F. Randall F. Cunliffe  
Chairman, Committee on Judiciary and Transportation  
27<sup>th</sup> Guam Legislature  
Ada's Commercial & Professional Center  
138 E. Marine Drive  
Hagatna, Guam 96910

Re: Bill No. 178 (LS)

Dear Senator Cunliffe:

Buenas! I would like to take this time to thank you for the opportunity to provide written testimony on Bill No. 178 (LS) - An act to amend section 120.60 of Title 8, Guam Code Annotated, relative to providing services to Victims of Criminal Sexual Conduct.

As an introduction, Public Law 21-44 created the Rape Crisis Center as a program under the Department of Mental Health & Substance Abuse in 1993; however, in order to portray a more sensitive approach with concern for the various clientele, the Rape Crisis Center has become known as "Healing Hearts Crisis Center (HHCC)". The name change was made official by Public Law 22-160 in December 1994.

Currently, the HHCC Center is providing the services that are being mentioned in the bill, free of charge, and the Department is fully in support of Bill No. 178. Healing Hearts provides adult and child victims of sexual assault a safe, sensitive, and supportive environment after the devastating trauma of sexual assault. The program also has an examination room that is fully equipped and designed specifically for the collection of forensic evidence. Through medico-legal exam, victims undergo Sexually Transmitted Disease (STD) and Human Immunodeficiency Virus (HIV) testing conducted when needed, depending on the extent of the assault. In collaboration with the Department of Public Health and Social Services - Bureau of Communicable Disease Control, Healing Hearts now has a certified HIV Pre- and Post-Test Counselor on staff who also administers the HIV OraSure Testing. Victims of sexual assault also undergo an assessment and are referred for appropriate services based on their needs.

received  
11-14-03 3:13 PM

Senator F. Randall F. Cunliffe  
Chairman, Committee on Judiciary and Transportation  
Page 2

Sexual assault and abuse is a major problem on our island and as professionals, we need to continue to provide the services to victims on all levels: primary, secondary, and tertiary. In closing, the Department of Mental Health & Substance Abuse is in full support of the above-mentioned bill.

Should you have any further questions, please contact my office at 647-5330.

Sincerely,

  
J. PETER ROBERTO, ACSW  
Director

cc: Director, DPHSS  
Nursing Supervisor, DMHSA  
Project Director, HHCC

JPR/LP:tl



# CATHOLIC SOCIAL SERVICE

#234-A U.S. Army Juan C. Fejeran Street  
Barrigada Heights, Guam 96913  
Telephone: (671) 635-1409 / 1442 • Fax: (671) 635-1444

Archbishop Anthony S. Apurca  
OFM GA. D.D.  
President/Chairman  
Board of Trustees/Directors  
  
Cerila M. Rapadas  
Executive Director  
  
Sr. M. Cecilia Caridad, RSI  
Deputy Director

November 10, 2003

Senator Randall Cunliffe  
Chairperson Committee on Judiciary and  
Transportation  
I Mina' Bente Siete Na Liheslaturan Guahan  
Hagatna, Guam 96932

Dear Senator Cunliffe:

Thank you for giving Catholic Social Service the opportunity to comment on Bill No. 178 (LS) - "AN ACT TO AMEND SECTION 120.60 OF TITLE 8, GUAM CODE ANNOTATED, RELATIVE TO PROVIDING SERVICES TO VICTIMS OF CRIMINAL SEXUAL CONDUCT." The intent of the act is to ensure that victims of criminal sexual conduct be provided with necessary services by the Dept. of Public Health and Social Services with the assistance of the Sexual Abuse and Rape Crisis Center to protect the victim and the public.

While we support Bill No. 178 (LS), we find that language "Such services to the victim shall be free of charge, and shall include but are not limited to:" may be used by health insurance company to exclude coverage for not only examinations but treatment for victims of criminal sexual conduct. The sexual assault victim may have the added burden to obtain treatment from another provider should his/her provider negate the responsibility. The person's insurer should remain the primary payer for any other treatment not related to the STD.

Si yu' os ma' ase for affording Catholic Social Service the opportunity to comment on this bill.

Sincerely,

  
Cerila M. Rapadas  
Executive Director



Member  
Catholic  
Charities  
USA

*Dedicated To The Dignity Of The Human Person*



Member  
Catholic  
Charities  
USA

BU<sup>Y</sup> AU OF STATISTICS A<sup>Y</sup> O PLANS  
(Bureau of Planning)  
Government of Guam



Felix P. Camacho  
Governor of Guam

P.O. Box 2950 Hagåtña, Guam 96932  
Tel: (671) 472-4201/3  
Fax: (671) 477-1812

Manuel Q. Cruz  
Director

Kaleo S. Moylan  
Lieutenant Governor

Senator F. Randall Cunliffe  
Chairman, Committee on Judiciary and Transportation  
Twenty Seven Guam Legislature  
Ada's Commercial & Professional Building Suite 101F  
215 A Chalan Santo Papa Road  
Hagatna, Guam 96910

RECEIVED

FEB 18 2004

8:25A PL

Dear Senator Cunliffe:

The Bureau of Statistics and Plans is providing written testimony in support of Bill No. 178 "An Act to Amend §120.60 of Title 8, Guam Code Annotated, Relative to Providing Services to Victims of Criminal Sexual Conduct".

The proposed legislation ensures that Guam's statutes are in compliance with Section 1804 of the Omnibus Crime Control Act of 1990. It is important that Guam comply with the Act; otherwise, the Government of Guam will continue to lose federal funds under the Edward Byrne Memorial State and Local Law Enforcement Assistance Grant Program. From 1994 to 2003, Guam lost a total of \$1,356,114.00 in federal funds for non compliance.

Grant Year	Federal Funds	Ten Percent Penalty
FY 1994	\$1,054,000.00	\$105,400.00
FY 1995	\$1,322,000.00	\$132,200.00
FY 1996	\$1,390,000.00	\$139,000.00
FY 1997	\$1,456,000.00	\$145,600.00
FY 1998	\$1,477,000.00	\$147,700.00
FY 1999	\$1,328,400.00	\$132,840.00
FY 2000	\$1,429,000.00	\$142,900.00
FY 2001	\$1,480,968.00	\$148,097.00
FY 2002	\$1,299,552.00	\$129,955.00
FY 2003	\$1,324,227.00	\$132,422.00

Total:	\$1,356,114.00
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The Omnibus Crime Control Act of 1990, enacted by the 101<sup>st</sup> Congress, provides that each State and Territory must enact and enforce statutes which provide for the testing of certain offenders for the human immunodeficiency virus (HIV) that caused acquired immunodeficiency syndrome (AIDS) to continue to be eligible to receive U.S. Department of Justice administered criminal justice formula grant funds. At a minimum, the HIV testing mandate requires State and Territories, at the request of the rape victims, to administer an HIV test to all individuals, including juveniles, who are convicted of sexual crimes. Under the mandate, State and Territories must also provide the victim and the offender with the results of the test, and to provide the victim with counseling and referral to health care and support services at no cost to the victim. Enclosed, please find a copy of the Bureau of Justice Assistance's requirement regarding HIV requirement and the ten percent (10%) penalty for non compliance (*Attachment A*).

Currently, Guam has two public laws that address the HIV mandate. Public Law 22-116 was enacted to comply with the HIV Mandate, requiring all persons convicted of criminal sexual conduct crimes to submit to medical examinations to determine if they are infected with the HIV virus or any other sexually transmitted disease (STD), and that the results be provided to the victims. However, the U.S. Office of General Counsel (OGC) did not approve Guam's statute because mandatory testing of convicted juveniles was not included in the statute.

Public Law 23-71 amended Public Law 22-116 to include convicted or adjudicated juveniles. However, the U.S. Office of General Counsel (OGC) still did not approve Guam's statutes because there was no provision for victim services. Guam's statute did not explicitly address which agency was going to provide the service for victims. Enclosed, please find a copy of the letter from the U.S. Department of Justice Office of General Counsel finding Guam not to be in compliance (*Attachment B*).

In March 2000, the Bureau discussed the victim services provision with the Department of Mental Health and Substance Abuse (DMHSA). The Department of Mental Health and Substance Abuse through Healing Hearts, a Rape Crisis Center, has been identified to provide to victims of sexual acts at their requests, and at no cost to them the following victim services: counseling regarding HIV disease; HIV testing, and referral for appropriate health care and support services. The Healing Hearts Program is currently providing these services through funding under the Byrne Formula Grant Program. Bill No 178, as sent to the Twenty Seventh Guam Legislature by Governor Felix Camacho, has been pre-reviewed by the U.S. Office of General Council (OGC) was found to meet

Page 3

the Congressional HIV mandate. Enclosed is the letter that finds the draft legislation to be in compliance (*Attachment C*).

We believe that the passage of Bill No. 178 will ensure that victims of sexual assaults are provided these services at no cost to them, and Guam will be in compliance with the HIV mandate. The Bureau of Statistics and Plans strongly supports its passage, provided that no change are made to it.

If you have any question or require additional information, please contact myself or Ms. Machele Craig-Leon Guerrero at 472-4201/2/3.

Sincerely,



MANUEL Q. CRUZ  
Director

Enclosures

*HIV Requirement*

# Chapter 12 Testing Certain Offenders for HIV

Under a provision enacted by the 101st Congress, each State must enact and enforce statutes which provide for the testing of certain convicted sex offenders for the human immunodeficiency virus (HIV) if the State is to continue to receive their full Byrne Formula Grant Program award. Guidance concerning this requirement was first issued by BJA in April 1992 and the penalty provision took effect beginning in FY 1994. This chapter essentially repeats that guidance within the context of administrative issues and BJA policies relevant to the implementation of this requirement.

In recent years, a number of State legislatures have enacted statutes which require that persons convicted of certain sexual acts undergo HIV testing in order that their victims can know that they have not been exposed to the deadly virus, or if exposed, they can seek medical treatment and take steps to protect others from the further spread of the epidemic.

However, the provisions of these statutes 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 also received the findings. This requirement, which in effect establishes a set of essential elements which such legislation should encompass, not only promotes attention to this area, but encourages some consistency in the approaches of States.

## 12.1 The HIV Requirement

In Section 1804 of the Act of 1990 (hereafter referred to as Section 1804), Congress amended Section 506 of 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), taking into consideration subsection (e) 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;

(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) of title 18, United States Code. (Definition of Sexual act is found on page 25.)

Section 1804 was codified as 42 U.S.C. § 3756(f). The effective date for enactment was FY 1994.

## 12.2 The Financial Effect of Section 1804

Section 1804 requires that 10 percent of a State's formula grant be withheld if that State fails to place in effect, as well as actually enforce, the elements of the HIV testing standards created by Section 1804. The funds withheld from States which are not in compliance will be distributed to States which do 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 statutes 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.

## 12.3 The Section 1804 Standards

State statutes and other formal provisions 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:

### 12.3a 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.

### **12.3b 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.

### **12.3c 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.

### **12.3d 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 of the victim and the defendant.

### **12.3e 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:

- Counseling regarding HIV disease.

- HIV testing in accordance with applicable law.
- 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 Administrative Agencies (SAA's) responsible for administering the Byrne 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.

### **12.3f 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 tested.

### **12.3g 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(I)(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:

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, this fact would not 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.

## **12.4 Procedures for BJA Clearance of HIV Laws**

### **12.4a State Determination of Compliance with Section 1804**

It is the responsibility of each SAA to conduct a 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, SAA legal advisors should 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 SAA should 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, the SAA should make the appropriate legislative committees and/or legislators aware of the Section 1804 requirements.

To assist the States in assessing the degree of their Section 1804 compliance, a worksheet is available from BJA. The worksheet provides a useful tool to assist the SAA in arriving at a determination as to Section 1804 compliance. A State should not request BJA review until after conducting its own study based on the information contained in these

materials. Nor should a State request 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.

#### **12.4b State Certification of Section 1804 Compliance**

States that are in compliance must complete, as part of their application for formula grant funds, the HIV Testing Requirement Certification found in Appendix B.

*Office of General Counsel's finding of non compliance*

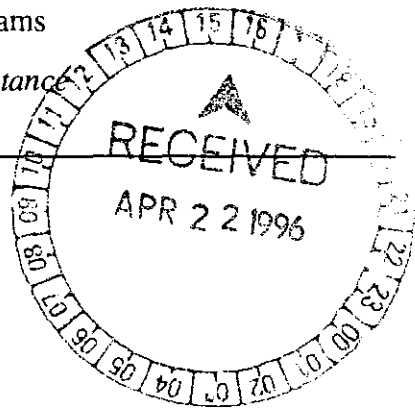


*hda*

U.S. Department of Justice

Office of Justice Programs

Bureau of Justice Assistance



Washington, D.C. 20531

Vincent P. Arriola  
Director  
Bureau of Planning  
Governor's Office  
P.O. Box 2950  
Agana, Guam 96910

April 11, 1996

Dear Mr. Arriola:

Attached is the memorandum of response from the Office of Justice Programs, Office of the General Counsel concerning their review of Guam Public Law 22-116 and 23-71 for compliance with the Crime Control Act of 1990. Unfortunately, they do not feel that the proposed legislation adequately addresses the need for victim services.

At issue is the lack of assurance on the part of the Government of Guam that these services will be provided, rather than simply made available. The opinion of the General Counsel is that this service provision should be addressed explicitly as either a law or a formal statement of policy.

If I may be of any further assistance to you in this matter, please contact me at (202) 616-3456.

Sincerely,

Heber C. Willis, III  
Program Manager  
State and Local Assistance Division

- enc: General Counsel Memorandum dated April 9, 1996
- Letter from Bureau of Planning dated March 21, 1996
- w/cover memorandum
- Copy of Proposed Guam Public Law 22-116 and 23-71

*19-172-bm*

cc: Grant Working File





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Washington, D.C. 20531

APR 9 1996

MEMORANDUM TO: Heber C. Willis, III  
Program Manager  
State and Local Assistance Division  
Bureau of Justice Assistance

FROM: Paul F. Kendall *P.K.*  
General Counsel

SUBJECT: BJA Formula Grants Program: Compliance by the  
Territory of Guam with Section 1804 of the  
Crime Control Act of 1990

We have reviewed legislation proposed by the territory of Guam, specifically Guam Public Law 22-116 and 23-71, for compliance with Section 1804 of the Crime Control Act of 1990, codified at 42 U.S.C. § 3756(f). The proposed legislation addresses the outstanding issues of testing for juveniles adjudicated delinquent under state law for committing sexual acts, and the definitions of "conviction" and "sexual act". It is our opinion, however, that the proposed legislation does not comply with Section 1804, insofar that there is no provision for victim services.

The proposed legislation does not require the provision of victim services. Section 1804 requires that all victims be afforded: "counseling regarding HIV disease, HIV testing, in accordance with applicable law, and referral for appropriate health care and support services." 42 U.S.C. § 3756(f)(2)(C). Such services are notably absent from the proposed legislation. Guam's Bureau of Planning letter of March 21, 1996, states that counseling services, testing, and health care treatment and victim support services will be provided to victims free of charge through the Department of Mental Health and Substance Abuse Healing Hearts Center. The letter also notes that funds currently available for the purpose of providing victim services are not being utilized by Government of Guam entities. In the absence of an affirmative obligation for all qualified Government of Guam entities to provide victim services, there is no assurance that such services will be provided. It is our opinion that the provisions for victim services should be addressed explicitly, either, as a matter of law or statement of policy. An example of policy guidance could consist of a directive to all Government of Guam entities that are mandated with these duties to provide the aforementioned victim services. Such a directive would need to be binding on the Government of Guam service providers. The fact

that victim services may be provided by a few Government of Guam entities, as indicated above, is important, but not sufficient to comply with this section. As such, we cannot find the proposed legislation in compliance with Section 1804.

If you have any questions, please contact Lila Sultan of my staff at 6-3259.



U.S. Department of Justice

Office of Justice Programs

Bureau of Justice Assistance

Washington, D.C. 20531

MEMORANDUM TO

Paul Kendall, General Counsel  
Office of Justice Programs

THROUGH:

James C. Swain, Director  
State and Local Assistance Division

Albert Antony Pearsall, III; Chief, West Branch  
State and Local Assistance Division

FROM:

  
Heber C. Willis, III; Program Manager  
State and Local Assistance Division

DATE:

March 26, 1996

SUBJECT: Review of Guam Public Law for Compliance with Section 1804 of Crime Control Act of 1990 (Mandatory HIV Testing)

The attached correspondence is forwarded to your office for review and comment. Please include this office in any correspondence with the Guam Bureau of Planning regarding this matter.

Your prompt response is appreciated.

## **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>11</sup>, taking into consideration subsection (e)<sup>12</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;**

---

<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>3</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".

² 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

# 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?*

*Office of General Counsel's finding on proposed legislation*

**Lola E. Leon Guerrero**

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**From:** Lola E. Leon Guerrero <leleong@ns.gov.gu>  
**To:** fred nishihira <shigeru\_jr@yahoo.com>  
**Sent:** Tuesday, May 02, 2000 8:57 AM  
**Subject:** Fw: Review of Guam Proposed Legislation

Transmitted is the feedback on the proposed legislation.

lola

----- Original Message -----

**From:** Lila Sultan <[LILA@ojp.usdoj.gov](mailto:LILA@ojp.usdoj.gov)>  
**To:** <[RobertsB@ojp.usdoj.gov](mailto:RobertsB@ojp.usdoj.gov)>  
**Cc:** <[Greg@ojp.usdoj.gov](mailto:Greg@ojp.usdoj.gov)>; <[Kendall@ojp.usdoj.gov](mailto:Kendall@ojp.usdoj.gov)>; <[Pensingj@ojp.usdoj.gov](mailto:Pensingj@ojp.usdoj.gov)>  
**Sent:** Thursday, April 13, 2000 3:27 PM  
**Subject:** Review of Guam Proposed Legislation

I reviewed the proposed legislation sent to me on April 10, 2000 by Clifford A. Guzman, Director of the Bureau of Planning in Guam. This proposed legislation addresses the final outstanding issue in Guam's HIV program, namely the provision of victim services. This legislation if enacted would, in conjunction with Public Laws 22-116 and 23-71, meet the requirements of Section 1804 of the Crime Control Act of 1990, 42 U.S.C. § 3756(f). OGC's approval of Guam for purposes of meeting the Byrne 3756(f) requirement, however, is not final until this proposed legislation is enacted.

Lila

9/28/2000