

## 1999 ASSEMBLY BILL 550

October 20, 1999 – Introduced by Representatives GUNDRUM, SUDER, NASS, MUSSER, KESTELL, SPILLNER, KAUFERT, LADWIG, STONE, GUNDERSON and ALBERS, cosponsored by Senators DARLING, ROESSLER and DRZEWIECKI. Referred to Committee on Judiciary and Personal Privacy.

1     **AN ACT** *to amend* 939.50 (1) (intro.); and *to create* 939.622 (2m), 941.39 and  
2           941.40 of the statutes; **relating to:** transfer or use of a syringe, needle or  
3           similar object used by a person with acquired immunodeficiency syndrome or  
4           the human immunodeficiency virus, persons with acquired immunodeficiency  
5           syndrome or the human immunodeficiency virus having sexual contact or  
6           sexual intercourse, and providing a penalty.

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### ***Analysis by the Legislative Reference Bureau***

Current law prohibits various acts against public health and safety. Current law also provides a penalty enhancer that may be applied to a person who is convicted of committing a sexual assault if, at the time of the assault, the person knew that he or she was infected with the human immunodeficiency virus (HIV) or certain sexually transmitted diseases and if, as a result of the assault, the victim was significantly exposed to HIV or the sexually transmitted disease. This penalty enhancer adds five years to the maximum sentence prescribed by law for the sexual assault.

Under this bill, if a person knows that he or she has had a positive test for the presence of HIV or that he or she has been diagnosed with acquired immunodeficiency syndrome (AIDS), the person may not have sexual contact which carries a potential for transmission of HIV to another or sexual intercourse with another unless the person first discloses to the other person that he or she has had

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a positive HIV test or that he or she has been diagnosed with AIDS. A person who violates this prohibition may be imprisoned for not more than 40 years.

In addition, this bill prohibits a person from transferring to or using on another person a hypodermic syringe, needle or other object used or intended for use in injecting substances into the human body if the person knows or has reason to know that the syringe, needle or other object has been used by a person who has had a positive HIV test or who has been diagnosed with AIDS and if the person knows or has reason to know that the syringe, needle or other object has not been sterilized since it was used by the person with the positive HIV test or the AIDS diagnosis. A person who violates this prohibition may be imprisoned for not more than 40 years. The prohibition does not apply to the transfer of a syringe, needle or other object that is not going to be used by another person to inject a substance into his or her body. Thus, a person would not violate the prohibition by giving a used syringe or needle to a program that collects used syringes or needles for the purpose of properly disposing of them.

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***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

1           **SECTION 1.** 939.50 (1) (intro.) of the statutes is amended to read:

2           939.50 **(1)** (intro.) Except as provided in ss. 941.39, 941.40, 946.83 and 946.85,  
3 felonies in chs. 939 to 951 are classified as follows:

4           **SECTION 2.** 939.622 (2m) of the statutes is created to read:

5           939.622 **(2m)** A person who is subject to increased penalties under this section  
6 may also be charged with, convicted of and sentenced for a violation of s. 941.40 based  
7 on the same unlawful acts.

8           **SECTION 3.** 941.39 of the statutes is created to read:

9           **941.39 Transfer or use of syringe, needle or similar object used by**  
10 **person with acquired immunodeficiency syndrome or the human**  
11 **immunodeficiency virus. (1)** In this section:

12           (a) “Drug injection device” means a hypodermic syringe, needle or other object  
13 used or intended for use in parenterally injecting substances into the human body.

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1 (b) “HIV” means any strain of human immunodeficiency virus, which causes  
2 acquired immunodeficiency syndrome.

3 **(2)** (a) No person may transfer a drug injection device to another person if the  
4 person knows or has reason to know all of the following:

5 1. That the drug injection device has been used by a person who has had a  
6 positive test for the presence of HIV, antigen or nonantigenic products of HIV or an  
7 antibody to HIV or by a person who has been diagnosed with acquired  
8 immunodeficiency syndrome.

9 2. That the drug injection device has not been sterilized since it was used by  
10 a person specified in subd. 1.

11 3. That the drug injection device will be used by another person to parenterally  
12 inject a substance into his or her body or will be possessed by another person with  
13 the intent to use it to parenterally inject a substance into his or her body.

14 (b) No person may use a drug injection device to parenterally inject a substance  
15 into the body of another person if the person knows or has reason to know all of the  
16 following:

17 1. That the drug injection device has been used by a person who has had a  
18 positive test for the presence of HIV, antigen or nonantigenic products of HIV or an  
19 antibody to HIV or by a person who has been diagnosed with acquired  
20 immunodeficiency syndrome.

21 2. That the drug injection device has not been sterilized since it was used by  
22 a person specified in subd. 1.

23 **(3)** A person who violates sub. (2) may be imprisoned for not more than 40  
24 years.

25 **SECTION 4.** 941.40 of the statutes is created to read:

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1           **941.40 Persons with acquired immunodeficiency syndrome or the**  
2           **human immunodeficiency virus; disclosure of status to sexual partners. (1)**

3           In this section:

4           (a) “HIV” means any strain of human immunodeficiency virus, which causes  
5           acquired immunodeficiency syndrome.

6           (b) “Sexual intercourse” includes the meaning given under s. 939.22 (36) as well  
7           as cunnilingus, fellatio or anal intercourse between persons or any other intrusion,  
8           however slight, of any part of a person’s body into the genital or anal opening of  
9           another. The emission of semen is not required.

10           (2) No person who knows that he or she has had a positive test for the presence  
11           of HIV, antigen or nonantigenic products of HIV or an antibody to HIV or who knows  
12           that he or she has been diagnosed with acquired immunodeficiency syndrome may  
13           have sexual contact which carries a potential for transmission of HIV to another or  
14           sexual intercourse with another unless, before the sexual contact or sexual  
15           intercourse occurs, the person discloses to the other person that he or she has had  
16           a positive test for the presence of HIV, antigen or nonantigenic products of HIV or  
17           an antibody to HIV or that he or she has been diagnosed with acquired  
18           immunodeficiency syndrome.

19           (3) A person who violates sub. (2) may be imprisoned for not more than 40  
20           years.

21           **SECTION 5. Initial applicability.**

22           (1) TRANSFER OR USE OF SYRINGE, NEEDLE OR OTHER DEVICE. The treatment of  
23           section 941.39 of the statutes first applies to the transfer or use of a hypodermic  
24           syringe, needle or other object occurring on the effective date of this subsection.

