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**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
STATE ADMINISTRATION
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
 - (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

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

can order the administration of an HIV test. When scheduled for release, inmates are given an HIV 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:

There are several fiscal issues that must be considered, including the cost of the HIV tests and the provision of medications.

HIV Testing Costs:

The average number of releases projected for the next five fiscal years is approximately 25,000 releases per year.⁶ Of those 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. The department currently performs approximately 13,000 voluntary HIV tests per year. Using a formula agreed upon by the Office of Economic & Demographic Research, it was determined that there will be approximately 23,150 inmates scheduled for release each year who will not have been previously tested for HIV within 60 days of their release.⁷ One HIV test, at a cost of \$10.73, multiplied by the remaining 23,150 inmates scheduled for release will result in an approximate cost of \$248,400 to the Department of Corrections. Based on figures provided by the department, approximately 4.5% of the inmates will test positive for HIV. This positivity rate, applied to the 23,150 inmates to be tested each year, results in approximately 1,042 inmates testing positive for HIV who were not previously known to have HIV. Those inmates who initially test positive for HIV are re-tested with a special diagnostic test called the Western blot test. This diagnostic test (and costs associated with the test) costs \$695 dollars.⁸ Performing the confirmation test on 1,042 inmates will cost \$724,190.

approximate additional testing costs: \$972,590

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.

30-Day Supply of Medication:

The drug therapy regimen currently provided to HIV positive inmates costs \$28 dollars per day.⁹ The cost of supplying 30 days worth of medication to the estimated additional 1,042 inmates who will be discovered to be HIV positive will be \$875,280.

approximate additional medication costs: \$875,280

Special Transitional Assistance

Based on figures provided by the Department of Corrections, it costs approximately \$46 dollars 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

Another cost-factor that must be considered when determining state impact is who is going to care for these HIV positive individuals when they are returned to society. Depending on the releasee's health and financial status, he or she may qualify for various HIV/AIDS treatment programs through their local county health department, including Medicaid. Local county health departments receive a portion of their funding from the state, so if the county assumed responsibility for providing treatment and medicine to the releasee, the state would still be affected financially.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The cost of HB 301 on local governments is indeterminate. Depending on the releasee's health status, he or she may qualify for various HIV/AIDS treatment programs through their local county health department. The amount the releasee will have to pay for the services will be dependent on his or her financial status.

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 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.

⁹ Information obtained from Legislative Office of Department of Corrections.

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.

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.

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

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.

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 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.

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

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
Provides a definition for the term "HIV test." 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. The DOC is authorized to perform an HIV test on an inmate upon the request of a physician. An inmate's HIV test results must be recorded in the inmate's medical record.	Same. 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. No such provision. Same.
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.	Same. However, a 30-day supply of medicines will only be provided "if appropriate."
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.	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.
No such provision.	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.
Exempts from public disclosure HIV test results. Provides for an exception for persons designated by the DOC rule.	Allows the release of certain records unless prohibited by federal law.
Same provisions apply to inmates residing in private correctional institutions.	No such provision.
No such provision.	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.
No such provision.	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.

VII. SIGNATURES:

COMMITTEE ON CRIME PREVENTION, CORRECTIONS & SAFETY:

Prepared by:

Staff Director:

Melinda A. Smith

David De La Paz

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DATE: April 3, 2001

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AS REVISED BY THE COMMITTEE ON STATE ADMINISTRATION:

Prepared by:

Staff Director:

Heather A. Williamson, M.S.W.

J. Marleen Ahearn, Ph.D., J.D.