



**House
Legislative
Analysis
Section**

Washington Square Building, Suite 1025
Lansing, Michigan 48909
Phone: 517/373-6466

CHECK CONVICTS FOR AIDS

House Bill 4028 as enrolled
Second Analysis (1-9-89)

RECEIVED

FEB 08 1989

Sponsor: Rep. Robert Bender Mich. State Law Library
House Committee: Corrections
Senate Committees: Government Operations and
Health Policy

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), each prisoner would be required to undergo testing for the Human Immunodeficiency Virus (HIV) or an antibody to HIV. This requirement would not apply to prisoners who had been convicted of gross indecency, involvement in prostitution, criminal sexual conduct, or assault with intent to commit criminal sexual conduct, and tested three months prior to their arrival at the facility. In those cases, the prisoners would be tested and their records transferred to the department by the court, as provided in House Bill 4008, which provides for AIDS testing for high risk crimes. If any test result was positive, and the prisoner was subsequently subject to discipline by the department for sexual misconduct, illegal intravenous use of controlled substances, or assaultive or predatory behavior that could transmit HIV, the prisoner would be housed in administrative segregation, an inpatient health care unit, or a unit separate from the general prisoner population, whichever the department considered appropriate. The department would be required to report each positive test result to the Department of Public Health; otherwise, test results would be disclosed by the department only to persons who demonstrated a need to know the results. (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 of Public Health.)

Under the bill, a prisoner would be required to be tested for HIV or an antibody to HIV if a department employee was exposed to the blood or body fluid of a prisoner in a manner that could transmit HIV. If the prisoner refused to be tested, then he or she would be considered by the department to be HIV positive. Prisoners who tested positive, or were considered by the department to be HIV positive would not be allowed to work in a health facility operated by the department.

Under the bill, the department — in conjunction with the Department of Public Health — would be required to develop and implement a comprehensive AIDS education program designed specifically for a correctional environment. The program would be conducted by the bureau within the department responsible for health care, staff, and prisoners at each state correctional facility. The department would be required to conduct a seroprevalance study of the prisoners to determine the percentage who were HIV infected, and the deputy director in charge of the Bureau of Correctional Facilities would be required to take steps to ensure that all prisoners who received HIV testing also received counseling regarding AIDS and AIDS-related complex, including, at a minimum, treatment, transmission, and protective measures. The department would also be required to provide employees with the equipment necessary to implement universal precautions to prevent the transmission of HIV, and to provide or arrange for free testing for HIV or an antibody to HIV for employees, when requested.

Two years after the bill's effective date, the department would be required to submit a report regarding the testing component, managerial aspects, and effectiveness of its AIDS program to the Senate and House committees with jurisdiction over corrections' matters, and also to the Senate and House committees with jurisdiction over public health matters.

MCL 791.235 et al.

FISCAL IMPLICATIONS:

According to the Department of Corrections, the cost to the Department of Public Health of testing of incoming inmates under the bill is estimated at about \$50,000 per year. The cost of counseling prisoners has been estimated at \$130,680 per year. (12-13-88)

ARGUMENTS:

For:

The bill would help alleviate the fears of corrections officers by removing from the general prison population those prisoners infected — or suspected of infection — with the

H.B. 4028 (1-9-89)

AIDS virus, and housing them in segregated units.

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:

The bill should require that the test results of those prisoners who test positive for the AIDS virus be confidential. 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 other bills also protect the confidentiality of those who do take the tests, and 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.

Response: If the bill required confidentiality of test results of prisoners who tested positive for the AIDS virus, it would ignore 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.

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.