

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 463 CS  
Detention Facilities

Testing of Inmates for HIV Infection in County and Municipal

**SPONSOR(S):** Richardson and others

**TIED BILLS:**

**IDEN./SIM. BILLS:** SB 796

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Criminal Justice Committee</u>	<u>7 Y, 0 N, w/CS</u>	<u>Cunningham</u>	<u>Kramer</u>
2) <u>Local Government Council</u>	<u></u>	<u>DiVagno</u>	<u>Hamby</u>
3) <u>Criminal Justice Appropriations Committee</u>	<u></u>	<u></u>	<u></u>
4) <u>Justice Council</u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

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### SUMMARY ANALYSIS

County and municipal detention facilities are authorized to test inmates for infectious diseases in accordance with their written procedures, which are to be consistent with the guidelines of the Centers for Disease Control and Prevention and the recommendations of the Correctional Medical Authority. This authorization includes testing for the human immunodeficiency virus (HIV) under specific statutory circumstances and specified offenses. The results of these tests are confidential, exempt from public records, except to employees or officers of the sheriff or chief correctional officer who handle custody and care of the affected inmate and have a need to know such information, and to the victim of an inmate arrested for sexual offenses.

This bill allows a local government to adopt an additional program to require HIV testing of inmates in county and municipal detention facilities, irrespective of the crime committed. The bill would allow a county or municipally to require their detention facilities operating a testing program to perform an HIV test on each sentenced inmate no less than 30 days before the release date of the inmate unless the facility knows that the inmate is HIV positive or unless, within 120 days before the release date, the inmate has been tested for HIV and does not request retesting. This bill also requires a county or municipal jail to notify the Department of Health and the county health department upon release of prisoner who is known to be HIV positive, and requires the jail to provide such prisoners special transitional assistance. The bill provides for immunity of complying entities for negligently causing death or personal injury while complying with the program.

This bill also provides that any HIV testing of a county jail prisoner may be conducted without the prisoner's consent.

This bill would take effect July 1, 2006.

The fiscal impact of this bill on state and local governments is uncertain.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government → This bill gives local governments the option to require their facilities to conduct HIV testing on a wider population of inmates. In addition to testing, detention facilities would have to provide transitional assistance to infected inmates.

Safeguard individual liberty → This bill requires persons to submit to an invasive medical test.

Promote personal responsibility → This bill requires persons to submit to an invasive medical test, the result of which may entitle them to receive medical services provided at government expense. This bill does not require the beneficiaries of the legislation to pay any portion of the cost of implementation.

#### B. EFFECT OF PROPOSED CHANGES:

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 prior to and while being incarcerated. Not only do inmates engage in more of these behaviors, they also engage in them more frequently than members of the general population.<sup>1</sup> 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.

Since July 1, 2002, the Department of Corrections has been required to test all inmates for HIV within the 60 days prior to release.<sup>2</sup> If the inmate is found to be HIV-positive, the department is required to:

- Notify the Department of Health and the county health department in the county that the inmate intends to reside in.
- Provide counseling and transition assistance related to HIV.
- Provide a 30 day supply of HIV/AIDS related medicine.<sup>3</sup>

Section 951.27, F.S., requires county and municipal detention facilities to have a written procedure, consistent with guidelines of the Centers for Disease Control and Prevention and recommendations of the Correctional Medical Authority,<sup>4</sup> developed in consultation with the facility medical provider, establishing conditions under which an inmate will be tested for infectious disease. Under this statute, county and municipal detention facilities may test for HIV under the provisions of s. 775.0877, F.S. Section 775.0877, F.S., requires HIV testing of anyone who was convicted of, or pled nolo contendere or guilty to, committing or attempting to commit offenses involving the transmission of bodily fluid and delineated in the section. The person receiving the test results may divulge the test results to the sheriff or chief correctional officer. Such test results are confidential and exempt from public records laws.

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<sup>1</sup> Florida Corrections Commission 1998 Annual Report, page 52.

<sup>2</sup> Chapter 2002-292, L.O.F.

<sup>3</sup> s. 945.355, F.S.

<sup>4</sup> The Correctional Medical Authority (CMA) was created in 1986 to give independent advice to the Governor, the Legislature, and the Department of Corrections on the conduct of health care and management of costs consistent with quality care. See s. 945.601, F.S.

## Effect of Bill

This bill amends s. 951.27, F.S., to provide that a local government may institute a program to test that government's prisoners for HIV prior to release, irrespective of the crime convicted of. This is establishing a program similar to the requirement related to state prisoners.

A county or municipal detention facility that lies within the authority of any county or municipality that elects to institute a testing program authorized by this bill must, consistent with s. 381.004(3), F.S.,<sup>5</sup> perform an HIV test on each sentenced inmate who is to be released from the facility unless the facility knows that the inmate is HIV positive or unless, within 120 days before the release date, the inmate has been tested for HIV and does not request retesting. The required test must be performed not less than 30 days before the release date of the inmate.

An HIV test is not required if a prisoner is released due to an emergency or a court order and the detention facility receives less than 30 days' notice of the release date, or if the inmate is transferred to the custody of the Department of Corrections for incarceration in the state correctional system.

Because the testing must be within 30 days prior to release, it is likely that counties will forgo testing until the release date is known. Most prisoners in county jails are released pursuant to court order on less than 30 days notice<sup>6</sup>, and many are held until they are transferred to the Department of Corrections. The net result is that only persons sentenced to more than 30 additional days in county jail, and less than one year total for the offense, will be required to undergo testing.

If the county or municipal detention facility knows that a prisoner who is to be released from the facility is HIV positive or has received a positive HIV test result, the facility must, before the inmate is released:

- Notify the Department of Health and the county health department where the inmate being released plans to reside of the release date and HIV status of the inmate.
- Provide special transitional assistance to the prisoner, which must include: education on preventing the transmission of HIV to others; the importance of receiving follow-up medical care and treatment; and a written, individualized discharge plan that includes referrals to and contacts with the county health department and local primary medical care services for the treatment of HIV infection that are available where the inmate plans to reside. The prisoner must also be given a copy of his or her medical records from the jail.

This bill amends the current public records exemption for HIV tests conducted by local jails to include the HIV tests created by this bill.

This bill also provides that: "notwithstanding any statute providing for a waiver of sovereign immunity, the state, its agencies, or subdivisions, and employees of the state, its agencies, or subdivisions are not liable to any person for negligently causing death or personal injury arising out of complying with this section."

This bill also amends s. 381.004(3), F.S., to add the HIV tests done under s. 951.27, F.S., to the list of HIV tests that an individual may be compelled to submit to. Though referring to s. 951.27, F.S., as a whole, HIV testing pursuant to s. 951.27(1), F.S., does not require consent since it is conducted pursuant to s. 775.0877, F.S., which already requires mandatory testing. This bill provides an independent basis for unconsensual HIV testing under s. 951.27(1), F.S., and then provides that testing of all sentenced inmates pursuant to this bill may also be done without consent.

## C. SECTION DIRECTORY:

**Section 1.** Amends s. 951.27, F.S., providing for HIV testing of certain county jail prisoners; amending the applicable public records exemption; requiring transitional assistance; providing immunity.

<sup>5</sup> Section 381.004, F.S., provides procedures for HIV testing, confidentiality, and referral to services.

<sup>6</sup> This appears to include prisoners granted pretrial release. This also appears to include those convicted of an offense who receive the common sentence of "time served", which allows the prisoner to be released that day.

**Section 2.** Amends s. 381.004, F.S., providing that the testing required in Section 1 of the bill may be performed without the consent of the person being tested.

**Section 3.** This act takes effect July 1, 2006.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See "Fiscal Comments."

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

Estimated expenditures are unknown, but are a local option. The Department of Health (DOH) states in its analysis that counties will incur the costs of testing inmates and providing transitional assistance for those who test positive. DOH listed four different HIV tests, the least expensive being the ELISA test which costs \$12.07. DOH stated that if 120,000 inmates are tested annually, the cost of the ELISA test would be approximately \$1,448,400.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

### D. FISCAL COMMENTS:

It is unknown how many individuals might be tested as a result of this bill. Testing is not required for a prisoner released on less than 30 days notice, so persons arrested and then released on bond will not be tested. This group is the majority of individuals released from local jails. Also not tested are prisoners transferred to the Department of Corrections, which would be felony offenders sentenced to a term in excess of one year.

It appears that the only group that will be tested are prisoners serving more than 30 days of a county jail sentence beyond the sentencing date, in a county or municipality that elects to create and fund the program. This group will include not only misdemeanor offenders, but felony offenders sentenced to a term of less than one year (who by law are incarcerated in county jail). In 2004, there were 25,050 felony offenders sentenced to a term in county jail. It is unknown how many misdemeanor offenders were sentenced to a term in jail longer than 30 days after the date of sentencing.

In 2002, the Department of Corrections estimated the cost of a very similar requirement to be \$34.81 per inmate tested.<sup>7</sup> This cost includes basic testing of all, advanced testing for those few whose preliminary test is positive, and pre-release counseling for those known to be infected with HIV.

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<sup>7</sup> See Bill Analysis to HB 1289, from the 2002 session.

In its 2006 bill analysis, DOH stated that approximately 600,000 individuals are released from county jails each year. Recognizing that a majority of those individuals would not be required to be tested under the provisions of the bill, DOH used the figure 120,000<sup>8</sup> and stated that if 120,000 individuals were tested pursuant to the bill's provisions, approximately 2.1% would be HIV positive.<sup>9</sup> This translates into approximately 2,520 HIV positive inmates per year. DOH reports that health care costs for an HIV positive patient are approximately \$18,000 annually.<sup>10</sup> If half of the 2,520 HIV positive inmates continued treatment, DOH estimates that the cost would be approximately \$22,680,000 per year.<sup>11</sup>

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

##### 2. Other:

None.

#### B. RULE-MAKING AUTHORITY:

None.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 8, 2006, the Criminal Justice Committee adopted two amendments to the bill and reported the bill favorably with committee substitute. The first amendment clarifies that HIV testing is limited to *sentenced* offenders (rather than those unable to make bail, those awaiting their first appearance hearing, etc...). The second amendment specifies that counties electing to participate in the HIV testing program must comply with the requirements of the bill.

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<sup>8</sup> It is unclear how DOH arrived at the 120,000 figure.

<sup>9</sup> See Department of Health HB 463 Bill Analysis, 2006.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*