

# 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.)

BILL: CS/SB 954

SPONSOR: Criminal Justice Committee and Senator Dawson

SUBJECT: HIV/Testing Inmates

DATE: April 20, 2001                      REVISED: 4/24/01                      \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Gardner</u>	<u>Cannon</u>	<u>CJ</u>	<u>Favorable/CS</u>
2.	<u>Mannelli</u>	<u>Beck</u>	<u>APJ</u>	<u>Fav / 3 amendments</u>
3.	_____	_____	<u>AP</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

Committee Substitute for Senate Bill 954 would require the Department of Corrections (department) to test inmates for HIV infection not less than 60 days prior to release from prison. The department would not be required to retest those inmates known to be HIV positive nor those who had been tested within the previous year. Inmates that are released by an emergency court order are exempt from the testing requirement. The bill also requires the department to provide HIV positive inmates about to be released with certain transitional assistance:

1. education on preventing the spread of HIV and the importance of treatment,
2. a discharge plan with links to health care services in the community, and
3. a 30 day supply of medication, if appropriate.

If the inmate is HIV positive, the department would be required to notify the Department of Health as well as county health department in the community where the inmate is to reside following release. This bill adds inmates about to be released to the list of situations not requiring informed consent for HIV testing, and conforms the transfer of HIV status information between the Departments of Corrections and Health to the public records exemptions for HIV test results. This bill would also require the department to report to the Legislature on the implementation of this bill.

Senate Bill 954 provides an effective date of July 1, 2001.

This bill amends and/or creates the following sections of the Florida Statutes: 381.004, 944.704, 945.10, and 945.355.

## **II. Present Situation:**

The prevalence of HIV in Florida prisons is higher than in the general population. Statistics provided by the department indicate that there are 2,640 known HIV positive inmates, 768 of whom have full blown AIDS, as of December 2000. This means about 3.5 percent of inmates are known to be HIV positive; 3.3 percent of men and 10.3 percent of women. This infection rate can be explained by the high risk behaviors of persons who are sentenced to prison at some point in their lives, according to the 1998 annual report by the Florida Corrections Commission. Such behaviors include histories of multiple sex partners, sexually transmitted diseases, injection drug use, and other life styles that increase the risk of infection.

### **Current Practice and Laws Governing HIV Education**

Inmates receive HIV education and orientation upon intake, including prevention information, pursuant to s. 945.35, F.S. This section requires the department to work in conjunction with the Department of Health to develop an HIV education program for inmates. The program is to be designed in recognition of the incarceration setting, cultural differences, and the guidelines of the Centers for Disease Control and Prevention (CDC), as well as the recommendations of the Correctional Medical Authority.

This section also requires the department to develop an HIV education program for correctional staff with emphasis on appropriate behavior and attitude change. This section also allows the department to establish policies on housing, dining, and other physical contact, consistent with CDC guidelines. There is a confidentiality clause and a requirement that the department report to the Legislature yearly about the implementation of the program.

There is a large section of ch. 381, F.S. (Public Health), devoted to HIV testing, treatment, education and prevention. ss. 381.003-381.0046, F.S. Therein, the Legislature has defined HIV/AIDS and HIV testing, etc.; established policies concerning education, confidentiality and informed consent; and expressed legislative intent to control the spread of HIV.

- s. 381.004(2)(a), F.S., defines "HIV test" to mean a test ordered after July 6, 1988, to determine the presence of the antibody or antigen to human immunodeficiency virus or the presence of human immunodeficiency virus infection.
- s. 381.0038, F.S., requires the Department of Health to design an HIV/AIDS education program "designed to reach all segments of Florida's population."
- s. 381.004(3)(a), F.S., requires the informed consent of the person to be tested, but allows for specific exceptions related to high risk of transmission.
- s. 381.004(6), F.S., creates criminal penalties for violating the right of confidentiality.

### **Current Practice and Laws Governing Testing**

The department does not presently have a mandatory HIV testing policy. Instead, inmates are tested upon request, due to a prison incident involving blood, bodily fluids, or exposure, or when they present behaviors or symptoms that suggest the need to test, according to the department's Office of Health Services. Pursuant to s. 945.35(3), F.S., the department may begin testing when there is evidence of a "high risk behavior" of transmitting or contracting HIV. The department

conducted about 13,000 HIV tests in 1999-2000. Some inmates may not want to be tested because of a perceived risk of being identified as HIV positive.

The department uses the ELISA test as a first step toward determining the presence of the HIV virus in an inmate. This test costs \$10.73. If the clinic receives a positive result, they retest with the ELISA test. If there is a second positive result, the department conducts further testing and diagnosis that costs almost \$700.00 per patient, according to the Office of Health Services. The department does not require inmates to pay for HIV testing; however, s. 945.6037, F.S., allows the department to charge inmates a \$4.00 co-payment for nonemergency visits to the clinic. If inmates are required to make this co-payment, it could defray some of the testing costs.

### **Treatment Protocols**

The protocols for when to begin aggressive treatment of persons with HIV have just been changed by the Centers for Disease Control. Previously, it was believed that the proper course of action was to treat virtually all HIV positive persons with a “cocktail” of antibiotics, antiviral compounds and other medications. The department provided this treatment at a yearly cost of \$9,543.00 per treated inmate. Now, it is believed it may be beneficial to delay the commencement of aggressive treatment. However, it is current practice to continue treatment once treatment is begun. According to the department, the impact of these new protocols is undetermined.

### **Segregation and Transition Upon Release**

The department does not segregate HIV positive inmates, and they are distributed among 23 of the state’s prisons. It is the current policy of the department to prepare a continuity of care plan, provide inmates on medication with a 30 day supply of medication upon release, and to notify the local health department where the inmate plans to reside. According to the Office of Health Services, most HIV positive releasees would meet the qualifications for Medicaid.

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

The passage of CS/SB 954 would require the department to determine the HIV status of all inmates prior to release through testing. This bill would also require the department to provide transitional release services to those who test positive for HIV, including education, a treatment plan, and medication if appropriate. Three statutes are amended and cross-referenced to facilitate the purpose of this bill.

**Section 1** of this bill deals with the department’s responsibilities with regard to HIV testing of inmates prior to release, notice to the Department of Health, transitional assistance, and reporting to the Legislature. s. 945.355, F.S. The following is a breakdown of section 1:

Subsection 1 defines the term “HIV test” as “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 requires the department to test inmates not less than 60 days prior to being released under parole, accumulation of gain-time or expiration of sentence. This would not be necessary if the inmate had previously tested positive for the HIV virus or had been tested in the previous year, and did not request retesting. An inmate released by an emergency court order is exempt from the provisions of this section.

Subsection 3 would require the department to include the HIV test results in the inmate's medical records.

Subsection 4 requires the department to notify the Department of Health and the local health department for the county where the inmate plans to reside when the department releases an HIV positive inmate. Otherwise the HIV test results are confidential and exempt from the public records requirement.

Subsection 5 requires the department to provide HIV positive inmates with transitional assistance prior to the releasing of those inmates. The transitional assistance includes:

1. education on preventing transmission of HIV,
2. counseling on the importance of follow up care and treatment,
3. a written individualized treatment plan,
4. contacts with local HIV primary care providers, and
5. a 30 day supply of medication, if appropriate.

Subsection 6 requires the department to report to the Legislature not later than March 1, 2002, concerning the implementation of this law.

**Section 2** of this bill provides the department with authorization to release certain inmate medical records to the Department of Health and local departments of health as provided in s. 945.10, F.S.

**Section 3** of this bill adds the HIV testing of inmates about to be released from prison to the list of exceptions in s. 381.004, F.S., to the requirement to obtain informed consent to be HIV tested.

**Section 4** of this bill adds the transitional assistance provisions that would become s. 945.355(5), F.S., to the list of transitional services the department is to provide to inmates being released as described in s. 944.704, F.S.

**Section 5** of the bill provides an effective date of July 1, 2001.

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

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

None.

##### **B. Public Records/Open Meetings Issues:**

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

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

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

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The private prison companies contracting with the state to operate the five private prisons would experience an expense if required to participate in this program. It is possible that a contract adjustment could be negotiated to reflect that expense.

C. Government Sector Impact:

The bill requires four activities that will result in some expense to the state: mandatory testing of releasees; counseling and education for inmates found to be HIV-Positive; notification to local health departments; and a 30-day supply of medicine an inmate is taking at the time of release.

**Mandatory Testing:**

The Criminal Justice Estimating Conference projects that in FY 2001-2002 there will be 24,836 releases from prison. According to the Department of Corrections, approximately 13,000 inmates per year (or approximately 18 percent of its Average Daily Population (ADP)) are tested for HIV. Assuming that 18 percent of releasees have already been tested, it is estimated that this bill would require an additional 20,331 HIV tests in FY 2001-02.

Currently, the department uses the ELISA test (\$10.73 per test) to determine the presence of the HIV virus. Positive results are retested with a second ELISA, and positive results from the second test are tested a third time using the Western Blot test (\$695.00 per test); currently, less than 4 percent of the tested inmate population is HIV-Positive. Assuming that 4 percent of the releasees will have positive tests and that all of those will require a Western Blot test, it is estimated that mandatory testing will have a fiscal impact of approximately \$750,000 in FY 2001-02.

**Counseling and Education for HIV-Positive Inmates:**

The department estimates that it will cost approximately \$40,000 to provide additional counseling and education services to affected inmates.

**Notification to County Health Departments:**

The department foresees no additional costs for notification of local health departments.

**30-Day Supply of Medication:**

Treatment protocols have recently been changed by the Centers for Disease Control to delay the commencement of aggressive treatment until the patient's viral load exceeds 30,000 – 50,000 and the white blood count is 350 or below; however, those for whom treatment has begun would continue to be treated. According to the department, the impact of these new protocols is undetermined.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

#1 by Appropriations Subcommittee on Public Safety and Judiciary - Clarifies that the 30-day supply of medication for released inmates is only for HIV/AIDS-related medication and that the Department of Corrections must provide the releasee with medication only if it would be in accordance with U.S. Department of Health treatment guidelines.

Additionally, the amendment specifies items that must be included in the Department of Corrections report that is due to the legislature by March 1, 2002.

#2 by Appropriations Subcommittee on Public Safety and Judiciary - Also amends the bill to specify that the 30-day supply of medication is only for HIV/AIDS-related medication and that the Department of Corrections must provide the releasee with medication only if it would be in accordance with U.S. Department of Health treatment guidelines.

#3 by Appropriations Subcommittee on Public Safety and Judiciary - Provides an appropriation of \$793,244 to fund the mandatory testing and the cost of providing educational and transitional assistance to releasees.