

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
CRIME PREVENTION, CORRECTIONS & SAFETY
FINAL ANALYSIS**

BILL #: HB 1289
RELATING TO: HIV Testing of Inmates
SPONSOR(S): Representative(s) Wilson

TIED BILL(S):

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

- (1) CRIME PREVENTION, CORRECTIONS & SAFETY YEAS 7 NAYS 0
- (2) CRIMINAL JUSTICE APPROPRIATIONS (W/D)
- (3) HEALTHY COMMUNITIES COUNCIL (W/D)
- (4)
- (5)

I. SUMMARY:

House Bill 1289 would require the Department of Corrections (department) to test inmates for HIV infection not less than 60 days prior to release from prison. The bill also requires the department to provide HIV positive inmates who are about to be released with certain transitional assistance:

- education on preventing the spread of HIV and the importance of treatment,
- an individualized discharge plan with referrals and contacts to health care services in the community, and
- a 30 day supply of all HIV/AIDS-related medications.

If the inmate is HIV positive, the department would be required to notify the Department of Health as well as the county health department in the community where the inmate is to reside following release. The bill adds inmates about to be released to the list of situations not requiring informed consent for HIV testing. It provides an exception to confidentiality requirements to permit the department to transfer HIV status information resulting from testing pursuant to s. 945.355, F.S., to the Department of Health and local health departments. The bill also requires the department to report to the Legislature on the implementation of this bill.

The bill provides for an appropriation of \$793,244.

The bill provides an effective date of July 1, 2002.

Note: Please see Section VI, Amendments or Committee Substitute Changes, for discussion of two amendments which were adopted on the House floor.

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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"/> |

For any principle that received a "no" above, please explain:

HB 1289 requires the Department of Corrections to take a more active role in the detection of inmates with HIV/AIDS and to give notification of test results to other state and county agencies. HB 1289 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:

HIV/AIDS Statistics

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, and prostitution.

Statistics provided by the Department of Corrections indicate that as of December 2001, there were 2,602 known HIV positive inmates, 768 of whom had AIDS.² These numbers include infected inmates located within private prisons in Florida. The Criminal Justice Estimating Conference predicts that approximately 26,000 inmates will be released in FY 02-03.

Current Practice and Laws Regarding HIV Education

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. Pursuant to statute, the Department of Corrections works in conjunction with the Department of Health to develop an HIV education program for inmates. The program is 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.

¹ Florida Corrections Commission 1998 Annual Report, page 52.

² At the end of December, 2001, there were 72,406 inmates under DOC's custody. This means that approximately 3.6% of the inmates are known to be HIV positive.

Section 945.35, F.S., also requires the Department of Corrections to develop an HIV education program for correctional staff with emphasis on appropriate behavior and attitude change. It allows the Department of Corrections to establish policies on housing, dining, and other physical contact, consistent with CDC guidelines.

A large portion of ch. 381, F.S. (Public Health) is devoted to HIV testing, treatment, education and prevention:

- 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 Regarding Mandatory HIV Testing

The Department of Corrections currently does not have a mandatory HIV testing policy. Instead, inmates are tested for HIV at their request, or if they were involved in an incident where bodily fluids were exchanged, or when they present behaviors or symptoms that suggest the need to test, according to the Office of Health Services.³ The Department of Corrections tested approximately 13,000 inmates for HIV in the year 2000. The majority of those tests were performed upon inmate request, but several of the tests were performed because of a court-order.

The Bureau of Justice Statistics reports that 19 states test all inmates for HIV upon entry into the prison system,⁴ and that Missouri and Nevada, plus the Federal Bureau of Prisons, test inmates upon their release from prison. Six states and the Federal Bureau of Prisons test inmates selected at random for HIV.⁵

The HIV Testing Process

The Department of Corrections uses the ELISA test as a first step toward determining the presence of the HIV virus in an inmate. This test costs \$11.05. If the clinic receives a positive result, the department conducts further testing (including the Western Blot test) and diagnoses that costs considerably more, approximately \$719 per inmate.⁶ The department does not require inmates to pay for HIV testing.

Under current policy, the Department of Corrections (through the Infection Control Coordinator) notifies the Department of Health every time an inmate tests positive for HIV.⁷

³ The Office of Health Services is located within the Department of Corrections.

⁴ States that test inmates upon entrance into prison system: New Hampshire, Rhode Island, Iowa, Michigan, Missouri, Nebraska, North Dakota, Ohio, Alabama, Arkansas, Mississippi, Oklahoma, South Carolina, Tennessee, Colorado, Idaho, Nevada, Utah, Wyoming; HIV in Prisons and Jails, 1999, Bureau of Justice Statistics Bulletin, July 2001

⁵ New York, Rhode Island, Arkansas, Kentucky, Virginia, Oregon

⁶ Office of Health Services Bulletin 15.03.08 requires the department to follow specific protocol when an inmate initially tests positive for HIV. The protocol includes a confirmatory test (the Western Blot; approximately \$25 per test) viral load testing, TB testing, required immunizations, chest x-rays, follow-up testing, clinic scheduling, and counseling.

⁷ The Department of Corrections submits the name of the inmate who tests positive to the Department of Health.

Segregation and Transition Assistance Upon Release.

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

When the release of a known HIV positive inmate is scheduled, the Office of Health Services 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.⁸

C. EFFECT OF PROPOSED CHANGES:

The passage of HB 1289 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 the Department of Health. The bill also requires the Department of Corrections to provide a 30-day supply of HIV/AIDS-related 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

Section 1 creates s. 945.355, F.S., concerning 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. The following is a breakdown of section 1:

- Section 945.355(1), F.S., defines "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."
- Section 945.355(2), F.S., requires the department to test inmates not less than 60 days prior to being released by parole, accumulation of gain-time or expiration of sentence. Testing would not be required if the department knows the inmate to be HIV positive or if the inmate had been tested in the previous year and did not request retesting. There is an exemption from testing for inmates released due to an emergency.
- Section 945.355(3), F.S., requires the department to include the HIV test results in the inmate's medical records.
- Section 945.355(4), F.S., 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.

⁸ DOC Health Services Bulletin Nos. 15.03.08 and 15.03.29; 2001 DOC bill analysis for SB 308, 2002, page 1.

- Section 945.355(5), F.S., 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 and on the importance of follow-up care and treatment;
 - 2) a written individualized treatment plan including referrals to and contacts with the county health department and local HIV primary care services in the area where the inmate plans to reside; and,
 - 3) a 30-day supply of all HIV/AIDS-related medications that the inmate is taking prior to the time of release.

Section 2

Section 2 creates language requiring the department to report to the Legislature not later than March 1, 2003, concerning implementation of this law. The report is to include the total number of inmates tested under the program, the number of inmates who tested positive for HIV, the number of inmates who received special transitional assistance, and the number of inmates who received medication in accordance with protocols of the Department of Corrections and the United States Department of Health and Human Services.

Section 3

Section 3 amends s. 945.10, F.S., to provide an exception to confidentiality requirements governing release of inmate mental health, medical and substance abuse records. The amendment permits the department to transfer HIV status information (only if the inmate has tested positive for HIV or AIDS) to the Department of Health and the county health department where the inmate intends to reside.

Section 4

Section 4 adds the HIV testing of inmates about to be released from prison to the list of exceptions in s. 381.004(3), F.S., to the requirement to obtain informed consent to be HIV tested.

Section 5

Section 5 adds the following transitional assistance provisions to the list of transitional services the department is to provide to inmates being released as described in s. 944.704, F.S.: a written medical discharge plan, referral to a county health department, and a 30-day supply of all HIV/AIDS-related medications the inmate is taking at the time of release (if required under the protocols of the department and the treatment guidelines of the United States Department of Health and Human Services).

Section 6

Section 6 grants the state of Florida immunity from any person for the deaths or personal injury that might occur while the state, its agencies, its subdivisions, or its employees are complying with the requirements of section 944.355, F.S. **Please Note:** *This section contains a scrivener's error. Although the bill references section 944.355, F.S., there is no such statute section. The bill should read "945.355," which is the newly created statutory language requiring the Department of Corrections to administer HIV tests to inmates not less than 60 days before their scheduled release.*

Section 7

Section 7 allows for the appropriation of \$793,244 from the General Revenue Fund to the department for the 2002-2003 fiscal year for the purpose of implementing the bill.

Section 8

Section 8 provides an effective date of July 1, 2002.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill, as amended, provides for an appropriation of \$793,244 from the General Revenue Fund to the Department of Corrections for the 2002-2003 fiscal year for the purposes of implementing the bill.

The bill will have a definite fiscal impact upon state resources. **When combining the costs to the Department of Corrections and the Department of Health, the total cost to the state could exceed \$5.5 million dollars.**

Department of Corrections

The following information reflects the department's projection of implementation costs:

Testing of 24,381 releases with ELISA test at \$11.05 per test. (Projected 26,107 releases less 1,726 who do not need to be tested because of known HIV status or testing within the previous year.)	\$269,410.
Confirmation and diagnostic testing for 821 releasees at an average cost of \$719.98. [Based upon an assumption that 1,026 releasees will test positive (the same rate as the known HIV positive rate in the entire inmate population), and that 80% will require additional confirming and diagnostic testing.]	\$591,104
30-day supply of HIV drug therapy regimen for 821 releasees at \$28.00 per day per inmate	689,640\$
Additional costs for transition assistance	\$48,292
Total costs of implementation	\$1,598,446

Note: The bill does not specifically require the department to perform confirming and diagnostic testing as it now does when a positive result is received. However, the department indicates that CDC protocols require a second confirming test and the additional, more costly physician diagnosis if the second test confirms a positive HIV status.

Department of Health

The Department of Health reports that it will experience increased recurring costs of approximately \$4,050,000.⁹

This estimate, however, assumes that only 270 additional inmates with HIV will be identified and seek treatment through the department. The projection based on information supplied by the Department of Corrections suggests that 821 HIV positive inmates will be identified through testing.

⁹ The Department of Health has indicated that it costs the department approximately \$15,000 annually to care for a person with HIV/AIDS. According to DOH, the costs associated with caring for such a person include outpatient drug therapy, in-hospital care, support services, primary and specialty care, emergency department visits, and laboratory and x-ray costs.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill's cost to local governments is hard to determine. Depending on the releasee's health, he or she may be eligible for HIV/AIDS treatment programs that are operated by local health departments or non-governmental agencies receiving government funding. The money to support local health services could come from local government, state government, the federal government, or private grants. According to the department and the Department of Health, most HIV positive persons qualify for some level of assistance.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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.

D. FISCAL COMMENTS:

Despite the costs associated with implementing an HIV testing/notification program, it must be noted that early identification and treatment of these individuals may result in avoidance of acute care costs in the future.

The bill, as amended, provides for an appropriation of \$793,244 to the department for the 2002-2003 fiscal year. However, it should be noted that the designated amount does not appear to be sufficient to fund all costs associated with the bill.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

House bill 1289 does not require municipalities or counties to spend funds.¹⁰

B. REDUCTION OF REVENUE RAISING AUTHORITY:

House bill 1289 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 1289 does not reduce the percentage of a state tax shared with counties or municipalities.

¹⁰ In 2001, the Florida Association of Counties assumed a neutral position toward HB 301 (which is very similar to HB 1289) because the bill did not specifically require the counties to expend funds.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

While mandatory testing is authorized 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 specifically require additional testing if an inmate tests positive for HIV status. However, CDC protocols and department procedure require additional confirmatory and diagnostic testing. It is the department's position that failing to follow the protocols could subject the department to liability.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Committee on Crime Prevention, Corrections & Safety adopted a strike-everything amendment on Thursday, February 21, 2002. The amendment, which traveled with the bill until it was adopted on the House floor, conforms the House bill to its Senate companion. The amendment added a fiscal appropriation in the amount of \$793,244 to the bill, and also clarified that, upon release, HIV positive inmates are to receive a 30-day supply of "HIV/AIDS-related medications," rather than a 30-day supply of all medications. The amendment also provided specific details as to what the report from Department of Corrections to the Legislature must contain; the original bill only specified that the report must address the issues of implementation and participation of the program.

A second amendment, offered by the bill's sponsor, was also adopted on the House floor. This amendment provided the state of Florida (including agencies, subdivisions and employees of the state) with immunity from any person for the deaths or personal injury that might occur while the state, (or its agencies, subdivisions, or employees) are complying with the requirements of section 944.355, F.S. **Please Note:** *This amendment contained a scrivener's error. Although the amendment references section 944.355, F.S., there is no such statute section. The amendment should have read "945.355," which is the newly created statutory language requiring the Department of Corrections to administer HIV tests to inmates not less than 60 days before their scheduled release.*

VII. SIGNATURES:

COMMITTEE ON CRIME PREVENTION, CORRECTIONS & SAFETY:

Prepared by:

Staff Director:

Melinda Granlund

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DATE: June 10, 2002

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FINAL ANALYSIS PREPARED BY THE COMMITTEE ON CRIME PREVENTION, CORRECTIONS & SAFETY:

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