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LET CORRECTIONS EMPLOYEES KNOW PRISONERS' HIV STATUS

House Bill 5408 (Substitute H-1)
House Bill 5578 (Substitute H-1)
Revised First Analysis (5-22-96)

Sponsor: Rep. David Jaye
Committee: Health Policy

THE APPARENT PROBLEM:

Currently, the Public Health Code imposes a number of medical testing and counseling requirements on people arrested and charged with, bound over to circuit court for, or convicted of, certain sex or illegal intravenous (IV) drug crimes. The health code allows courts to order that people arrested and charged with certain prostitution-related crimes be tested for venereal disease (VD), hepatitis B (HBV) infection, human immunodeficiency virus (HIV) infections, or acquired immunodeficiency syndrome (AIDS). District courts are required to order that defendants bound over to circuit court for gross indecency, prostitution, or criminal sexual assault be tested and counseled for VD, HBV, and HIV if the court determines that there is reason to believe that the violation involved sexual penetration or exposure to the defendant's body fluids. Finally, courts also are required to order VD, HBV, and HIV testing and counseling of defendants convicted of gross indecency, solicitation, prostitution, criminal sexual assault, or illegal IV drug use. Public Act 253 of 1995 added child molesters to the code's existing VD, HBV, and HIV information, counseling, and testing requirements.

Under the Department of Corrections act, as soon as a prisoner arrives at a reception center of a state correctional facility, he or she is tested for HIV unless he or she had been tested within the preceding three months under the above health code provisions. HIV test results are to be disclosed by the Department of Corrections only to "persons who demonstrate to the department a need to know the test results"; in effect, this means that health care providers who provide medical care to prisoners know the HIV status of prisoners who test positive upon intake. In addition, positive HIV test results must be reported to the Department of Public Health (now called the Department of Community Health).

Some people believe that corrections officers, both at the state and local levels, should have access to the records of prisoners who have tested positive for HIV.

THE CONTENT OF THE BILLS:

House Bill 5408 would amend the Department of Corrections act (MCL 791.267) to require that positive HIV test results of prisoners tested upon entering corrections facilities be made available to each correctional officer employed at the facility where the prisoner is housed.

House Bill 5578 would amend the Public Health Code (MCL 333.5129) to require that the positive HIV tests results of defendants subject to mandatory HIV testing who were committed to a county jail would be available to each local correctional officer employed in the jail.

FISCAL IMPLICATIONS:

Fiscal information is not yet available. However, according to the House Fiscal Agency analysis of House Bill 5408 as introduced, of the prisoners tested at intake in fiscal year 1994-95, one percent of the males and three percent of the females tested positive for the HIV virus, and as of November 1995, 402 prisoners in institutions and residential programs were infected with the virus. (3-12-96)

ARGUMENTS:

For:

When prisoners are first admitted to state correctional facilities, they are tested for HIV infection. Reportedly, the warden is informed of the status of HIV-positive prisoners, but corrections employees in the facility are not. And yet surely it is the corrections employees, who must deal with prisoners on a daily basis, who have the most need for this information. If corrections employees knew who was HIV positive, they could take extra precautions in dealing with them. The bill would protect corrections employees, who all too often are placed in dangerous situations in the course of their work. And although danger is a necessary part of corrections work, given the nature of the people corrections employees must work with, the very least the state can do is to offer corrections

employees -- on both the state and local levels -- as much information as possible so as to enable employees to maximize their safety. The bill would do just this by giving them another tool with which to deal with prisoners.

Against:

According to the Department of Corrections, the bill would actually endanger corrections employees, rather than protect them, by giving them a false sense of safety. Currently, it is the policy of the department that corrections employees use universal precautions when dealing with all prisoners. If corrections employees knew that certain prisoners had tested positive for HIV, they could falsely assume that they didn't have to use the same care when dealing with the other prisoners. Yet given the relatively long incubation time for HIV infection and the routine, if illicit, sharing of body fluids among prisoners (through, say, illegal IV drug use, rape, or even consensual sex), the number of HIV-positive prisoners will always be greater than the number of prisoners who have already tested positive. It is only human nature to be more careful when dealing with a known risk than when dealing with an unknown risk. By allowing corrections employees access to the files of prisoners who have tested positive for HIV, the bill could lead to lapses in the use of universal precautions by corrections employees, thereby endangering both themselves and others with whom they came into contact.

Confidentiality of prisoners' medical records also would be breached by making the medical files of HIV-positive prisoners available to corrections employees. The HIV status of prisoners should be limited, as it now is by law, to those that have a need to know, such as health care providers who provide medical care for the prisoners. Most corrections employees do not provide medical care for prisoners and generally are not in situations where the likelihood of HIV transmission exists.

Finally, legislation has already been proposed (House Bills 5488 and 5881) that would allow corrections employees (and certain others) to request that prisoners (among others) be tested for HIV -- and that prisoners would then be tested even if they objected -- if a situation arose in which HIV transmission was possible. It is the position of the Department of Corrections that that approach would more effectively protect corrections employees than would the approach taken in these bills.

POSITIONS:

The Michigan Corrections Organization supports the bills. (5-15-96)

The Department of Corrections strongly opposes the bills. (5-15-96)

The HIV/AIDS Alliance of Michigan strongly opposes the bills. (5-15-96)

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.