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BILL ANALYSIS

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Senate Bill 827 (Substitute S-2 as reported)**Sponsor: Senator Jack Welborn****First Committee: Criminal Justice, Urban Affairs, and Economic Development****Second Committee: Health Policy****Date Completed: 6-28-88****RATIONALE**

The Department of Corrections (DOC) Act requires the DOC to conduct a physical exam of all prisoners entering its prison system through its reception centers. With the increased incidence of acquired immunodeficiency syndrome (AIDS) throughout society, many people are concerned that prisoners could be carrying the AIDS virus into the prison system. While there has been no evidence of transmission of AIDS through casual contact, many people in prisons have more than casual contact. Reportedly, there are instances of homosexuality and intravenous drug use, which are two of the most common means of AIDS transmittal, within the prison system. Those who are employed in prisons, as well as those who are confined in prisons, are concerned about controlling the spread of AIDS within correctional facilities. They believe that some sort of testing and segregation program should be implemented.

CONTENT

The bill would amend the Department of Corrections (DOC) Act to require that, upon arrival at a DOC reception center, all convicted prisoners undergo a test for the Human Immunodeficiency Virus (HIV) or its antibody. If a prisoner's test were positive, or if he or she tested positive and were diagnosed as having acquired immunodeficiency syndrome (AIDS) or AIDS-related complex, the DOC deputy director for the Bureau of Correctional Facilities would have to take steps to ensure all of the following:

- That the health and safety of all prisoners and DOC personnel in a correctional facility were protected.
- That the HIV was not transmitted to other prisoners in the facility.
- That all prisoners who tested positive, or were diagnosed as having AIDS or AIDS-related complex, received counseling regarding AIDS and AIDS-related complex, including treatment, transmission, and protective measures.

The bill would require the DOC to implement an AIDS education program designed specifically for a correctional facility environment. The program would have to be conducted by the DOC's Bureau of Health Care Services, for both prisoners and staff, at each State correctional facility.

The DOC would have to establish separate housing units for those prisoners who tested positive and were known by the DOC either to be sexually active with other prisoners or to use drugs intravenously; who were convicted of a felony involving criminal sexual conduct with a member of the same sex; or who were known by the Department to

attempt to spread the HIV by spitting blood or other acts. Prisoners who tested positive also would be prohibited from working in a health facility.

In addition, the DOC would have to conduct a statistically valid survey of the prisoners in all State correctional facilities in order to determine the percentage of State prisoners who are infected with the HIV. Within two years after the bill's effective date, the Department would have to report to the Senate and House committees with jurisdiction over corrections issues. The report would have to cover the bill's testing requirement, the DOC's managerial program, and the bill's overall effectiveness.

MCL 791.267

FISCAL IMPACT

The bill would result in an indeterminate expenditure increase for the State in FY 1987-88 and FY 1988-89. The indeterminate increase would be the result of three primary factors:

- The date the bill would take effect during FY 1987-88.
- The number of individuals who were identified as having tested positive for the HIV and were active intravenous drug users, sexually active with other prisoners, known by the Department to spread or attempt to spread the HIV by spitting blood or other similar acts that may transmit the virus, or convicted of criminal sexual conduct with individuals of the same sex; who are not currently identified with certainty by the Department.
- The programmatic and security issues associated with separate housing for the prisoners described under point two above, which have not been assessed by the Department.

The testing of all individuals when they enter the State prison system would cost approximately \$5 per prisoner. For FY 1988-89, based on a projected new prison commitment rate of 11,000-13,000 individuals, the cost of testing would be \$55,000-65,000.

As of May 5, 1988, the Department had identified three cases of AIDS, 23 cases of AIDS-related complex and 46 prisoners who had tested positive for the HIV but exhibited no symptoms, for a total of 72 prisoners. Based on this number of prisoners, 0.3% of the Bureau of Correctional Facilities population as of April 13, 1988, and the fact the Department has not yet assessed the programmatic and security issues associated with providing separate housing units, an estimate of the fiscal impact of this aspect of the bill cannot be made at this time.

S.B. 827 (6-28-88)

ARGUMENTS

Supporting Argument

As the AIDS virus infects more people, the risk of transmission increases. In a prison environment, the virus may be even more prevalent than in the general population. Reportedly, there have been 12 deaths that resulted from AIDS within the State's corrections system. In order to protect DOC staff and inmates from the spread of AIDS, the Department should implement an AIDS testing and education program. By requiring AIDS testing and the segregation of those prisoners who would be most likely to transmit the virus, the bill would attempt to protect persons within a correctional facility from the spread of AIDS.

In addition, the bill's requirements of conducting a statistically valid survey and reporting on the bill's effectiveness would allow the DOC to evaluate the extent of the AIDS problem within the prison system. Instituting educational and counseling programs could decrease the spread of the virus by making individuals more aware of AIDS and how it is transmitted.

Response: The bill is the result of hysteria, ignorance, and heightened fear of AIDS. Reportedly, corrections officers fear the spread of the virus by inmates; yet, in the three years since the testing program was first suggested, there have been no instances of DOC employees contracting AIDS.

In addition, segregating prisoners is unnecessary and could violate medical ethics standards. There has been no evidence that AIDS can be transmitted through casual contact. If the DOC segregated prisoners based on testing positive for the HIV, in effect the Department would be revealing medical records.

Supporting Argument

Within a correctional facility, AIDS is not just a health issue, but also a safety and security issue. Reportedly, there have been cases of self-mutilation by AIDS-carrying prisoners. These individuals then urge DOC employees to intercede so the prisoner can use his or her blood as a "weapon". The bill would address this problem by requiring those prisoners to be segregated.

Opposing Argument

The DOC already has had some success with a voluntary AIDS testing program. Expanding the program to include mandatory testing of all new prisoners would not be cost-efficient. The DOC estimates that there would be about one positive test result for each 100 tests conducted. In addition, a one-time test may not be sufficient. In the early stages, the HIV may not be detectable, yet can be present and later develop into AIDS.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.