



**House
Legislative
Analysis
Section**

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CHECK CONVICTS FOR AIDS

House Bill 4028 Substitute (H-4)
First Analysis (6-14-88)

Sponsor: Rep. Robert Bender
Committee: Corrections

RECEIVED

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THE APPARENT PROBLEM:

As yet, there is no cure for acquired immunodeficiency syndrome (AIDS), and no vaccine to prevent uninfected persons from getting the infection. AIDS is spread through blood transfusions, the sharing of hypodermic needles, and through intimate sexual contact, and many fear they will acquire the disease through accidental contact with those who are infected, specifically with those most likely to engage in behaviors or lifestyles that increase the risk of infection. For this reason, corrections officers believe that prisoners, as a segment of the population judged to contain many homosexuals and drug abusers, should be handled with special precautions. Others feel that prisoners, because they are confined and have a higher incidence of high-risk individuals than the general population, require special protection. While AIDS testing is now conducted on a voluntary basis in correctional facilities, many would require mandatory testing of all prisoners, and severe penalties for those who use the disease to threaten corrections officers or others. Since it is believed that education is the best weapon to curb the epidemic's growth, it is also felt that prisoners should receive educational counseling on AIDS.

THE CONTENT OF THE BILL:

The bill would amend the Department of Corrections act to require that, immediately upon arrival at a "reception center" (defined in the act as quarters in state correctional facilities for temporary confinement apart from regular inmates), convicted prisoners known by the department to be homosexual or bisexual or to illegally use controlled substances, as indicated by the presentence investigation report, the report from the county jail, or the prisoner interview conducted at the reception center, would be required to undergo testing for the Human Immunodeficiency Virus (HIV) or an antibody to HIV, unless a prisoner refuses the test. If any test results were positive, or if the test results were positive and any prisoners were diagnosed as having Acquired Immunodeficiency Syndrome (AIDS) or AIDS related complex, the deputy director in charge of the Bureau of Penal Institutions would take the necessary steps to ensure that all prisoners who tested positive or who were diagnosed as having AIDS or AIDS related complex, received education and counseling regarding AIDS and AIDS related complex, including, at a minimum, treatment, transmission, and protective measures. (The bill would define "positive test result" to mean a double positive enzyme-linked immunosorbent assay (ELISA), test combined with a positive western blot assay test, or a positive test result under an HIV test considered reliable by the federal Centers for Disease Control, and approved by the department.)

Under the bill, a prisoner would be required to be tested for HIV or an antibody to HIV if a facility employee was exposed to semen, blood, or vaginal fluid from the prisoner. If the prisoner refused to be tested, then he or she would be found guilty of a major misconduct and, if applicable, would lose accumulated disciplinary credits or good time, or both. In addition to the above tests, the bill would require that each prisoner be tested for HIV or an

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antibody to HIV when transferring to a camp or corrections center, or when paroled or discharged, unless the prisoner refused to be tested. A prisoner found guilty by the department of sexual misconduct, illegal use of controlled substances, or assaultive or predatory behavior and who received a positive test result would be housed in administrative segregation, an inpatient health care unit, or other unit separate from the general prison population, whichever the department determined appropriate.

The bill would require that test results for HIV or an antibody to HIV be confidential and disclosed by the department only to persons, not including prisoners, who demonstrated a need to know the results, and by department personnel assigned to report all positive test results to the Department of Public Health for contact notification. A department employee who violated this requirement would be dismissed from employment and could be liable in a civil action for actual damages, or \$5,000, whichever was greater, and costs and reasonable attorney fees.

The fact that a prisoner had received a positive HIV test result could not be used by the parole board in making a parole determination. The parole board would be required to order, however, as a condition of parole, that the prisoner participate in an AIDS education and counseling program. If the prisoner did not comply the board would revoke the parole.

Under the bill, the department would be required to comply with the Michigan regulations on occupational safety and health pertaining to exposure to HIV. The department would also be required to develop and implement a comprehensive AIDS education program designed specifically for a correctional environment. The program would be conducted by the department for both department employees and prisoners at each state correctional facility, and would include, but not be limited to, regular in-service training for department employees and information regarding mandatory universal precautions to prevent transmission of HIV. Each time a prisoner transferred to a new correctional facility, he or she would be required to participate in the AIDS education program. The department would also be required to provide employees with the equipment necessary to implement the mandatory universal precautions to prevent the transmission of HIV, and to provide free HIV testing to departmental employees, on request.

MCL 791.235 et al

FISCAL IMPLICATIONS:

According to the Department of Corrections, the cost of testing of incoming inmates under the bill is estimated at about \$50,000 per year. An estimate of the cost of testing exiting prisoners and the cost of counseling is not available. (6-13-88)

OVER

H.B. 4028 (6-14-88)

ARGUMENTS:

For:

The bill is part of a package of bills designed to encourage or require testing for the AIDS virus by as many people as possible, especially those in "high risk" categories. To accomplish this objective the bills would also protect the confidentiality of those who do take the tests, and would require pre- and post-counseling, and contact notification of the test subject's sexual or hypodermic needle-sharing or drug-sharing partners. It has been found, in society at large, that without the assurance of confidentiality protection, many people fear to expose themselves to test results, since the disclosure usually results in lost jobs, denial of insurance, loss of friends and havoc within families. Since there is reason to believe that disclosure within the confines of prisons would put an inmate at undue risk for his or her personal safety it is equally important that the principle of confidentiality be afforded these persons.

Against:

By requiring that the test results of those prisoners who test positive for the AIDS virus be confidential, the bill ignores the fears of the corrections officers who have to break up prisoner fights or apply first aid measures to prisoners who may have AIDS or who may carry the AIDS virus. Some prisoners, in fact, deliberately use AIDS as a threat against officers (and other prisoners), whether they actually have AIDS or not. Prisoners are not entitled to the same rights as other citizens. They lost those rights when they entered prison. Officers' rights, on the other hand, should outweigh the confidentiality requirement. Mandatory testing of all prisoners and isolation or segregation of prisoners with AIDS or the AIDS virus should be required, so that those who daily come in contact with prisoners will know who they are dealing with.

Response: No corrections officer has ever been infected with AIDS from prisoner contact. Since the AIDS virus is not airborne and is not spread by casual contact, there is no need to segregate all prisoners who test positive. The department already has case histories of prisoners who are apt to act violently, or who engage in high risk behavior, and those prisoners are housed accordingly. The bill requires that the department provide employees with "the equipment necessary to implement the mandatory universal precautions to prevent transmission of HIV," and the department has, in fact, already started to issue AIDS kits as part of a corrections officer's standard uniform. The kits include gloves and a CPR mask, which are contained in a leather belt pouch.

Against:

AIDS tests can produce many false positive results, so the bill's requirement that incoming prisoners be tested would only give officers a false sense of security. While those convicted of sexual assault should be tested, the expense of testing 9,000 new prisoners each year would be too great. The initial (ELISA) tests cost \$5 each, and it has been estimated that one percent (90) of these will test positive and would require further testing at a cost of \$35 each (\$5 for another ELISA test and \$30 for a western blot test). To this total cost of almost \$50,000 would be added the costs of counseling, which have not yet been estimated.

POSITIONS:

The Department of Corrections supports the bill. (6-13-88)

The Michigan State Medical Society supports the bill. (6-13-88)

The Michigan Corrections Organization/SEIU, Local 526M, supports the bill. (6-13-88)

The Department of Public Health has no position on the bill. (6-13-88)

The State Bar of Michigan has no position on the bill. (6-13-88)

The Michigan Council on Crime and Delinquency opposes the bill. (6-13-88)