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HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
HEALTH CARE LICENSING & REGULATION
ANALYSIS

BILL #: CS/HB 711

RELATING TO: HIV Testing of Inmates

SPONSOR(S): Committee on Corrections and Representative Hill and others

COMPANION BILL(S): SB 2122(c)

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

(1) CORRECTIONS YEAS 7 NAYS 0
(2) HEALTH CARE LICENSING & REGULATION
(3) CRIMINAL JUSTICE APPROPRIATIONS
(4)
(5)

I. SUMMARY:

CS/HB 711, relating to the testing of inmates for HIV requires:

- the Department of Corrections and contractors of private correctional facilities under the Correctional Privatization Commission to perform HIV testing within 30 days following an inmate's commitment to a correctional facility and to conduct testing again with 180 days for all inmates who tested negative;
- the test record and result of the HIV test be placed in the inmate's medical record;
- that such a test be performed within 60 days before an inmate is released;
- an inmate who has received a positive HIV test be provided with educational services, a discharge plan, and medications prior to release;
- the DOC and contractors of private correctional facilities to notify the county health department where the inmate will reside when an inmate has received a positive HIV test result when the inmate is released pursuant to an emergency order or other unexpected action;
- the HIV test used by DOC and contractors of private correctional facilities under the Correctional Privatization Commission to conform to the standards for such testing in s. 381.0043(3) F.S., regarding the confirmation of the test and counseling for the test;
- an HIV test before an inmate is released from prison unless a test was performed within the previous 60 days OR if it is already known that the inmate is HIV positive as determined by a previous HIV test;
- the results from any HIV test shall only be accessible to persons designated by agency rule and shall be exempt from the public records law [s. 119.07(1)] and the Florida Constitution [s.24(a), Article I]; and
- the DOC to conduct a study of the benefits of random HIV testing of inmates and report findings and recommendations from this study to the Legislature by February 1, 2000.

The committee substitute provides for an effective date of July 1, 1999.

The fiscal impact of this bill is indeterminate but significant.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Prevalence of HIV/AIDS in Florida's Prisons

According to a report by the National Institute of Justice, in 1995, Florida ranked seventh nationally, along with Maryland, in HIV/AIDS cases as a percentage of total custody population (3.4 percent) which was up from 2.4 percent in 1991 (ranking ninth). As of December 31, 1998, there were 2,461 inmates with the HIV virus including 780 inmates diagnosed with AIDS in a population of 67,053. This raises the prevalence rate to 3.7%. Nationally, the average is 2.3 percent. In 1995 there were 1,971 male cases of HIV, or 3.3 percent of that population, and 222 female cases of HIV, or 6.1 percent of that population, in Florida's prisons. In 1995 Florida ranked second, behind New York, in the number of confirmed AIDS cases (692), which accounts for 31.6 percent of the total HIV cases, and 1.1 percent of the total inmate population.

It should be noted that testing polices for HIV vary from state to state and may account for higher percentages of inmates diagnosed with HIV in some states.

Also, in 1995 Florida ranked second, behind New York, in inmate deaths due to AIDS. Between 1989 and 1997, AIDS deaths accounted for over half (50.6 percent) of all inmate deaths in Florida's prisons.

A study by Richard J. Koehler, "HIV Infection, TB, and the Health Crisis in Corrections," indicates that inmates die more quickly from AIDS than those patients who are not incarcerated. In 1991, the median time from diagnosis to death for an AIDS patient is 159 days for prisoners as opposed to 318 days for all other patients. The results of Koehler's study indicate that the overall seroprevalence rate for inmates in Florida's prisons was 4.5 percent. The male inmate prevalence rate was 4.2 percent and the female inmate prevalence rate was 8.7 percent

Inmates in Florida are tested for HIV at their request or if they have been involved in an incident where body fluids were exchanged. (Section 945.35 (3), Florida Statutes.)

Because of the largely voluntary nature of HIV/AIDS testing in the state's prisons, many inmates are believed to pass through undiagnosed. In 1990, Johns Hopkins University published results of a Correctional Regional Infection Sentinel Surveillance Project study based on sampling done in 1988 and 1989. The purpose of the study was to identify seroprevalence [the proportion of persons who are HIV+] of HIV-1 antibody among consecutive entrants to ten distinct correctional systems in the United States, and to characterize seroprevalence by gender, geography, racial/ethnic grouping, and facility type (i.e., jails versus prisons). The DOC participated in this study. In 1996, the department conducted a follow-up seroprevalence study based on the methodology used in the Correctional Regional Infection Sentinel Surveillance Project study, with some modification.

This past year, South Carolina became the seventeenth state to test all inmates upon entrance into prison, the first to adopt this practice since 1990. Three states test all inmates in custody; three states and the federal government test upon release.

In an effort to minimize cost of caring for HIV/AIDS inmates, the Department of Corrections (DOC) Office of Health Services (OHS) has consolidated treatment by housing HIV inmates at 23 institutions in proximity to contracted hospitals. The department has, additionally, opened a special care facility that houses 144 of the terminally ill AIDS cases.

The DOC's treatment protocols for inmates with HIV/AIDS are having to change in order to favorably impact the growing costs of AIDS treatment and to provide a more consistent cost effective

quality of care for these inmates. In 1992, the average cost per case was $4,757. The projected cost per case for FY 1998-99, based on six month expenditures is $9,834.

HIV Testing In Florida's Prisons

The HIV testing in Florida's prisons is done primarily on a voluntary basis. Section 381.004, Florida Statutes, provides that such tests are intended to be voluntary and confidential. Additionally, s. 945.35(3), F.S., allows the Department of Corrections (DOC) to begin a testing program on any inmate found to be engaged in the following high-risk behaviors.

- Sexual contact with any other person.
- An altercation involving exposure to body fluids.
- The use of intravenous drugs.
- Tattooing of the body.
- Any other activity medically known to transmit the virus.

It is the department's policy to encourage all inmates to be tested and counseled for HIV without incurring a medical co-payment. Inmates who test negative may request retesting in six months. All inmates scheduled for testing receive pretest and posttest counseling. All admissions to the reception centers are encouraged to be tested and testing information is provided during orientation at their permanent institution.

The department uses the ELISA (Enzyme-Linked Immunosorbent Assay) antibody test for HIV. If the ELISA is positive, a Western blot test is done to confirm the diagnosis. An "indeterminate" or "slightly reactive" result should be repeated in three months; a second "indeterminate" result within six months is considered negative.

According to DOC, inmates considered to be at "high-risk" for HIV infection are urged to be tested. A refusal of this recommendation must be documented. The department considers an inmate to be at high-risk if any of the following factors are identified.

- Men who have had sex with men.
- History of multiple sex partners.
- History of intravenous drug use or use of crack cocaine.
- History of sexually transmitted diseases.
- Those who received blood or blood products between 1978 and 1985.
- Sexual or needle sharing contacts with any of the above groups.
- History of Tuberculosis or recent Mantoux skin test conversion.
- History of Hepatitis B or Hepatitis C positivity.
- Laboratory tests that indicate the following:
    - Reduced white blood cell count
    - Reduced hemoglobin
    - Reduced platelets
    - Unexplained gamma globulin elevation
- Persistent Herpes simplex or multi-dermatomal zoster (shingles) or zoster in a young person, even in one dermatome.
- Pregnant inmates.
- Inmates presenting with swollen lymph nodes and/or lymphadenopathy.
- Female inmates presenting with recurrent candidial vaginitis.
- Female inmates with cervical cancer or pre-cancerous lesions.

- Inmates with recurrent bacterial pneumonias.
- Recurrent or persistent diarrheas.
- Kaposi's sarcoma.
- Lymphoma.
- Inmates who consider themselves "at-risk," or are just curious; or "just want to know" HIV status.

Inmates who have less than 60 days remaining on their sentence are not generally tested. Each institution is responsible for testing its permanent inmates. Bulletin board notifications are available in English, Spanish, and Creole. These bulletin board notifications name most of the first eight risk factors listed above and add involvement in prostitution. They do not include the sharing of injection drug use equipment as a risk factor and do not mention that the testing and counseling are free.

Testing after incidents where body fluids have been exchanged, such as altercations or needle sticks, will be performed immediately after the incident, unless the inmate is known to be HIV+, and repeated at six weeks, three months, and six months if the affected inmate remains negative.

Chapter 10D-3.062, Florida Administrative Code, requires all newly positive HIV tests to be reported to the Florida Department of Health.

Other Correctional Systems

As part of the Florida Corrections Commission's 1998 Annual Report, fourteen states were surveyed regarding HIV/AIDS policies and practices. These correctional systems were chosen because they reported high HIV prevalence rates or because of uncommon practices. The following table lists the systems surveyed, prevalence rates, and testing and housing policies.

HIV/AIDS Policies and Practices in Other States

State	1995 Percent of population		Testing	Housing
	Male	Female		
Alabama	1.1%	1.0%	Upon intake and release	Segregated
California	0.8%	0.9%	Voluntary, involvement in an incident	Specialized AIDS unit at Vacaville for later stages of disease. Otherwise, not segregated
Connecticut	4.6%	13.4%	Voluntary	Not segregated
Georgia	2.3%	4.0%	Upon intake, at inmate's request	Not segregated
Maryland	3.3%	5.5%	Voluntary, involvement in an incident	Not segregated
Massachusetts	3.5%	10.5%	Voluntary, random sample	Not segregated
Mississippi	1.4%	0.3%	Upon intake	Segregated
New Hampshire	0.9%	11.4%	Upon intake, at inmate's request	No segregation
New Jersey	3.4%	9.8%	Voluntary	Not segregated
New York	13.4%	22.7%	Voluntary, involvement in an incident, random sample	Not segregated
Texas	1.4%	3.0%	Voluntary	Not segregated

HIV/AIDS Policies and Practices in Other States				
Vermont	0.0%	0.0%	Upon clinical indication	Not segregated
Federal	2.3%	4.0%	Upon release, voluntary, random sample	Not segregated
Canada	N/A	N/A	Voluntary	Not segregated

Source: The Florida Corrections Commission, *1998 Annual Report*.

HIV/AIDS Education

Prisons house high concentrations of inmates with histories of injection and other drug use, high-risk sexual practices, and other behaviors that may place them at increased risk for HIV infection and who are less likely to be reached by community-based AIDS education efforts. Also, inmate populations are "captive audiences" available for education and intervention programs for the length of their stays in correctional facilities.

Section 945.35, F.S., requires the DOC to establish a mandatory and continuing education program on HIV/AIDS for all inmates. The program must be sensitive to cultural "and other relevant differences among inmates" and emphasize behavior and attitude change. The programs are to be designed for the inmates while they are incarcerated and prior to their release and are to be updated as new medical information becomes available.

According to the Department of Corrections' Health Service Bulletin 15.03.08, HIV/AIDS training is to be provided to inmates at reception, transfer to a permanent institution (HIV 101-Basic and HIV 102-Testing Policy), and prior to release, with updates offered as needed. The provision of this education must be documented. The decision on what HIV/AIDS educational materials to purchase, including booklets and videos, is made at the institution level. There can be great variation in the quality and quantity of HIV/AIDS information that is available from institution to institution.

The basic HIV information course is given at orientation and could be a handout or a videotape. Generally, the videotape "HIV/AIDS 101," produced by the Florida Department of Health, is used. The tape does not specifically address the issues relating to HIV in the correctional setting, but does cover the transmission, testing, and treatment of HIV/AIDS. According to the OHS, there are no specific educational materials addressing AIDS for pre-release. Verbal instructions to the pre-release inmates are to include more HIV/STD [sexually transmitted disease] prevention and condom use.

Most HIV/AIDS educational booklets are written at the sixth to eighth grade reading level. An increasing number of the booklets and videos use "Real Stories" with inmates talking to inmates about their experiences of having HIV/AIDS in prison, how they contracted the disease, and prevention strategies. Not all of the materials mention using condoms, explain about sharing injection drug use equipment other than needles, suggest getting drug treatment, or discuss safer sex practices.

Inmate Peer Educator Project

The DOC reports an Inmate Peer Educator Project at Lawtey CI, Florida CI, and Dade CI. The Inmate Peer Education Project recognizes that prisoners are one of the highest risk groups for contracting HIV/AIDS and other sexually transmitted diseases. Through educating both inmates and correctional staff, the program is designed to reduce the incidences of these diseases for those inmates

not infected and help HIV+ inmates to develop a plan to maintain good health and prevent transmission.

The Inmate Peer Educator projects are funded by a federal grant, through the Centers for Disease Control and Prevention. Costs for the program are $50,000 annually per program and are administered by the Bureau of HIV/AIDS, Florida Department of Health (DOH), with the DOC as the provider. The funds allow the DOC to employ one Education and Training Specialist as the project coordinator and one Data Entry Operator, purchase office supplies and computer equipment, and cover other necessary expenses.

According to the DOH's Bureau of HIV/AIDS, inmates access the program either by volunteering or by referral. Prior to formal instruction, the project coordinator will interview inmates to ascertain their knowledge of HIV/AIDS and sexually transmitted diseases. A study package is issued and an inmate peer counselor is assigned to assist with the study process. Peer educators give educational presentations to inmates during the HIV/AIDS basic awareness course, inmate orientation, and pre-release sessions.

Upon entering the facility, inmates receive a thirty-minute basic HIV/AIDS orientation during which a survey is completed. Some inmates then choose to take the fifteen-hour basic awareness course. A subset of those inmates completing this course go on to take the advanced or peer education course. Those inmates who have become peer educators are given credit for adding a "life betterment" course to their education. Inmate peer educators who have been released from prison can request assistance with placement in an HIV/AIDS prevention agency in their home community in order to continue working in the area of prevention. The project coordinator contacts the local HIV/AIDS program coordinator who assists with placement either as a volunteer or a paid employee.

Each day, the project coordinators walk the compound, speaking with inmates, dispelling misinformation, and encouraging them to take the basic awareness course. As a result, an average of ten inmates are reached per day. This process helps reduce rumors and is referred to by inmates as "Rumor and Fact Control."

The contract requires the department to implement at least twenty courses during the contract year: a minimum of one inmate orientation or inmate pre-release module per month, a minimum of four staff training courses; a minimum of two HIV/AIDS basic awareness courses; and a minimum of two peer educator courses. The inmates trained as peer educators will assist with inmate orientation and pre-release presentations, under the direction of the project coordinator.

In order to evaluate the projects, the contract requires the project coordinator to distribute survey forms during orientation, prior to HIV/AIDS basic awareness course, and during the pre-release program and to maintain a database with the results. The project coordinator tracks the number of participants, demographics, reasons for non-completion, and the number of HIV voluntary testing referrals that were submitted as a result of the program participation. The peer counselors' educational presentations are evaluated by the project coordinator and verbal feedback are offered concerning strengths and areas to improve. Peer counselors can volunteer to participate in a follow-up study after release. Volunteers are sent a survey every six months for two years after the inmate's release. An inmate cannot be excluded from the program for failure to volunteer for the follow-up study.

HIV Transmission in Prison

A great concern of many correctional professionals is the transmission of HIV. Several studies undertaken to date suggest that the rate of HIV/AIDS transmission in prison is rare.[1] One study found that within a prison setting an annual incidence rate of 0.3 percent, while another study found the rate to be as high as 21 percent. Despite such disparate findings, clearly the risk of infection does increase with higher HIV prevalence rates among inmates. Although sex, injection drug use, and tattooing are all prohibited activities, they continue to occur in prisons.

Studies on sexual activity in prison, both consensual and nonconsensual, also vary widely. Studies show the rate to range from as low as 1 percent to as high as 90 percent. Research suggests that injection drug use is less frequent in prisons than on the outside but considerably more risky because the shortage of needles leads to increased sharing. Also, inmates are not always aware that "sharing" includes containers, cookers, cotton, and needles that have been used by persons not present. When needles are not available, pieces of pens and light bulbs have been used by inmates to inject drugs. Tattooing is a common practice in prison, often done with whatever materials are readily available. In tattooing, sharing the needle or needle substitute, ink, and string used to transmit the ink may pose risks for HIV transmission.

Private Prisons

In 1989, the Legislature authorized the Department of Corrections (DOC) to enter into contracts with private corrections firms for the construction and operation of private prisons. (See Chapter 89-526, Laws of Florida) In March of 1995, the state opened its first private prison, housing adult females. Although Gadsden County was initially charged with procuring the private prison, the DOC was later directed to negotiate and manage the contract. This private facility is the only private prison contract managed by the DOC.

In 1993, the Legislature created Chapter 957, Florida Statutes, which established a five-member Correctional Privatization Commission (CPC) within the Department of Management Services. (See Chapter 93-406, Laws of Florida) The CPC was charged with entering into a contract with vendors for the financing, construction and management of two 750-bed private correctional facilities. Later, Corrections Corporation of America (CCA) and Wackenhut Corrections Corporation were each awarded a contract. The two 750-bed facilities (Moore Haven Correctional Facility and Bay Correctional Facility) were opened in July and August of 1995.

The CPC awarded the 1,318-bed facility to Wackenhut Corrections Corporation and the facility (South Bay Correctional Facility) opened in February of 1997. Corrections Corporation of America was awarded the remaining contract for a 350-bed facility (Lake City Correctional Facility) which opened in October of 1996. Currently, the state contracts for a total of 3,936 privatized beds.

Cooperative Transfer Agreement

Chapter 94-148, Laws of Florida, mandated that inmate transfers to and from private correctional facilities be accomplished through a cooperative agreement between the department, the contractor, and the commission. This provision of law went into effect May 11, 1994 and was codified in s. 957.06 (2), Florida Statutes.

It should be noted that of the 2,461 inmates with AIDS in Florida, 611 inmates are housed in private prisons. In June 1998, based on the cooperative agreement between the DOC and the private vendors, the department agreed to reduce the number of HIV+ inmates it was sending to these facilities from the level at that time of approximately 13 percent of the total capacity of the institution

[1] Christine A. Saum, et.al., "Sex in Prison: Exploring the Myths and Realities," The Prison Journal, 75 (December 1995): 414; Cindy Struckman-Johnson, et.al., "Sexual Coercion Reported by Men and Women in Prison, " The Journal of Sexual Research, 33 (1966): 67-68; Theodore M. Hammett, et.al., 1994 Update: HIV/Aids and STDs in Correctional Facilities, U.S. Department of Justice, Office of Justice Programs, National Institute of Justice, (December 1995).

to 3.4 percent of capacity. The private institutions will continue to be HIV/AIDS institutions, but have this limitation. The table shows the old capacity level and the new level based on the agreement.

Previous and Current Levels of HIV+ Inmates Assigned to Private Prisons

Institution	Capacity	13% of Capacity	3.4% of Capacity
Bay	750	98	26
Moore Haven	750	98	26
South Bay	1,318	171	45
Lake City	350	46	12
Total	3,168	413	109

Source: Office of Health Services, Florida Department of Corrections.

The private vendors under contract with the Florida Privatization Commission have a ceiling rate of $7500 in medical costs for any particular inmate. Once this has been achieved, the inmate is transferred back to the department for medical care.

B. EFFECT OF PROPOSED CHANGES:

CS/HB 711 creates s. 944.6025, F.S., and s. 957.055, F.S., which would define the term "HIV test" that is required of the department and contractors operating private correctional facilities under the bill. The committee substitute requires the department and contractors operating private correctional facilities to perform an HIV test on inmates within 30 days following the inmate's commitment to a correctional facility and to conduct further testing of those inmates who tested negative within 180 days. The committee substitute further requires the department and contractors operating private correctional facilities, in addition to the test, to record the results of the test in the inmate's medical record.

The committee substitute provides for two other circumstances for which HIV testing shall be performed. The first is at the request of a physician on the behalf of an inmate; and second, the department shall perform the test on an inmate before release on parole or upon expiration of their sentence. The committee substitute provides an exception if the inmate has undergone the test within the previous 60 days.

CS/HB 711 provides that prior to the release of an inmate who has received a positive HIV test result, the department and contractors operating private correctional facilities shall provide special transitional assistance to the inmate, which includes the following.

- Education on preventing the transmission of HIV and on the importance of receiving follow-up care and treatment.
- A written, individualized discharge plan that links the inmate to local primary care services for HIV treatment in the area where the inmate is to reside.
- When appropriate, a 30 day supply of all medicines taken by the inmate will be given upon their release from prison.

- If an inmate with a positive HIV test result is released pursuant to an emergency court order or any other unexpected action, the department and contractors operating private correctional facilities shall notify immediately the county health department of the county where the inmate is to reside following release in order to ensure the continuance of care and other services.

The committee substitute authorizes the DOC to conduct a study of the benefits of random HIV testing of inmates and report findings and recommendations from this study to the Legislature by February 1, 2000.

The committee substitute provides for an effective date of July 1, 1999.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) \any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

NO.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No. It is the department's current policy to encourage all inmates to be tested for HIV without incurring a co-payment for testing or pretest and posttest counseling.

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

Yes, see Comment Section.

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

No.

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

s. 944.6025, F.S.

E. SECTION-BY-SECTION ANALYSIS:

None.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

See Fiscal Comments.

2. Recurring Effects:

See Fiscal Comments.

3. Long Run Effects Other Than Normal Growth:

See Fiscal Comments.

4. Total Revenues and Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

See Fiscal Comments.

2. Recurring Effects:

See Fiscal Comments.

3. Long Run Effects Other Than Normal Growth:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

See Fiscal Comments.

2. Direct Private Sector Benefits:

See Fiscal Comments.

3. Effects on Competition, Private Enterprise and Employment Markets:

See Fiscal Comments.

D. FISCAL COMMENTS:

Department of Corrections

HIV Testing

The DOC reports that under CS/HB 711 the entire status population would have to be tested as well as new intakes, these costs could potentially be around $3 million in the first year. In addition, such testing could potentially identify about 1,200 to 1,800 inmates with the HIV virus.

Department of Corrections
HIV Testing of Inmates
Projected Fiscal Impact

Cost of HIV Test (ELISA)	**$490,565**
New commitments (22,654*10.73)	$243,077 See Note 1
Releases (23,065*10.73)	$247,488 See Note 1 & 8
Projected positive HIV test	2,469
New commitments (22,654*.054)	1,223 See Note 2
Releases (23,065*.054)	1,246 See Note 2
Cost of confirming and diagnostic testing ($592.93 per positive test)	**$1,463,944** See Note 3
Cost of Physician requested HIV tests	undeterminable
Treatment of new commitments tested HIV+ (22,654*.054*$9,543)	$11,660,082 See Note 4
Less Current HIV prevalence rate (3.5%) (22,654*.035*$9,543)	(7,566,549) See Note 4
Increased cost of recurring treatment	**$4,093,533** See Note 5
Special Transitional Assistance (HIV Education/Counseling)	**$55,509** See Note 6
Providing 30 Day Supply of Drug Therapy Regimen (Projected # positive HIV test x $18 per day x 30 days)	**$672,840** See Note 7 & 9
Notification to a County Health Dept of HIV+ Inmates	current department policy
TOTAL ADDITIONAL COST	**$6,776,391**

Note:
1. Analysis uses FY 97-98 Annual Report Admission/Release figures as basis of analysis.
2. Assumes 5.4% of all test will be positive.
3. Confirming and Diagnostic test costs provided by Office of Health Services.
4. Annual treatment costs of $ 9, 534 provided by Office of Health Services.
5. Based on assumption that HIV/AIDS inmates are leaving the system at the same rate as intake. Therefore, this represents minimal cost impact, not maximum.
6. Fiscal impact is the salaries and benefits for an Education and Training Spec. providing three hours of counseling/education.
7. Thirty Day drug supply per diem is 69% of annual treatment cost based on FY 97-98 actual drug expenditures.
8. Assumes all released inmates receive an HIV test.

9. Assumes all HIV+ inmates receive 30 day supply of drug therapy.

HIV/AIDS Treatment

The prescribing of protease inhibitors and other retroviral and antiretroviral drugs is mandated by the Center for Disease Control. Prior to 1996, these drugs did not exist and the prevailing treatment standards utilized low cost drugs. The regimen of care is noted as successful. DOC reports that 1998 was the first year in the last decade that AIDS was **not** the leading cause of death within the Florida correctional system. The following table reflects the rise in the average cost per case.

HIV/AIDS TREATMENT COST (Average per case)	
FY 1992-93	$4,757
FY 1993-94	$4,370
FY 1994-95	$4,196
FY 1995-96	$4,046
FY 1996-97	$5,603
FY 1997-98	$9,534
FY 1998-99 (projected)	$9,834

Source: Florida Department of Corrections, Office of Health Services

HIV/AIDS Treatment For Released Inmates

As provided by the DOC, approximately 22,800 inmates are released from Florida's prisons each year. According to the Department of Health (DOH), the majority of these inmates are indigent and receive services through the public health system or other indigent care providers.

With the implementation of CS/HB 711, the DOH estimates an additional 250 inmates per year will be identified with HIV positive test results. According to DOH, these additional 250 inmates with HIV infection could be referred to case managers in local communities each year upon their release from prison. DOH estimates based on the DOC data, that at $15,000 per year for care and related costs for each released inmate, the increase in treatment cost would be $3,750,000 each year.

The committee substitute provides for the HIV testing within 30 days following an inmate's commitment to a correctional facility and to conduct testing again with 180 days for all inmates who tested negative The approximate cost of testing one inmate for HIV, including staff time is $16.98. The fiscal impact of the committee substitute is indeterminate but significant.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the revenue raising authority of local governments.

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

This bill does not reduce the percentage of state shared tax with local governments.

V. COMMENTS:

The presence of HIV (Human Inmmuniodeficiency Virus) and AIDS (Acquired Immune Deficiency Syndrome) has had a profound effect on the cost of health care in the correctional setting. The prevalence of HIV/AIDS in prisons exceeds its prevalence in the general population. As the prison population increases and inmates are being incarcerated longer due to stricter sentencing guidelines, the costs of HIV/AIDS will continue to rise as inmates remain in prison through the later, more costly stages of the disease and new treatment protocols are developed. For the past several years, the Department of Corrections has reported that expenditures for the treatment and testing of HIV/AIDS have far exceeded the legislative appropriation. The following table reflects the appropriations and expenditures over several fiscal years.

COST OF CARING FOR HIV/AIDS INMATES

Fiscal Year	Appropriated	Spent
1994-95	$5.8 million	$ 8.1 million
1995-96	6.3 million	7.8 million
1996-97	6.3 million	10.8 million
1997-98	6.3 million	17.1 million
1998-99	6.8 million	19 million*
1999-2000	14 million#	21.8 million*

* estimated costs # proposed in Governor's Budget
Source: Florida Department of Corrections, Office of Health Services

It is the department's current policy to encourage all inmates to be tested for HIV without incurring a medical co-payment of $4 for testing or for pretest and posttest counseling. An increased volume of testing and counseling mandated by HB 711 may necessitate the need to for the department to explore other options in order to bear the burden of increased costs.

There has been a great debate in the correctional community over the testing of inmates: mandatory versus voluntary. Both mandatory and voluntary testing have been challenged in the courts. Those opposed to mandatory testing question whether the testing violates an inmate's right to privacy and subjects them to

unlawful searches and seizures. The courts have consistently upheld the prison's right to mandatory testing. The courts have also denied the challenge that failure to perform mandatory testing violates an inmate's Eighth Amendment rights. It is important to note that no case involving the question of mandatory testing for HIV/AIDS in the prison setting has reached the U.S. Supreme Court. The final word on what is required, or prohibited, of prison officials in this area has yet to be written.

Although the U.S. Supreme Court has yet to decide on the issue of mandatory HIV testing of inmates, there are several cases which are instructive on this issue. In a case involving the 8th Amendment and cruel and unusual punishment [Wilson v. Seiter - 501 U.S. 294, 298, 1991], the court ruled that if a correctional policy is in violation of the 8th Amendment, there must be a pervasive risk of harm under the existing policy and there must be a deliberate indifference to that risk by correctional administrators. Only if both of these conditions exist may correctional departments have inflicted cruel and unusual punishment.

In an Alabama case directly related to mandatory HIV testing of inmates [Harris v. Thigpin - 941 F.2d 1495,1512, 11th Circuit, 1991], the court ruled that the Department of Corrections' policy of involuntary testing was not unconstitutional. Using the Turner case [Turner v. Sefly - 482 U.S. 78, 1978], the court found that the department policy was necessary to reduce the spread of HIV/AIDS, to reduce prison violence, and that the policy was reasonably related to legitimate penological interests.

In a discussion with the staff of the Governmental Operations Committee and House Bill Drafting, it will be necessary to amend the committee substitute. Current law (s. 381.004 (3)(d)F.S.) provides that HIV/AIDS test results are confidential and exempt from the provisions of s.119.07(1), F.S.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The committee substitute includes a strike-all amendment offered by Representative Hill and was adopted unanimously. It differs from the original bill in the following ways:

1. It provides for the same mandatory HIV testing requirements for inmates who are housed in private prisons as for inmates housed in public prisons.

2. It specifies that the HIV test used by DOC and contractors of private correctional facilities under the Correctional Privatization Commission must conform to the standards for such testing in s. 381.0043(3) F.S., regarding the confirmation of the test and counseling for the test.

3. It provides for an HIV test before an inmate is released from prison unless a test was performed within the previous 60 days OR if it is already known that the inmate is HIV positive as determined by a previous HIV test.

4. It specifies that the results from any HIV test shall only be accessible to persons designated by agency rule and shall be exempt from the public records law [s. 119.07(1)] and the Florida Constitution [s. 24(a), Article I].

Two additional amendments to the strike-all amendment were unanimously adopted by the Committee on Corrections.

Amendment 1A :The amendment offered by Representative Trovillion provides that for all inmates within thirty days following admission be tested and all inmates testing negative to be tested again within 180 days. The record and results of the HIV test shall be placed in the inmate's medical record.

Amendment 1B: The amendment offered by Representative Melvin requires DOC to conduct a study of the benefits of random HIV testing of inmates and report findings and recommendations from this study to the Legislature by February 1, 2000.

VII. SIGNATURES:

COMMITTEE ON CORRECTIONS:

Prepared by: Staff Director:

Johana P. Hatcher — Ken Winker

AS REVISED BY THE COMMITTEE ON HEALTH CARE LICENSING & REGULATION:

Prepared by: Staff Director:

Lucretia Shaw Collins — Lucretia Shaw Collins