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DATE: April 13, 2001

**HOUSE OF REPRESENTATIVES
AS FURTHER REVISED BY THE COMMITTEE ON
CRIMINAL JUSTICE APPROPRIATIONS
ANALYSIS**

BILL #: HB 301

RELATING TO: Testing of Inmates for HIV

SPONSOR(S): Representative(s) Wilson and others

TIED BILL(S): None

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) CRIME PREVENTION, CORRECTIONS & SAFETY YEAS 8 NAYS 0
- (2) STATE ADMINISTRATION YEAS 5 NAYS 0
- (3) CRIMINAL JUSTICE APPROPRIATIONS YEAS 10 NAYS 0
- (4) COUNCIL FOR HEALTHY COMMUNITIES
- (5)

I. SUMMARY:

House Bill 301 requires the Department of Corrections and contractors operating private correctional facilities under the Correctional Privatization Commission to perform HIV tests on inmates prior to their release. The bill also requires the Department of Corrections and private contractors to provide special transitional assistance, including education, an individualized discharge plan, and a 30-day supply of medication, to inmates who test positive for HIV. If an inmate who tests positive for HIV is released unexpectedly, the bill requires the Department of Corrections to notify the local county health department in the county where the inmate plans to reside. House Bill 301 mandates that the results of the inmates' HIV tests be placed in their medical records, and also that the results shall only be accessible to persons designated by the Department of Corrections. The results of the HIV tests will be exempt from the public records provisions of § 119.07(1) and § 24(a), Article I of the State Constitution.

House Bill 301 will have a fiscal impact on the state of Florida.

House Bill 301 provides for an effective date of July 1, 2001.

See "Other Comments" section for comments by the Committee on State Administration.

The Committee on State Administration adopted a strike-everything amendment, which is substantially different from the bill, and which is traveling with the bill.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|---|--|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

House Bill 301 requires the Department of Corrections to take a more active role in the detection of inmates with HIV/AIDS, therefore promoting "increased" government. HB 301 requires the mandatory testing of all inmates for HIV upon their release, therefore reducing individual freedom by removing the current option of voluntary testing.

B. PRESENT SITUATION:

The prevalence of HIV/AIDS in prisons exceeds its prevalence in the general population. A reason for the high rate of HIV infection in correctional institutions is the high-risk behaviors of inmates. Not only do inmates engage in more of these behaviors, they also engage in them more frequently than members of the general population.¹ Examples of such behaviors include anal intercourse, tattooing, a history of multiple sexual partners, a history of multiple sexually transmitted diseases, and poor physical and/or mental health. Research has shown that female inmates are more likely to be infected with HIV/AIDS than male inmates. The elevated risk of women for HIV infection can be explained by certain pre-incarceration behaviors, including high rates of economic dependency, injection drug use, crack use, and prostitution.

Statistics provided by the Department of Corrections indicate that as of December 2000, there were 768 inmates known to have AIDS within the prison system, and 2,640 inmates known to be HIV positive within the prison system.² These numbers include infected inmates located within private prisons in Florida.

The Department of Corrections currently does not have a mandatory HIV testing policy.³ Instead, inmates are tested for HIV at their request or if they were involved in an incident where bodily fluids were exchanged.⁴ The Department of Corrections tested approximately 13,000 inmates for HIV last year. The majority of those tests were performed upon inmate request, but several of the tests were performed because of a court-order.

When inmates are received into the correctional system, they receive an HIV orientation that includes prevention information, descriptions of "at-risk" behavior, and a presentation of the available treatment regimens for those inmates who are HIV positive. During incarceration, inmates may request an HIV test, and under certain circumstances, a Department of Corrections physician can order the administration of an HIV test. When scheduled for release, inmates are given an HIV

¹ Florida Corrections Commission 1998 Annual Report, page 52.

² The number of HIV positive inmates includes the number of inmates known to have AIDS.

³ The Department of Health has indicated that 20 states test all inmates for HIV upon entry into the prison system, and 4 of those states also test the inmates as they leave the system.

⁴ DOC Health Services Bulletin No. 15.03.08

test only if they request it. When the release of a known HIV positive inmate is scheduled, the Office of Health Services (within the Department of Corrections) briefs the inmate on the need to continue treatment regimens and procedures, prepares a continuity of care plan for the inmate's release, coordinates the HIV positive inmate's condition and release with the local county health department where the inmate plans to reside, and also provides a 30-day supply of medication to the inmate.⁵

Inmates who test positive for HIV/AIDS are not housed separately. However, the department has consolidated the housing of such inmates to 23 institutions.

C. EFFECT OF PROPOSED CHANGES:

The passage of HB 301 would result in mandatory HIV testing of all inmates prior to their release. Such testing will result in increased costs to the Department of Corrections and contractors of private prisons. The bill also requires the Department of Corrections and operators of private prisons to provide a 30-day supply of medication to HIV positive inmates upon their release. While the 30-day medication supply is current department policy, the costs to the department will be increased because the mandatory HIV testing will reveal more HIV positive inmates who will need the medication.

D. SECTION-BY-SECTION ANALYSIS:

Section 1:

This section creates new statutory language with regard to HIV testing of inmates.

Subsection 1 of section 1 defines the term "HIV test" (a test ordered to determine the presence of the antibody or antigen to human immunodeficiency virus or the presence of human immunodeficiency virus infection).

Subsection 2 of section 1 requires the Department of Corrections to perform an HIV test on an inmate before the inmate is released by reason of parole, accumulation of gain-time allowances, or expiration of sentence. (Inmates who have had a previous HIV test within 60 days of a scheduled "release" HIV test are exempt from this requirement.) This subsection also requires the Department of Corrections to perform an HIV test upon the request of a physician, and to record the results of all HIV tests in the inmate's medical record.

Subsection 3 of section 1 requires the Department of Corrections to provide special transitional assistance to inmates who test positive for HIV. The transitional assistance is to include HIV/AIDS education, a written discharge plan that provides information to the inmate about local HIV primary care services in the area where the inmate plans to reside, and a 30-day supply of all medicines the inmate is taking at the time of release. (These actions are already current department policy.)

Subsection 4 of section 1 requires the Department of Corrections to notify the local county health department in the county where an inmate plans to reside if the inmate has tested positive for HIV and is released unexpectedly.

Subsection 5 of section 1 declares that the results of the HIV tests will be accessible only by designated personnel at the Department of Corrections. The test results will be exempt from the public records provisions of § 119.07(1), F.S., and § 24(a), Article I of the State Constitution.

⁵ DOC Health Services Bulletin Nos. 15.03.08 and 15.03.29; 2001 DOC bill analysis, page 1.

Section 2:

This section is identical to section 1, except that it applies to contractors operating private correctional facilities in Florida.

Section 3:

This section provides an effective date of July 1, 2001.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

Department of Corrections:

The anticipated cost to the Department of Corrections is \$1,895,802. The methodology used to arrive at this figure is explained more fully below:

HIV Testing Costs:

The average number of releases projected for the next five fiscal years is approximately 25,000 releases per year.⁶ Of the 25,000 releases, the Department of Corrections estimates that they release approximately 1,150 inmates per year who are already known to have HIV and therefore will not need to be tested. Another 700 inmates will have voluntarily been tested and, therefore, would not need to be tested⁷. Thus, approximately 23,150 inmates scheduled for release each year will be tested.

The initial HIV test costs \$10.73 and will cost \$248,400 to test 23,150 inmates. Based on figures provided by the department, approximately 4.5%, or 1,042, of the 23,150 inmates will test positive for HIV. These inmates will undergo a second test to confirm if they are actually HIV positive. The second test costs \$695 resulting in total expenditures of \$724,190 to administer to 1,042 inmates.⁸

approximate additional testing costs: \$972,590

30-Day Supply of Medication:

The drug therapy regimen currently provided to HIV positive inmates costs \$28 per day.⁹ It will cost \$875,280 to provide a 30 day supply of medication to 1,042 inmates.

approximate additional medication costs: \$875,280

⁶ Data obtained from Workpapers of the Criminal Justice Estimating Conference, held February 16, 2001, p. 17. The release numbers included inmates released from private correctional facilities as well.

⁷ 13,000 voluntary tests per year divided by a total population of approximately 71,000 equals 18.3% of population who are currently tested per year. 5.6% (or 4,000) inmates are within 60 days of their release at any given time. 18.3% multiplied by 4,000 inmates equals 732 inmates who will be voluntarily tested within 60 days of their release. Approximately 32 (4.5%) of those inmates will be HIV+ and will therefore be included in the number of inmates released each year known to be HIV+ (1150). The addition of 700 to the known 1,150 equals 1,850 inmates who will already have been tested for HIV or are known to be HIV positive and therefore won't need further HIV testing.

⁸ Test costs obtained from the Legislative Office of the Department of Corrections.

⁹ Information obtained from Legislative Office of Department of Corrections.

Special Transitional Assistance

Based on figures provided by the Department of Corrections, it costs approximately \$46 per inmate to provide the special transitional assistance (HIV education and counseling) to those inmates who test positive for HIV. Therefore, the cost of providing special transitional assistance to the newly discovered 1,042 HIV positive inmates will be \$47,932.

approximate additional transitional assistance costs: \$47,932

Total approximate cost to the DOC \$1,895,802.¹⁰

Department of Health:

The Department of Health reports that it will experience increased recurring costs of approximately \$2.7 million. **This estimate, however, assumes that only 170 additional inmates with HIV will be identified and seek treatment through the department. The projection based on information supplied by the Department of Corrections suggests that 1,042 HIV positive ex-inmates will be identified through testing.**

The department's estimate does not appear to consider any potential offset from individuals who would seek health care services for problems related to their HIV infection, regardless of whether this bill passes. Given the progressively debilitating nature of HIV infection, particularly when untreated, it is logical to assume that at least some of the individuals who test positive would eventually seek health care services as their conditions worsen. Early identification and treatment of these individuals may result in avoidance of acute care costs in the future. Also, a number of HIV positive individuals become Medicaid eligible and can have services reimbursed through this program. Similarly, the analysis does not appear to take into account the extent to which individuals identified will re-offend or violate probation and be recommitted to the Department of Corrections and receive health care through the prison system.

The impact on the Department of Health, accordingly, is indeterminate.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The private companies that contract with the Correctional Privatization Commission will also be financially affected by HB 301. Representatives for both of the private vendors operating in Florida (Corrections Corporation of America and Wackenhut Corrections Corporation) have indicated that passage of HB 301 could be very expensive for their respective companies.¹¹ The private vendors

¹⁰ This amount includes the costs to test inmates in the private correctional facilities. The per diem amounts paid to the private correctional facilities are determined by the Correctional Privatization Commission but are part of DOC's budget.

¹¹ Lobbyists are Matt Bryan and Damon Smith, respectively.

are paid a per diem rate based on the number of inmates. If the per diems are not increased to cover the price of the tests and medication, then the vendors may experience a financial deficit with regard to the contract per diems.

D. FISCAL COMMENTS:

The fiscal amount (\$947,111) that was used for the original version of the bill analysis for HB 301 was based on figures and amounts submitted by the Department of Corrections on Tuesday, March 13, 2001. On Wednesday evening, the night before HB 301 was scheduled to be heard by the Crime Prevention, Corrections & Safety Committee, the Department of Corrections submitted a different set of numbers that they believed to be more accurate. Subsequent to the meeting of the Crime Prevention, Corrections & Safety Committee, the new numbers submitted by the department were presented to staff of the Office of Economic & Demographic Research. Staff reviewed the numbers and determined the appropriate formula to be used for calculating the number of HIV tests performed (please see footnote 7). The numbers presented in this updated version of the analysis for HB 301 are the numbers that were agreed upon by staff of the Office of Economic & Demographic Research and staff of the Crime Prevention, Corrections & Safety Committee.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

House bill 301 does not require municipalities or counties to spend funds.¹²

B. REDUCTION OF REVENUE RAISING AUTHORITY:

House bill 301 does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

House bill 301 does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

While mandatory testing is enforced in several states, questions remain concerning the issues of individual rights, medical confidentiality standards, and the potential for discrimination associated with identifying HIV positive individuals.

B. RULE-MAKING AUTHORITY:

None.

¹² The Florida Association of Counties has indicated they are “neutral” toward the bill because the bill, as written, does not require the counties to expend funds.

C. OTHER COMMENTS:

The bill does not provide any time frame for the testing process. The Department of Corrections has indicated that a time frame of 90 days before release would give them sufficient time to conduct and analyze the tests, and provide counseling and education to the HIV positive inmates.

Although section 2 of the bill applies to contractors operating under the Correctional Privatization Commission, it does not address the issue of the privatization of health care in Region IV of the state prison system. Proviso language in the 2000 General Appropriations Act required the Department of Corrections to privatize health care in Region IV. Bids will be awarded by the Department for the provision of health care in the region, and the Correctional Privatization Commission will not be involved in monitoring those vendors (contractors). Because the Request For Proposal (RFP) for the privatization of health care services was finalized before the filing of this bill, the RFP did not include any of the provisions that are required by HB 301. If the bill passes, the contract with the private vendor will likely need to be amended to include the requirements of the bill and to provide additional funding.

Comments by the Committee on State Administration

Article I, s. 24(a), Florida Constitution, expresses Florida's public policy regarding access to government records as follows:

Every person has the right to inspect or copy any public records made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

Article I, s. 24(c), Florida Constitution, does, however, permit the Legislature to provide by general law for the exemption of records from the requirements of s. 24. The general law must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish its purpose. In addition, it must be filed in a separate bill.

HB 301 contains two public records exemptions. Both exemptions apply to the results of an inmate's HIV test results within a state correctional facility and a private correctional facility.

A strike-everything amendment has been filed that appears to remediate this problem.

The removal of the public records exemptions from this bill does not affect the confidentiality of the inmates' HIV test results. Section 945.10(a), F.S., provides that medical records of an inmate or an offender are confidential and exempt from public disclosure. In addition, s. 384.26, F.S., states that

[t]he department¹³ and its authorized representatives may interview, or cause to be interviewed, all persons infected or suspected of being infected with a sexually transmissible disease for the purpose of investigating the source and spread of the disease and for the purpose

¹³ The Department of Health is referred to as the department in s. 384.26, F.S.

of ordering a person to submit to examination and treatment as necessary.

All information gathered in the course of contact investigation shall be confidential and exempt.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On April 3, 2001, the Committee on State Administration heard HB 301 and adopted a strike-everything amendment. The strike-everything amendment is substantially different than the original bill. The bill, as amended, was reported favorably.

HB 301	Strike-Everything Amendment
<p>Provides a definition for the term "HIV test."</p> <p>Requires the Department of Corrections (DOC) to perform an HIV test on an inmate before the inmate is released by reason of parole, accumulation of gain-time allowances, or expiration of sentence. This does not apply if an inmate has undergone an HIV test within the previous 60 days or is known to be HIV-positive.</p> <p>The DOC is authorized to perform an HIV test on an inmate upon the request of a physician.</p> <p>An inmate's HIV test results must be recorded in the inmate's medical record.</p>	<p>Same.</p> <p>Requires the DOC to perform an HIV test on an inmate whose HIV status is unknown. It must be performed not less than 60 days prior to the inmate's presumptive release. Reasons for release are the same. This requirement "need not" apply if an inmate is known to be HIV positive or has been tested within the previous year and does not request retesting. This also does not apply when an inmate is released due to an emergency.</p> <p>No such provision.</p> <p>Same.</p>
<p>Prior to the release of an HIV-positive inmate, the DOC must provide special transitional assistance to the inmate. This assistance includes: education on preventing the transmission of HIV; the importance of receiving follow-up care and treatment; a written, individualized discharge plan; and a 30-day supply of all medicines the inmate is taking at the time of release.</p>	<p>Same. However, a 30-day supply of medicines will only be provided "if appropriate."</p>
<p>When an HIV-positive inmate is released pursuant to an emergency court order or other unexpected action, then the DOC must immediately notify the county health department in the county where the inmate will reside following release. This is to ensure the continuance of care and other services.</p>	<p>The DOC must, prior to the release of an inmate, notify the Department of Health and the county health department, in the county where the inmate plans to reside upon release, regarding an inmate who is known to be HIV-positive or has a positive test result.</p>
<p>No such provision.</p>	<p>The DOC must report to the Legislature by March 1, 2002, as to the implementation of this program and the participation by inmates and staff.</p>
<p>Exempts from public disclosure HIV test results. Provides for an exception for persons designated by the DOC rule.</p>	<p>Allows the release of certain records unless prohibited by federal law.</p>
<p>Same provisions apply to inmates residing in private correctional institutions.</p>	<p>No such provision.</p>
<p>No such provision.</p>	<p>Provides that informed consent is not required for HIV testing of inmates prior to their release from prison by reason of parole, accumulation of gain-time credits, or expiration of sentence.</p>
<p>No such provision.</p>	<p>The DOC transition assistance officer must provide a written medical discharge plan, referral to a county health department, and, if appropriate, a supply of prescribed medication for an HIV-positive inmate.</p>

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VII. SIGNATURES:

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AS FURTHER REVISED BY THE COMMITTEE ON CRIMINAL JUSTICE APPROPRIATIONS:

Prepared by:

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