

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.)

Prepared By: Criminal Justice Committee

BILL: SB 796

INTRODUCER: Senator Wilson

SUBJECT: HIV Infection/Testing of Inmates

DATE: February 9, 2006

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davis	Cannon	CJ	Favorable
2.	_____	_____	HE	_____
3.	_____	_____	CA	_____
4.	_____	_____	JU	_____
5.	_____	_____	HA	_____
6.	_____	_____	_____	_____

I. Summary:

This bill allows county and municipal governments, by majority vote, to adopt a program that requires HIV testing on prisoners. It further requires the detention facilities to notify the Department of Health 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 under these circumstances to the list of 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:

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.¹

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.²

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

² *Id.*

A racial breakdown of these figures provides 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.³ 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.⁴ 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.⁵ 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.⁶

However, the rate of HIV/AIDS is more prevalent in prisons and detention facilities than in the general population. The Department of Corrections 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.

Beginning in July 2002 the Department of Corrections was required to test all inmates for HIV at least 60 days prior to their release. If the inmate is found to be HIV positive then the department is required to:

- Notify the Department of Health and the county 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.⁷

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 Centers for Disease Control and Prevention and recommendations of the Correctional Medical Authority.

According to the Department of Health, 11 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 that do not receive funding from the bureau.

III. Effect of Proposed Changes:

Section 1 of the bill amends s. 951.27, F.S., to provide that a local city or county government, by majority vote of the governing body, may institute a program to test the local prisoners for HIV. Each prisoner would be tested at least 30 days before release unless the facility knows that the

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

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

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

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

⁷ Section 945.355, F.S.

inmate is HIV positive or within 120 days before the release date the inmate has been tested and does not request retesting. A test on the inmate 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 the inmate is transferred to the Department of Corrections for incarceration.

The bill imposes several requirements on the detention facility before an HIV positive prisoner is released. The facility must notify both the county health department of the county where the inmate plans to reside as well the Department of Health, 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 also provide an individualized written discharge plan which includes records of all lab and diagnostic test results, medication and treatment information, and referrals to and contacts with the county health department and local primary medical care services for the treatment of HIV infection that are available in the area where the inmate intends to reside.

A proposed s. 951.27(5), F.S., provides that sovereign immunity is not waived for any death or injuries that arise from the blood testing of inmates.

The provisions of this proposal closely parallel s. 945.355, F.S., which requires the Department of Corrections to test inmates prior to their release. One significant difference, however, is that the department is required to provide the HIV positive inmate with a 30 day supply of HIV/AIDS-related medications that the inmate is taking 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.

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:

None.

C. Government Sector Impact:

Detention facilities that do not currently test prisoners for HIV before their release will be impacted by this bill. The fiscal impact could be significant depending on the facilities' populations. The impact of meeting the transitional assistance requirements is unknown but could be significant.

When the Department of Health supplies facilities with testing kits they use the rapid test kits. Those tests generally take from 20 – 40 minutes to get results. The kit costs approximately \$12 and if the test result is negative no further action is required. If the result is reactive then a confirming test is required which requires an additional expenditure of approximately \$30. According to the Department of Health, 98 percent of tests are negative.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Summary of Amendments:

None.

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