

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: Criminal Justice Committee

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BILL: SB 370

INTRODUCER: Senator Wilson

SUBJECT: Inmate Testing for HIV Infection

DATE: February 12, 2007

REVISED: 02/20/07

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	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Clodfelter</u>	<u>Cannon</u>	<u>CJ</u>	<b>Favorable</b>
2.	<u>                    </u>	<u>                    </u>	<u>HP</u>	<u>                    </u>
3.	<u>                    </u>	<u>                    </u>	<u>JU</u>	<u>                    </u>
4.	<u>                    </u>	<u>                    </u>	<u>HA</u>	<u>                    </u>
5.	<u>                    </u>	<u>                    </u>	<u>                    </u>	<u>                    </u>
6.	<u>                    </u>	<u>                    </u>	<u>                    </u>	<u>                    </u>

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## I. Summary:

This bill requires the Department of Health (DOH) to designate 2 large counties and 5 smaller counties to participate in an HIV testing program for county jail prisoners. Participation in the program must be approved by the county's governing body. The bill also requires participating detention facilities to notify DOH and the county health department when an HIV positive prisoner is released and to provide certain transitional assistance to that prisoner. Conforming language adds HIV testing of county jail prisoners under these circumstances to the list of HIV tests for which informed consent is not required.

The bill provides sovereign immunity for death or injury arising from actions carried out in compliance with the provisions of the bill.

This bill substantially amends sections 951.27 and 381.04, Florida Statutes.

## II. Present Situation:

### HIV/AIDS

AIDS is the acronym for acquired immune deficiency syndrome. It is a fatal disease caused by a virus, a tiny organism similar to the organisms that cause colds and flu. The virus that causes AIDS is the human immunodeficiency virus, or HIV. HIV infection causes people to get AIDS by damaging their immune systems. The immune system is what defends the body against the many different organisms that can enter the body and cause sickness. Without the ability to resist disease, people with AIDS fall ill easily, get sick often, and have great difficulty recovering. People do not die from HIV infection directly. Rather, they die from the "opportunistic" infections and diseases they get because their immune system is not working properly.

Both the DOH and the U.S. Centers for Disease Control and Prevention (CDC) report that early detection and treatment of HIV infection can yield substantial health benefits. For the individual, it can reduce the number of opportunistic infections and delay the onset of AIDS and death from the disease. For society, it promotes public health by providing the opportunity for interventions that may change high-risk behaviors and thereby reduce the transmission of the virus to others.

### **HIV/AIDS in Florida**

Since testing and reporting began in 1981, through 2004, a cumulative total of 96,849 AIDS cases have been reported in Florida. This places Florida third in the nation for reported AIDS cases. In 2004 alone, 5,816 AIDS cases were reported here. Of the cumulative total, males account for 76 percent of the cases and females account for 24 percent.<sup>1</sup> The number of newly infected HIV cases dropped by 3 percent in 2004. During 2004, AIDS cases rose higher in Broward County (1,010) and Miami-Dade County (1,349) relative to the other areas in the state. Officials at DOH note that the increase in AIDS cases may be attributed in part to the large volume of publicly funded HIV testing that has occurred over the past three years.

Since HIV testing and reporting began in 1997 through 2004, a cumulative total of 33,489 HIV cases have been reported in Florida. In 2004 alone, 6,341 HIV cases were reported. Males accounted for 64 percent of the cumulative total while females accounted for 36 percent.<sup>2</sup>

A racial breakdown of these figures indicates that, while blacks account for 14 percent of the state population, blacks represent 48 percent of the total AIDS cases and 54 percent of the HIV cases.<sup>3</sup> While whites make up approximately 69 percent of the state population, they represent 36 percent of the AIDS cases and 28 percent of the HIV cases.<sup>4</sup> Hispanics account for 17 percent of the adult population and comprise the remaining 16 percent of the AIDS cases and 17 percent of the HIV cases.<sup>5</sup> The Haitian population is recorded as part of the black population for statistical purposes. The Haitian population accounted for 6,984 AIDS cases in the cumulative total and 2,170 cases in the 2004 total.<sup>6</sup>

### **HIV Testing in Florida Prisons**

The rate of HIV/AIDS is more prevalent in prisons and detention facilities than in the general population. The Department of Corrections (DOC) reports that, of the total inmate population of 86,474 inmates, 3,396 or 3.5 percent have tested positive for the HIV virus. Of the inmates who have tested positive for HIV, 645 have been diagnosed with AIDS. This is often attributed to the fact that the inmates engage in high risk activities more frequently than the general population. Researchers say high incarceration rates increase risk behaviors associated with HIV by skewing the ratio of women to men, worsening economic conditions, and increasing the social capital of men who are not imprisoned.<sup>7</sup>

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<sup>1</sup> Florida Department of Health, Bureau of HIV/AIDS, data as of December 31, 2004.

<sup>2</sup> *Id.*

<sup>3</sup> Florida Department of Health, Bureau of HIV/AIDS – HIV/AIDS and Blacks, 2004.

<sup>4</sup> Florida Department of Health, Bureau of HIV/AIDS, data as of December 31, 2004.

<sup>5</sup> Florida Department of Health, Bureau of HIV/AIDS, HIV/AIDS Among Hispanics, Florida, 2004.

<sup>6</sup> Florida Department of Health, Bureau of HIV/AIDS – HIV/AIDS in Florida's Haitian Population – 2004.

<sup>7</sup> "Links Between Prison and AIDS Affecting Blacks Inside and Out," Lynette Clemetson, The New York Times, August 6, 2004.

Beginning in July 2002, DOC has been required to test all inmates for HIV at least 60 days prior to their release. If the inmate is found to be HIV positive, the department is required to:

- Notify DOH and the health department in the county where the inmate intends to live;
- Provide counseling and transition assistance related to HIV; and
- Provide a 30-day supply of HIV/AIDS related medicine.<sup>8</sup>

Section 951.27, F.S., requires county and municipal detention facilities to have a written procedure concerning the testing for infectious diseases, including HIV. The procedure must be consistent with guidelines established by the CDC and recommendations of the Correctional Medical Authority.

According to DOH, 14 county health departments receive funding through the department's Bureau of HIV/AIDS to implement HIV counseling, testing, and referral services to the local county detention facilities. The programs focus on testing inmates early in their jail terms and then linking them with appropriate services upon their release. Other detention facilities provide voluntary testing programs through their county health department or community-based organizations, but do not receive funding from the bureau. Disease reporting laws require reporting of positive test results, but there is no requirement for county health departments to be notified when an HIV-positive inmate is released from jail.

#### **HIV Testing and Informed Consent**

Section 381.004(3), F.S., requires any person who orders an HIV test to obtain the informed consent of the person upon whom the test is being performed, with some exceptions. Section s. 381.004(3)(h), F.S., provides a number of exceptions to the informed consent requirement, including HIV testing of inmates prior to their release from prison. However, informed consent is required before testing an inmate who is being released from jail.

Informed consent for HIV testing must be preceded by an explanation of the right to confidential treatment of information identifying the subject of the test and the results of the test as provided by law. Information must also be provided on the fact that a positive HIV test result will be reported to the county health department with sufficient information to identify the test subject and on the availability and location of sites at which anonymous testing is performed. Consent need not be in writing if there is documentation in the medical record that the test has been explained and the consent has been obtained.

The person ordering the test or that person's designee must ensure that all reasonable efforts are made to notify the test subject of his or her test result. Notification of a person with a positive test result must include information on the availability of appropriate medical and support services, on the importance of notifying partners who may have been exposed, and on preventing transmission of HIV. Notification of a person with a negative test result must include, as appropriate, information on preventing the transmission of HIV. When testing occurs in a hospital emergency department, detention facility, or other facility and the test subject has been released before being notified of positive test results, informing the county health department for that department to notify the test subject fulfills this responsibility.

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<sup>8</sup> Section 945.355, F.S.

The CDC has recently recommended that HIV testing become a part of routine care for all persons between the ages of 13 and 64. It emphasizes that the testing must be voluntary and undertaken only with the patient's knowledge, but recommends that pre-test counseling and separate, written consent for HIV testing should no longer be required.

### **III. Effect of Proposed Changes:**

Section 1 of the bill amends s. 951.27, F.S., to require DOH to select two counties with a population over 1.2 million and five with a lower population in which to institute a program to test local prisoners for HIV. Participation must be authorized by a majority vote of the county's governing body. Each prisoner would be tested at least 30 days before release unless the facility knows that the inmate is HIV positive or if the inmate has been tested within 120 days of the release date and does not request retesting. A test is not required if an inmate is released due to an emergency or a court order and the facility receives less than 30 days' notice of the release, or if the inmate is transferred to DOC for incarceration.

The bill imposes several requirements on participating detention facilities before an HIV positive prisoner is released. The facility must notify both the county health department where the inmate plans to reside and DOH of the inmate's release date and HIV status. The facility must also provide transitional assistance to the inmate in the form of education on preventing HIV transmission and on the importance of receiving medical care and treatment. The assistance must include providing the releasee with an individualized written discharge plan. The plan must include records of laboratory and diagnostic test results, medication and treatment information, and referrals to and contact information for the health department and local primary medical care services for HIV infection treatment that are available where the inmate intends to reside.

New subsection (5) of s. 951.27(5), F.S., provides that the state, its agencies, its subdivisions, or employees are not liable for negligently-caused death or bodily injury that arises out of compliance with the testing and notification procedures.

The provisions of this proposal closely parallel s. 945.355, F.S., which requires DOC to test inmates prior to their release. A significant difference is that DOC is required to provide the HIV positive inmate with a 30 day supply of HIV/AIDS-related medications that is being taken at the time of release.

Section 2 of the bill amends s. 381.004, F.S., to add HIV testing pursuant to this bill to the list of tests for which informed consent is not required.

The bill has an effective date of July 1, 2007.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

There could be an indeterminate impact on costs incurred by private insurance carriers due to increased identification of the HIV status of released inmates. However, the costs of early treatment can be expected to be mitigated by a reduction in treatment costs for opportunistic infections that may be prevented.

C. Government Sector Impact:

Participating county detention facilities will be impacted by this bill. For those that do not currently test prisoners for HIV before their release, the fiscal impact of testing depends on the number of inmates that are released from the jail who require testing under the bill. Jails normally use a \$12 rapid test kit that takes from 20-40 minutes to get results. According to DOH, 98 percent of tests are negative and no further testing is required. For positive results, a confirming test is required at an additional cost of \$1 for a blood test or \$4 for a swab test.

The impact of meeting the transitional assistance requirements is unknown but could be significant. DOH estimates that the bill would result in increased annual treatment costs of approximately \$3,000,000 for the state. It does not anticipate that federal funds will be available to absorb the costs. The department's estimate is based upon the assumption that 2 large, 4 medium, and 1 small county will agree to participate in the program, resulting in approximately 48,000 tests. Assuming that approximately 2 percent of those inmates will test positive for HIV, approximately 960 inmates per year would be identified. Of these, one-quarter (240 persons) are expected to need services through public health because they are indigent and do not have other coverage. Of these 240 persons, the department projects that half (120 persons) will continue treatment, with the other half either moving from Florida or not continuing treatment. The average cost of treating a person with HIV is approximately \$25,200 a year, yielding a total cost of \$3,024,000 to treat 120 persons.

Early identification and treatment may reduce costs that would otherwise be incurred for treating opportunistic infections. It may also reduce transmission of the virus to other

persons who would themselves need treatment. The fiscal impact of this potential benefit has not been estimated.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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## **VIII. Summary of Amendments:**

None.

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