

The Florida Senate
PROFESSIONAL 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: Health Policy Committee

BILL: CS/SB 938

INTRODUCER: Health Policy Committee and Senator Dawson

SUBJECT: HIV/AIDS

DATE: March 29, 2007 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Munroe	Wilson	HP	Fav/CS
2.			HA	
3.			RC	
4.				
5.				
6.				

I. Summary:

The bill directs the Department of Health, in conjunction with the Department of Corrections and the Department of Juvenile, to develop a plan to address HIV prevention and the testing and treatment of juveniles in Department of Juvenile Justice commitment programs and inmates held by the Department of Corrections. The plan must address any constitutional or legal issues relating to HIV prevention programs, testing, and treatment.

The Office of Program Policy Analysis and Government Accountability (OPPAGA) must: complete a study on the distribution of federal Ryan White funds in Florida to determine whether the distribution of this funding is meeting the needs of areas in Florida that have the highest rates of HIV infection or the highest number of people living with AIDS. The OPPAGA must also identify any significant barriers of access to drugs or other vital AIDS treatment by persons living in areas in Florida with the highest rates of HIV infection.

The findings and recommendations of both the plan and report required by the bill must be submitted by January 1, 2008.

This bill creates two undesignated sections of law.

II. Present Situation:

HIV/AIDS

AIDS is the acronym for acquired immune deficiency syndrome. It is a fatal disease caused by a virus, a tiny organism similar to the organisms that cause colds and flu. The virus that causes

AIDS is the human immunodeficiency virus, or HIV. The HIV infection causes people to get AIDS by damaging their immune systems. The immune system is what defends the body against the many different organisms that can enter the body and cause sickness. Without the ability to resist disease, people with AIDS fall ill easily, get sick often, and have great difficulty recovering. People do not die from HIV infection directly. Rather, they die from the “opportunistic” infections and diseases they get because their immune system is not working properly.

The Ryan White Comprehensive AIDS Resources Emergency Act provides grants to fund medical care and other support services for individuals with HIV/AIDS. The United States Congress recently enacted the Ryan White HIV/AIDS Treatment Modernization Act of 2006 to reauthorize funding in title XXVI of the Public Health Service Act for the Ryan White CARE Act program and to provide for more flexibility for how Ryan White funds can be used with an emphasis on providing life-saving and life-extending services for persons living with HIV/AIDS in the United States.¹ Under the new funding methodology: priority is given to urban areas with the highest number of persons living with AIDS while also helping mid-sized cities with emerging needs, and grantees must spend at least 75 percent of funds on core medical services. The new law codifies the Minority AIDS Initiative and provides funding for activities to evaluate and address the disproportionate impact of HIV/AIDS and disparities in access, treatment, care and outcome on racial and ethnic minorities.

HIV/AIDS in Florida

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 in Florida. Of the cumulative total, males account for 76 percent of the cases and females account for 24 percent.² The number of newly infected HIV cases dropped by 3 percent in 2004. During 2004, AIDS cases rose higher in Broward County (1,010) and Miami-Dade County (1,349) relative to the other areas in the state. Officials at the DOH note that the increase in AIDS cases may be attributed in part to the large volume of publicly funded HIV testing that has occurred in recent years.

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.³

A racial breakdown of these figures indicates 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.⁴ 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.⁵ Hispanics account for 17 percent of the adult population and comprise the remaining 16 percent of the AIDS cases and 17 percent

¹ See the Ryan White HIV/AIDS Treatment Modernization Act of 2006 (P.L. 109-415) signed into law by President Bush on December 19, 2006.

² Florida Department of Health, Bureau of HIV/AIDS, data as of December 31, 2004.

³ *Id.*

⁴ Florida Department of Health, Bureau of HIV/AIDS – HIV/AIDS and Blacks, 2004.

⁵ Florida Department of Health, Bureau of HIV/AIDS, data as of December 31, 2004.

of the HIV cases.⁶ 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.⁷

HIV Testing in Florida Prisons

The rate of HIV/AIDS is more prevalent in prisons and detention facilities than in the general population. The Department of Corrections (DOC) 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. Researchers say high incarceration rates increase risk behaviors associated with HIV by skewing the ratio of women to men, worsening economic conditions, and increasing the social capital of men who are not imprisoned.⁸

Beginning in July 2002, the DOC has been required to test all inmates for HIV at least 60 days prior to their release. If the inmate is found to be HIV positive, the department is required to:

- Notify the DOH and the 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.⁹

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 (CDC) and recommendations of the Correctional Medical Authority.

According to the DOH, 14 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, but do not receive funding from the bureau. Disease reporting laws require reporting of positive test results, but there is no requirement for county health departments to be notified when an HIV-positive inmate is released from jail.

HIV Testing and Informed Consent

Section 381.004(3), F.S., requires any person who orders an HIV test to obtain the informed consent of the person upon whom the test is being performed, with some exceptions. Section 381.004(3)(h), F.S., provides a number of exceptions to the informed consent

⁶ Florida Department of Health, Bureau of HIV/AIDS, *HIV/AIDS Among Hispanics, Florida, 2004*.

⁷ Florida Department of Health, Bureau of HIV/AIDS – *HIV/AIDS in Florida's Haitian Population – 2004*.

⁸ "Links Between Prison and AIDS Affecting Blacks Inside and Out," Lynette Clemetson, *The New York Times*, August 6, 2004.

⁹ Section 945.355, F.S.

requirement, including HIV testing of inmates prior to their release from prison. However, informed consent is required before testing an inmate who is being released from jail.

Informed consent for HIV testing must be preceded by an explanation of the right to confidential treatment of information identifying the subject of the test and the results of the test as provided by law. Information must also be provided on the fact that a positive HIV test result will be reported to the county health department with sufficient information to identify the test subject and on the availability and location of sites at which anonymous testing is performed. Consent need not be in writing if there is documentation in the medical record that the test has been explained and the consent has been obtained.

The person ordering the test or that person's designee must ensure that all reasonable efforts are made to notify the test subject of his or her test result. Notification of a person with a positive test result must include information on the availability of appropriate medical and support services, on the importance of notifying partners who may have been exposed, and on preventing transmission of HIV. Notification of a person with a negative test result must include, as appropriate, information on preventing the transmission of HIV. When testing occurs in a hospital emergency department, detention facility, or other facility and the test subject has been released before being notified of positive test results, informing the county health department for that department to notify the test subject fulfills this responsibility.

According to the CDC, an estimated one-fourth of one million Americans believed to be living with HIV remain unaware of their infection. The CDC emphasizes that new approaches are urgently needed to reach these individuals with information on their HIV infection, and are essential to the success of HIV prevention and care efforts in the United States. Early diagnosis is critical in order for people with HIV to receive life-extending therapy. About 40 percent of individuals diagnosed with HIV are diagnosed within one year of developing AIDS, when it may be too late for them to fully benefit from treatment. Additionally, studies show that most people who learn they are infected take steps to protect their partners, while people who are unaware of their infection are estimated to account for between 50 and 70 percent of new sexually transmitted HIV infections.¹⁰

The CDC has recently recommended that HIV testing become a part of routine care for all persons between the ages of 13 and 64.¹¹ It emphasizes that the testing must be voluntary and undertaken only with the patient's knowledge, but recommends that pre-test counseling and separate, written consent for HIV testing should no longer be required.¹²

The Williams Institute at the University of California, Los Angeles, recently published the results of three studies, which measured HIV-discrimination in health care in Los Angeles

¹⁰ United States Centers for Disease Control and Prevention "Fact Sheet: CDC's Revised Recommendations for HIV Testing of Adults, Adolescents, and Pregnant Women in Health Care Settings" September 2006, as republished in *The Body*®, a service of Body Health Resources Corporation at <http://www.thebody.com/cdc/recommendations06_facts.html> (Last visited on March 29, 2007).

¹¹ *Id.*

¹² *Id.*

County.¹³ The studies conducted from 2003 to 2005 found that HIV-discrimination remains common in the health care sector despite legal prohibitions.¹⁴ The studies found that 46 percent of skilled nursing facilities, 26 percent of plastic and cosmetic surgeons, and 55 percent of obstetricians in Los Angeles County would not take any patients who were HIV-positive for any type of service, even when the patients were asymptomatic.¹⁵

III. Effect of Proposed Changes:

Section 1. Requires the DOH, in conjunction with the DOC and the Department of Juvenile Justice to develop a plan to address HIV prevention, testing, and treatment of juveniles in the custody of the Department of Juvenile Justice and persons incarcerated by the Department of Corrections. The plan must identify any barriers to the prevention of HIV infection among inmates held by the Department of Corrections and juveniles held by the Department of Juvenile Justice and any constitutional or legal issues relating to HIV prevention programs, testing, and treatment provided in prisons or in Department of Juvenile Justice commitment programs. The Department of Health must complete the plan and submit its findings and recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives by January 1, 2008.

Section 2. Requires the OPPAGA to complete a study on the distribution of funding authorized by the federal Ryan White Comprehensive AIDS Resources Emergency Act and subsequent reauthorizations in Florida to determine whether the distribution of this funding is addressing the needs of areas within Florida with the highest rates of HIV infection or with the highest number of people living with AIDS. The office must also identify any significant barriers of access to drugs and other vital medical services for AIDS treatment by persons living in areas within Florida with the highest rates of HIV infection. The office must complete the study and report its findings and recommendations to the President of the Senate and the Speaker of the House of Representatives by January 1, 2008.

Section 3. The bill provides an effective date of July 1, 2007.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

¹³ "HIV Discrimination in Health Care Services in Los Angeles County: The Results of Three Testing Studies" December 2006. Brad Sears and Deborah Ho, The Williams Institute, University of California at Los Angeles. See the Williams Institute's website at: <http://www.law.ucla.edu/williamsinstitute/publications/Discrimination%20in%20Health%20Care%20LA%20County.pdf> (Last visited on March 29, 2007).

¹⁴ Id.

¹⁵ Id.

B. Public Records/Open Meetings Issues:

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Article I, Section 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Department of Health will incur costs to implement the bill. The Department of Health is currently preparing its analysis of the fiscal impact of the bill to reflect changes contained in the committee substitute.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Summary of Amendments:

None.

This Senate Professional Staff Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
