

Standby Guardianship Legislation: Expanding Future Care and Custody Options

Jeffrey A. Menzer, RN, ACRN

Project Director

Family Ties Project

Consortium for Child Welfare

Washington, DC

www.familytiesproject.org



LIFE PLANNING FOR FAMILIES AFFECTED BY HIV/AIDS

Presented at Establishing Permanent Futures for Children: Future Care and Custody Planning for Families Affected by Life-Threatening Illness, September 11, 2001, New Orleans, LA, sponsored by the National Abandoned Infants Assistance Resource Center

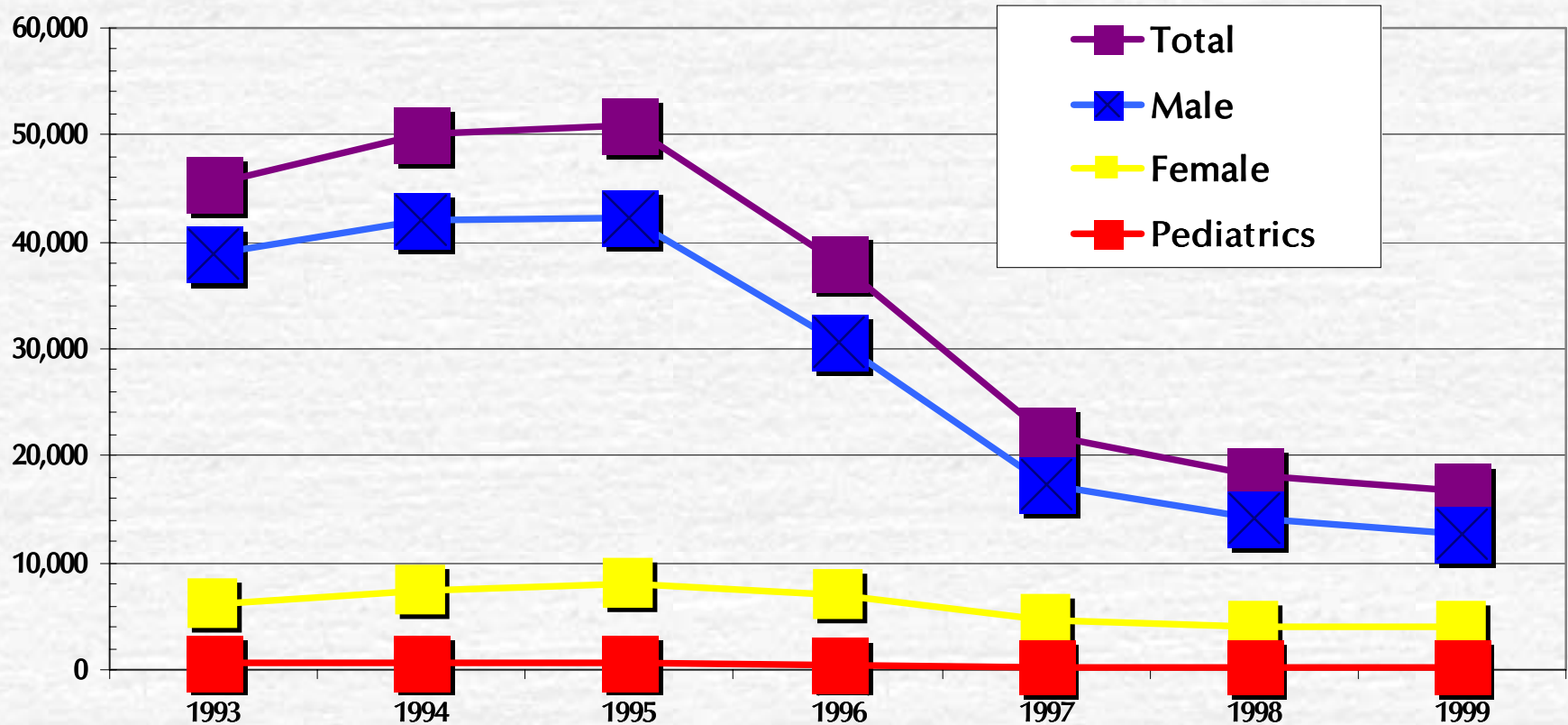
The Family Ties Project Mission Statement

The Family Ties Project addresses the issue of children orphaned by the HIV/AIDS epidemic in the District of Columbia.

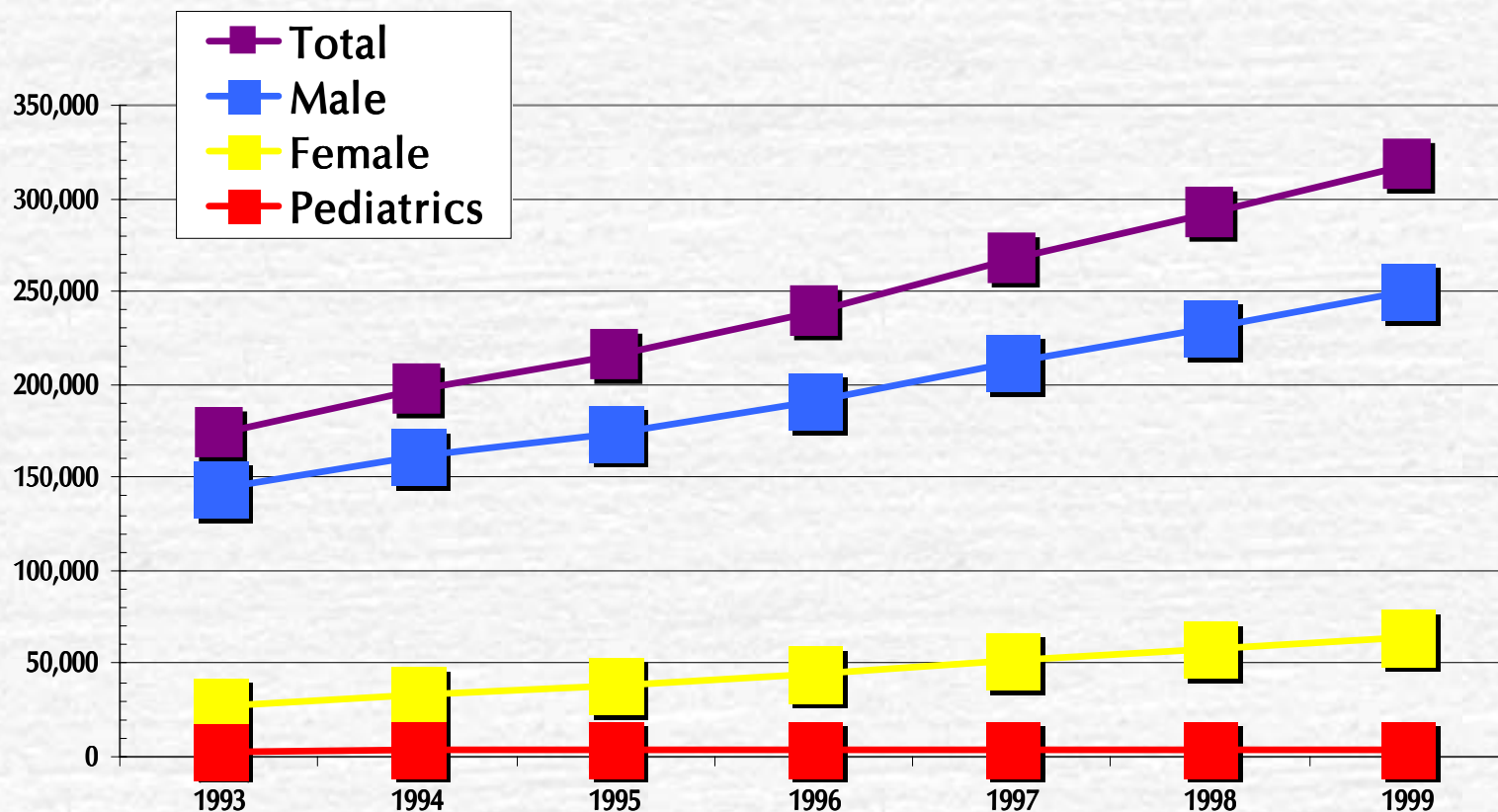
The mission of the Family Ties Project is to promote and preserve the well being of children, youth and families affected by HIV/AIDS by working with parents and caregivers to plan for the future care of their children.

These objectives are accomplished through the direct collaborative efforts of a multi-disciplinary team of service providers, including case managers, therapists and attorneys. The project also advocates for policy changes to improve the planning options available to parents and caregivers in Washington, DC.

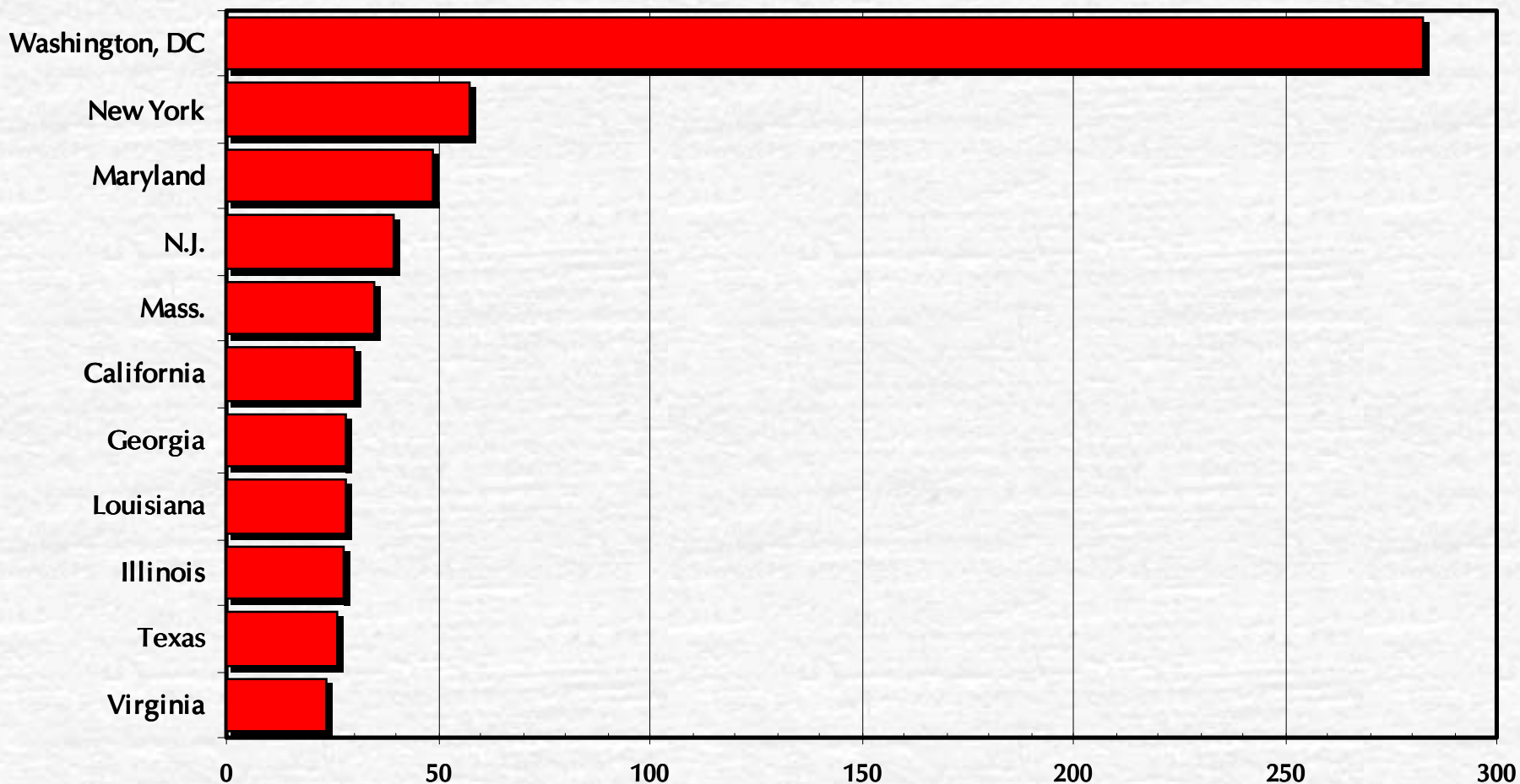
Estimated Deaths of Persons with AIDS, United States, 1993 through 1999



Estimated Persons Living with AIDS, United States, 1993 through 1999

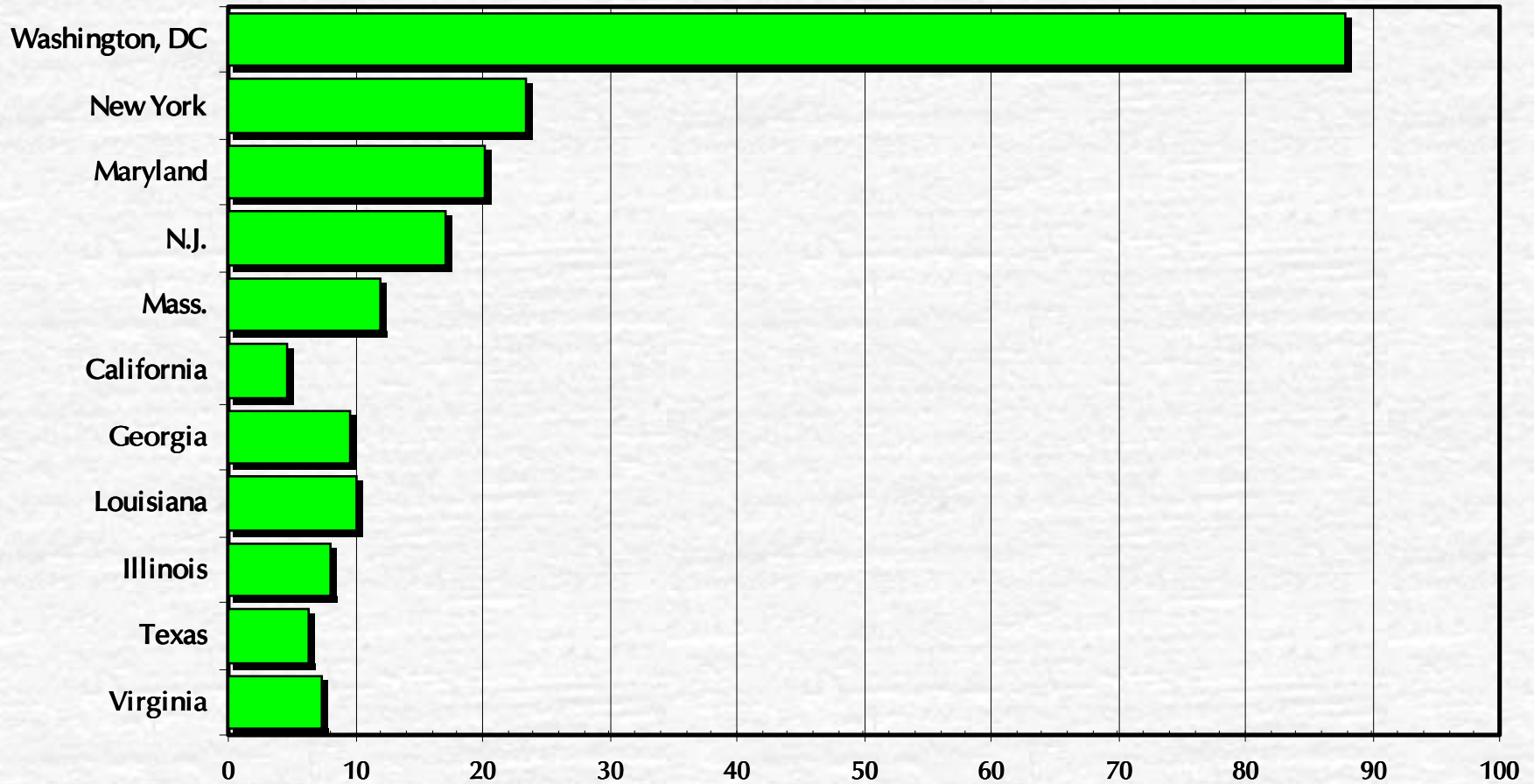


Male adult/adolescent AIDS rates per 100,000 population, reported in 2000

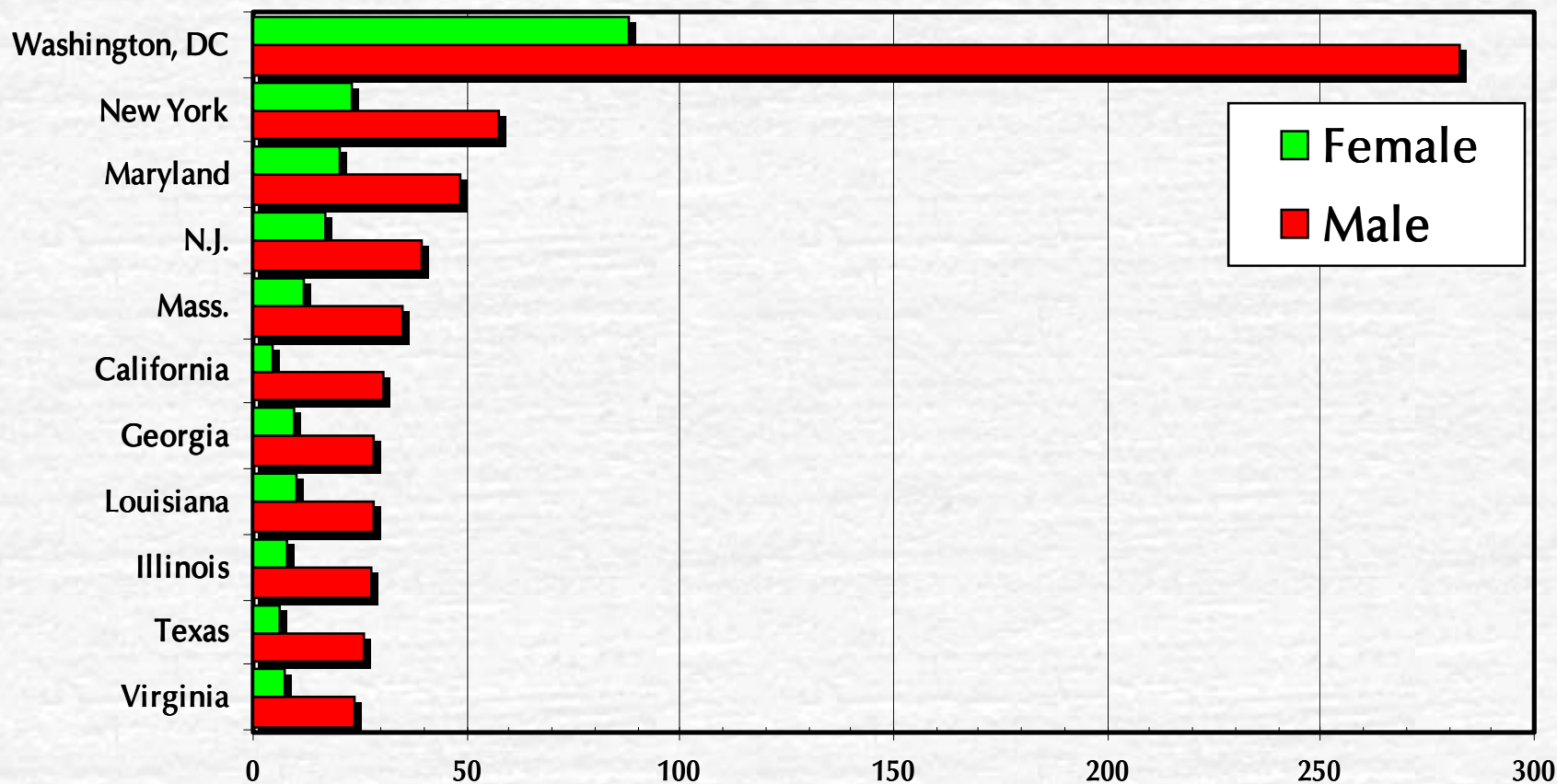


Source: CDC, Survey Report, Vol 12, No 2

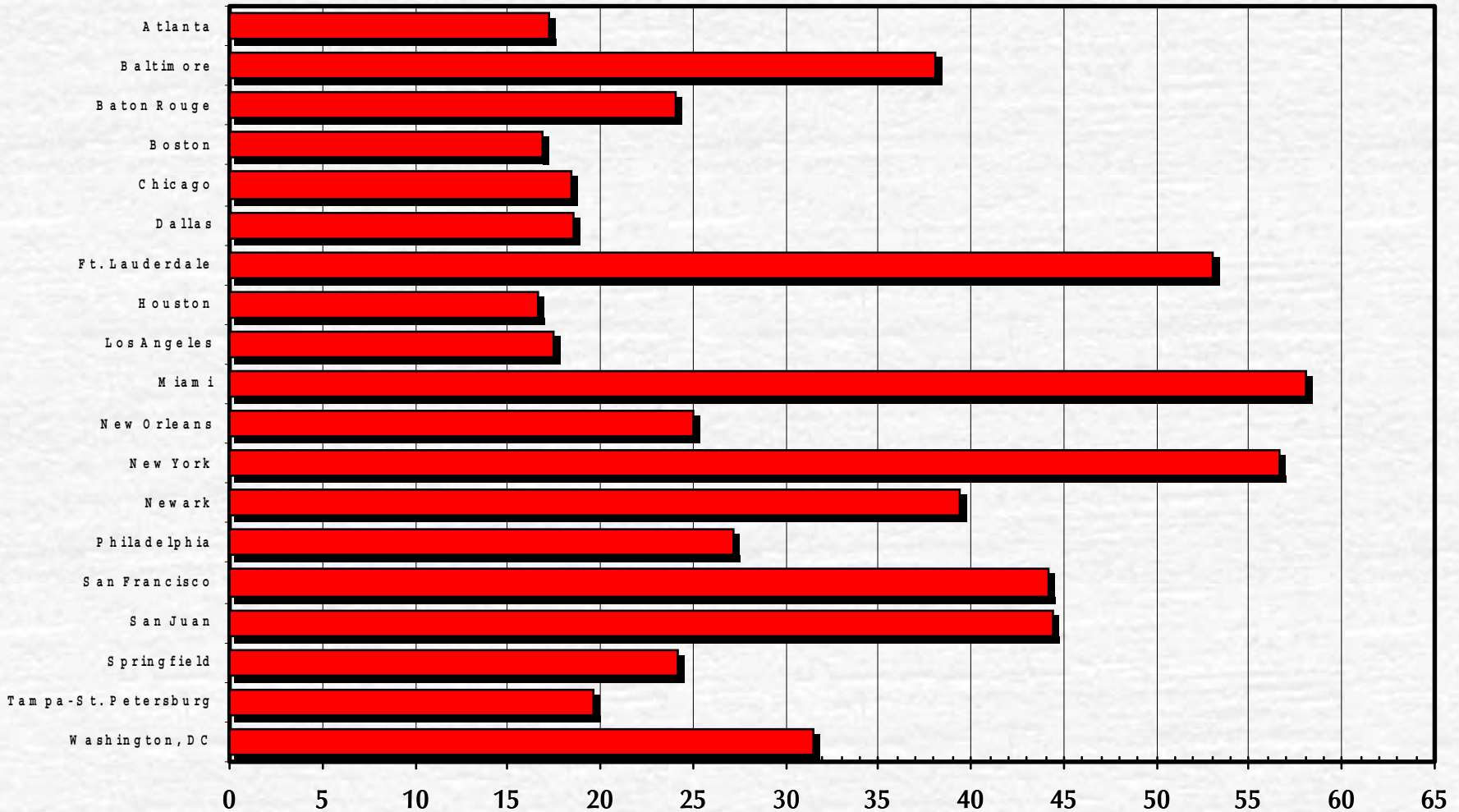
Female adult/adolescent AIDS rates per 100,000 population, reported in 2000



Adult/adolescent AIDS rates per 100,000 population, reported in 2000



Annual rate of AIDS per 100,000 Population by Metropolitan Area, 2000



Source: CDC, Survey Report, Vol 12, No 2

The Long Road to Standby Guardianship in the District of Columbia

- ☞ 1993: “Medical Consent for a Minor by an Adult Caregiver” Enacted
- ☞ 1995 – 1996: Community Planning/Assessment Efforts
- ☞ 1996 - 2000: Draft 1/Coalition Effort
- ☞ 2000 – 2001: Draft 2/Narrow Effort with consultant
 - November 2000: Testimony before the Committee on Human Services to include Standby Guardianship in child welfare reform legislation
 - December 2000: Child Welfare reform (part 1) enacted without inclusion of Standby Guardianship
- ☞ 11 July 2001: Standby Guardian Act of 2001, Bill 14-309 Introduced in D.C. City Council, referred to Committee on Human Services

Legislator's Checklist*: General Issues

Legal code placement?

- Placed in DC family code because sense that probate court lacks expertise to decide custody-related issues.

Is legislation readable and understandable?

- Legislation does not include form, but specifies the content of a designation.

Does it create essential permanent guardianship?

- Yes. The Standby Guardian "shall become permanent legal custodian except as subject to restoration of designator's ability to parent."

Does it define illness criteria?

- Yes. Follows ASFA "Sense of the Congress", "A parent who is terminally ill, or who is periodically incapable of caring for the needs of a child due to the parent's incapacity or debilitation resulting from illness."

* Larsen, *Standby Guardian Laws. A Guide for Legislators, Lawyers and Child Welfare Professionals*. 2000.

Legislator's Checklist: Designation Process

- ☞ Require filing prior to or after the triggering event; or two track process?
 - Allows two-track process; both a declaration without filing and filing after triggering event.
- ☞ Require document's signing be witnessed?
 - Yes, designator's signature must be witnessed by two witnesses. Allows another adult who is not the designated Standby Guardian to sign on behalf of the designator if she/he is incapable.
- ☞ Decide or prescribe the triggering events?
 - Prescribes the three triggering events: 1) debilitation with consent; 2) documented incapacity (physician or nurse practitioner); 3) death
- ☞ Law includes mental incapacity, physical debilitation with consent and death?
 - Yes

Legislator's Checklist: Designation Process

- ☞ Is consent alone enough to active guardianship?
 - In case of debilitation.
- ☞ Outline the process for revocation of designation?
 - Yes. Section 10 outlines process of filing notice of revocation with the court and delivering to Standby Guardian; notifying the Standby Guardian or Designator; or executing a subsequent designation.

Legislator's Checklist: Agreement of Non-Custodial Parent

- ✓ Define standards and process for notifying non-custodial parents?
 - Yes. Requires notification within 10 days of filing petition with court.
- ✓ Require consent of non-custodial parent?
 - Not required, but with consent of other parent, "there shall be a rebuttable presumption" of approval of the petition.
- ✓ Provide opportunity for non-custodial parent to challenge designation?
 - Yes. Non-custodial parent may request a hearing within 20 days of notice.
- ✓ Provide that the non-custodial parent request review of the court's decision at any time?
 - As with any custody order, a non-custodial parent can file a petition challenging the order.

Legislator's Checklist: Role of the Standby Guardian

- Provide concurrent-decision making power and/or process for resolving differences?
 - Concurrency is specifically stated, "The designator shall retain concurrent authority over the child as health permits", but there is no specific process for resolution of differences or conflicts. Language regarding providing designator with "frequent and continuing contact with and physical access to the child...involvement of the designator in the decision making on behalf of the child."
- Include informing court when triggering event has occurred and gathering and filing evidence?
 - Yes. Standby Guardian has 90 days to file death certificate. "Authority shall cease upon failure to file within 90 days, but shall recommence upon such filing."
 - "If designation has been made, but the petition for approval of the designation has not been filed and the triggering event has occurred, the Standby Guardian shall have temporary legal authority to act as a legal custodian or guardian of the child without the direction of the court for a period of 90 days." (Sec 7.a.)

Legislator's Checklist: Role of the Standby Guardian

☞ Require the standby guardian to petition for permanent guardianship when parent dies?

- No. "At the death of the designator the Standby Guardian shall become the legal custodian of the child."

☞ Presume that standby guardian will become permanent?

- Yes. Alternative Standby Guardian may also be approved.

Legislator's Checklist: Court Process

- ☞ Require court to hold hearing in every case to “determine best interest of the child”?
 - Legislation does not specifically require a hearing. Rebuttable presumption of best interest of child is defined.
- ☞ Provide an opportunity for a guardian ad litem be appointed for the child?
 - Not specified, but hearing procedure follows child custody proceedings.
- ☞ Specify the time of the court hearing or allow parent/guardian control?
 - Specifies a 90 day filing after the triggering event.
- ☞ Specify what documents be required to be filed?
 - Yes.

Legislator's Checklist: Court Process

☛ Include a process for converting a standby guardianship into permanent guardianship or have a presumption that standby guardianship automatically become permanent guardian absent a parental challenge?

- "At the death of the designator the Standby Guardian shall become the legal custodian of the child as defined in District of Columbia statutes.