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Leg[islative] Review - 5/98 - H.R. 2070 - Correction Officers Health and Safety Act

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EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET

ROUTE SLIP

TO: <u>Todd Summers</u>	Take necessary action	☐
<u>Joe Cerda</u>	Approval signature	☐
<u>cc: Jukes</u>	Comment	☐
	Prepare reply	☐
	Discuss with me	☐
	For your information	☐
	See remarks below	☐

FROM: Ron Jones (x53386)

DATE: 10/14/98

REMARKS:

Here's the Hatch version of HX 2070,
Correction Officers Health and Safety Act. The
handwritten changes ("shall" to "may" in two places)
are Bo P's proposal to Hatch.

We've told ~~DoJ~~ DoJ that BoP should NOT
actively oppose or support the bill.

Call me if you have any questions.

105th CONGRESS**2d Session****H. R. 2070****AN ACT**

To amend title 18, United States Code, to provide for the testing of certain persons who are incarcerated or ordered detained before trial, for the presence of the human immunodeficiency virus, and for other purposes.

105th CONGRESS**2d Session****H. R. 2070****AN ACT**

To amend title 18, United States Code, to provide for the testing of certain persons who are incarcerated or ordered detained before trial, for the presence of the human immunodeficiency virus, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the 'Correction Officers Health and Safety Act of 1998'.

SEC. 2. TESTING FOR HUMAN IMMUNODEFICIENCY VIRUS.

(a) IN GENERAL- Chapter 301 of title 18, United States Code, is amended by adding at the end the following:

'Sec. 4014. Testing for human immunodeficiency virus

'(a) The Attorney General ^(may) ~~shall~~ cause each individual convicted of a Federal offense who is sentenced to incarceration for a period of 6 months or more to be tested for the presence of the human immunodeficiency virus not earlier than 3 nor later than 4

months after the commencement of that incarceration if such individual is determined to be at risk for infection with such virus in accordance with the guidelines issued by the Bureau of Prisons relating to infectious disease management.

(b) If the Attorney General has a well founded reason to believe that a person sentenced to a term of imprisonment for a Federal offense, or ordered detained before trial under section 3142(e), may have intentionally or unintentionally transmitted the human immunodeficiency virus to any officer or employee of the United States, or to any person lawfully present in a correctional facility who is not incarcerated there, the Attorney General shall, upon the request of the affected officer, employee, or other person, cause the person who may have transmitted the virus to be counseled and tested promptly tested for the presence of such virus and communicate the test results as soon as practicable to the person requesting that the test be performed and to the person tested, if person tested so requests, and, consistent with the Bureau of Prisons guidelines for infectious disease management, to inform any person (in, as appropriate, confidential consultation with the person's physician) who may have been exposed to such virus, the potential risk involved and, if warranted by the circumstances, that prophylactic or other treatment should be considered.

(c) If the results of the test indicate the presence of the virus, the Attorney General shall provide appropriate access for counselling, health care, and support services to the affected officer, employee, or other person, and the person tested.

(d) The results of a test under this section are inadmissible against the person tested in any Federal or State civil or criminal case or proceeding.

(e) Not later than 1 year after the date of enactment of this section, the Attorney General shall make rules to implement this section. Such rules shall require that the results of any test are communicated only to a person requesting the test, to the person tested, and, if the results of the test indicate the presence of the virus, to the chief administrative officer of the correctional facility in which the person tested is imprisoned or detained, to correctional facility personnel consistent with Bureau of Prisons guidelines. Such rules shall also provide for procedures designed to protect the privacy of a person requesting that the test be performed and the privacy of the person tested.

(b) CLERICAL AMENDMENT- The table of sections at the beginning of chapter 301 of title 18, United States Code, is amended by adding at the end the following new item:

'4014. Testing for human immunodeficiency virus.'

(c) GUIDELINES FOR STATES- Not later than 1 year after the date of the enactment of this Act, the Attorney General, in consultation with the Secretary of Health and Human Services, shall provide to the several States proposed guidelines for the prevention, detection, and treatment of incarcerated persons and correctional employees

who have, or may be exposed to, infectious diseases in correctional institutions.

Passed the House of Representatives August 3, 1998.

Attest:

Clerk.

END



Todd A. Summers

08/07/98 12:02:04 PM

.....

Record Type: Record

To: Jose Cerda III/OPD/EOP, Ronald E. Jones/OMB/EOP

cc: Sandra Thurman/OPD/EOP, Richard J. Turman/OMB/EOP

Subject: Correction Officer Health and Safety Act

I just spoke with DoJ's leg person handling this bill, and told her that we were leaning to recommending that the Administration's position move from "strongly oppose" to silent. Here is why we support that position:

The Policy

Requiring Testing

We do not want to support mandatory testing. We have always maintained that voluntary counseling and testing is adequate. That remains our position on a number of bills, including Rep. Coburn's. If we were to adopt a different stance for prisoners, it opens us up to charges of hypocrisy and deflates our argument on non-prisoners. Moreover, it could potentially be infused with racial connotations since prisoners are predominantly black men. Given the heat that the CDC, NAACP and others are putting on us for the racial disparities in the epidemic, it might be prudent to avoid a conflict here.

I understand that Rep. Waters has participated in amending this bill, so it is clearly on her radar screen. Her staff says that she's in a position of not actively opposing the bill. Rep. Pelosi's staff says the same.

That being said, we now test everyone on the way out of jail so the bill just moves up the inevitable. From a scientific perspective, that is better for prisoners since early detection and treatment of HIV is recommended. From a BoP policy perspective, the testing done on the way out is "voluntary" except that it's required as part of the package of things that must be done to be released. So BoP argues that they don't do mandatory or "forced" testing, but that's semantics.

The bill requires counseling, support, and care for all those who test HIV-positive. We think that's a good mandate, even if it may be redundant (BoP's principal objection to the bill, as I understand it). I think this works more to the advantage of correction officers, staff, and visitors than prisoners because the policy now is that prisoners get care if they're HIV-positive. (The President's Advisory Council on HIV/AIDS has been adamant that they believe that there is a difference between policy and practice at some Federal institutions, but we cannot confirm that and BoP says it's not true.)

The bill also provides that the Attorney General develop standards of care and prevention for States, which we think is good. State, county and local jails ought to be the object of far greater attention since the prevalence of HIV there is so much higher than Federal institutions. I think BoP and DoJ like this part of the bill.

Testing After Potential Exposure

HR2070 also requires testing, or re-testing, after an exposure by a prisoner to an officer, staff person, or visitor. This is hard to argue, particularly because there are now protocols for post-exposure prophylaxis that may be efficacious (not a lot of data yet). We like that the determination of whether the exposure risk was significant lies with DoJ/BoP and should therefore be based on scientific

standards and not subjective fears ("he spit on me, I want him tested"). Universal precautions should minimize instances of exposure, and BoP encourages their implementation, but exposures are certainly possible.

The Unions

I've spoken with the leg. director for AFSCME, which represents some (100,000) of the correctional officers and have a call into SEIU, which represents others. AFSCME says this is a very big deal for the correctional officers, and they feel that the bill that passed is a significant improvement over the original draft that we strongly opposed. They are less concerned about our active support than they are about our active opposition--they'd be content if we moved from "strongly oppose" to silent.

This also makes BoP's objection that officer's are going to be put at risk during mandatory testing because they might have to hold prisoners down to take their blood. First of all, I am not convinced this is a significant issue for Federal prisoners. Second, if the officers' unions are supporting the bill, why are we objecting on their behalf?

Recommendation

We recommend that the Administration:

1. remove it's strong opposition to the bill
2. not actively oppose or support the bill
3. indicate to Senator Hatch and others that we'll acquiesce to a Senate version that parallels that which passed the House, and that the Administration would strongly oppose a version that reverts to the original version of HR2070.

Please let me know if you have any questions.

Total Pages: _____

LRM ID: REJ522

**EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001**

Friday, June 26, 1998

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below

FROM: James J. Jukes (for) Assistant Director for Legislative Reference

OMB CONTACT: Ronald E. Jones

SUBJECT: PHONE: (202)395-3386 FAX: (202)395-3109
JUSTICE Copy Report on HR2070 Correction Officers Health and Safety Act

DEADLINE: Tuesday, June 30, 1998

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: As the last paragraph of the attached letter indicates, it was received by OMB too late for interagency clearance. Please let us know by the deadline if you have any objections to the positions taken in the letter. A copy of the substitute that is the subject of the letter is also attached.

DISTRIBUTION LIST**AGENCIES:**

52-HHS - Sondra S. Wallace - (202) 690-7760

89-Office of National Drug Control Policy - John Carnevale - (202) 395-6736

95-Office of Science and Technology Policy - Jeff Smith - (202) 456-6047

61 - JUSTICE

EOP:

Peter G. Jacoby

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Leanne A. Shimabukuro

Christopher C. Jennings

Todd A. Summers

Kate P. Donovan

Elizabeth Gore

James C. Murr

Richard J. Turman

Kevin P. Cichetti

Chin-Chin Ip

David J. Haun

Victoria Wassmer

LRM ID: REJ522
and Safety Act

SUBJECT: JUSTICE Copy Report on HR2070 Correction Officers Health

**RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM**

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:

(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or

(2) sending us a memo or letter

Please include the LRM number shown above, and the subject shown below.

TO: Ronald E. Jones Phone: 395-3386 Fax: 395-3109
Office of Management and Budget
Branch-Wide Line (to reach legislative assistant): 395-3454

FROM: 6/29/98 (Date)
Todd Summers (Name)
AIDS Policy (Agency)
6-2444/6-2437 (Telephone)

The following is the response of our agency to your request for views on the above-captioned subject:

☒ Concur☐ No Objection☐ No Comment☐ See proposed edits on pages _____☐ Other: _____☐ FAX RETURN of _____ pages, attached to this response sheet



U. S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

June 22, 1998

The Honorable Henry Hyde
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This letter presents the views of the Department of Justice on the substitute amendment offered by Rep. McCollum to H.R. 2070, the "Correction Officers Health and Safety Act of 1997." Rep. McCollum's amendment to H.R. 2070 would require the Attorney General to test Federal inmates and Federal pre-trial offenders for the human immunodeficiency virus (HIV) at the request of a Federal employee or other person, if the Attorney General believes that the inmate or offender may have transmitted the virus to the individual. It also provides for the disclosure of the test results to the requester.

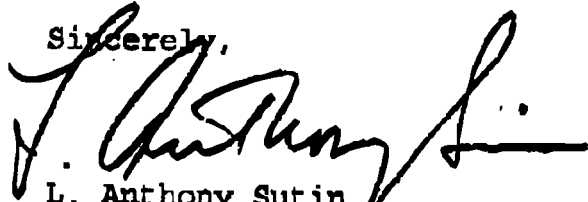
We have previously provided comments to H.R. 2070 and wish to reiterate our opposition to any legislation which would require the Bureau of Prisons to conduct forcible testing for the HIV. As we have stated previously, if an inmate refuses to submit to a test, the BOP does not want to be in a position of exposing additional staff to another possible transmission incident by forcibly testing the inmate. The BOP already has a range of sanctions available to persuade inmates to voluntarily submit to testing. Our concerns with the bill could be addressed by replacing the first occurrence of the phrase "the Attorney General shall" in section 4014(a) with the phrase "the Attorney General may." In this way, the BOP could forcibly test an inmate if to do so would not jeopardize the safety and security of others, but would not be required to do so in every circumstance regardless of the risk to staff.

We also note that this bill, like the introduced version, does not limit itself to exposure incidents which occur within a Federal correctional facility. As currently written, the subsection permits individuals to request testing for a possible transmission which may have occurred prior to the inmate's confinement. The bill also permits individuals to request

testing on Federal inmates or pre-trial offenders who are not being held in Federal facilities. The only limitation on any request is that the Attorney General does not have reason to believe the transmission did not occur. Correctional management interests are not served by requiring testing for exposure incidents which occurred outside of the offender's confinement. Likewise, we believe it would be impractical, in certain instances, to require the Attorney General to test offenders who are confined in non-Federal facilities.

Thank you for the opportunity to present our views. Please do not hesitate to call upon us if we may be of further assistance. The Office of Management and Budget has advised us that there was insufficient time to clear this letter throughout the Administration.

Sincerely,



L. Anthony Sutin
Acting Assistant Attorney General

cc: The Honorable John Conyers, Jr.
Ranking Minority Member

F:\MS\MCCOLL\MCCOLL.114

H.L.C.

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 2070
OFFERED BY MR. MCCOLLUM**

Strike all after the enacting clause and insert the
following:

1 SECTION 1. SHORT TITLE.

**2 This Act may be cited as the "Correction Officers
3 Health and Safety Act of 1998".**

4 SEC. 2. TESTING FOR HUMAN IMMUNODEFICIENCY VIRUS.

5 (a) IN GENERAL.—Chapter 301 of title 18, United
**6 States Code, is amended by adding at the end the follow-
7 ing:**

8 "§ 4014. Testing for human immunodeficiency virus

**9 "(a) If the Attorney General has reason to believe
10 that a person sentenced to a term of imprisonment for
11 a Federal offense, or ordered detained before trial under
12 section 3142(e), may have intentionally or unintentionally
13 transmitted the human immunodeficiency virus to any of-
14 ficer or employee of the United States, or to any person
15 lawfully present in a correctional facility who is not incar-
16 cerated there, the Attorney General shall, upon the re-
17 quest of the affected officer, employee, or other person,
18 cause the person who may have transmitted the virus to
19 be promptly tested for the presence of such virus and com-**

F:\M5\MCCOLL\MCCOLL.114

H.L.C.

2

1 communicate the test results as soon as practicable to the per-
2 son requesting that the test be performed and to the per-
3 son tested, if the tested person so requests. If the results
4 of the test indicate the presence of the virus, the Attorney
5 General shall provide appropriate referrals for counselling,
6 health care, and support services to the affected officer,
7 employee, or other person.

8 “(b) Not later than one year after the date of enact-
9 ment of this section, the Attorney General shall make
10 rules to implement this section. Such rules shall require
11 that the results of any test are communicated only to the
12 person requesting the test and to the tested person. Such
13 rules shall also provide for procedures designed to protect
14 the privacy of the person requesting that the test be per-
15 formed and the privacy of the tested person.

16 (b) CLERICAL AMENDMENT.—The table of sections
17 at the beginning of chapter 301 of title 18, United States
18 Code, is amended by adding at the end the following new
19 item:

“4014. Testing for human immunodeficiency virus.”.

20 (c) GUIDELINES FOR STATES.—Not later than one
21 year after the date of the enactment of this Act, the Attor-
22 ney General, in consultation with the Secretary of Health
23 and Human Services, shall provide to the several States
24 proposed guidelines for the prevention, detection, and
25 treatment of incarcerated persons and correctional em-

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B.L.C.

8

- 1 ployees who have, or may be exposed to, infectious diseases
- 2 in correctional institutions.

Amend the title to read "A bill to amend title 18, United States Code, to provide for the testing of certain persons who are incarcerated or ordered detained before trial, for the presence of the human immunodeficiency virus, and for other purposes."

June 17, 1998 (12:42 p.m.)

*** TX REPORT ***

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FACSIMILE

OFFICE OF NATIONAL AIDS POLICY

EXECUTIVE OFFICE OF THE PRESIDENT

736 Jackson Place
Washington, DC 20503

Phone: (202) 456-AIDS (2437)
Fax: (202) 456-2438

TO:

PUJA

FAX NUMBER:

228-2424

FROM:

DARV

105TH CONGRESS
2D SESSION

H. R. 2070

IN THE SENATE OF THE UNITED STATES

AUGUST 31, 1998

Received; read twice and referred to the Committee on the Judiciary

AN ACT

To amend title 18, United States Code, to provide for the testing of certain persons who are incarcerated or ordered detained before trial, for the presence of the human immunodeficiency virus, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Correction Officers
3 Health and Safety Act of 1998”.

4 **SEC. 2. TESTING FOR HUMAN IMMUNODEFICIENCY VIRUS.**

5 (a) IN GENERAL.—Chapter 301 of title 18, United
6 States Code, is amended by adding at the end the follow-
7 ing:

8 **“§ 4014. Testing for human immunodeficiency virus**

9 “(a) The Attorney General shall cause each individual
10 convicted of a Federal offense who is sentenced to incar-
11 ceration for a period of 6 months or more to be tested
12 for the presence of the human immunodeficiency virus not
13 earlier than 3 nor later than 4 months after the com-
14 mencement of that incarceration.

15 “(b) If the Attorney General has a well founded rea-
16 son to believe that a person sentenced to a term of impris-
17 onment for a Federal offense, or ordered detained before
18 trial under section 3142(e), may have intentionally or un-
19 intentionally transmitted the human immunodeficiency
20 virus to any officer or employee of the United States, or
21 to any person lawfully present in a correctional facility
22 who is not incarcerated there, the Attorney General shall,
23 upon the request of the affected officer, employee, or other
24 person, cause the person who may have transmitted the
25 virus to be promptly tested for the presence of such virus
26 and communicate the test results as soon as practicable

1 to the person requesting that the test be performed and
2 to the person tested, if person tested so requests.

3 “(c) If the results of the test indicate the presence
4 of the virus, the Attorney General shall provide appro-
5 priate access for counselling, health care, and support
6 services to the affected officer, employee, or other person,
7 and the person tested.

8 “(d) The results of a test under this section are inad-
9 missible against the person tested in any Federal or State
10 civil or criminal case or proceeding.

11 “(e) Not later than 1 year after the date of enactment
12 of this section, the Attorney General shall make rules to
13 implement this section. Such rules shall require that the
14 results of any test are communicated only to a person re-
15 questing the test, to the person tested, and, if the results
16 of the test indicate the presence of the virus, to the chief
17 administrative officer of the correctional facility in which
18 the person tested is imprisoned or detained. Such rules
19 shall also provide for procedures designed to protect the
20 privacy of a person requesting that the test be performed
21 and the privacy of the person tested.”.

22 (b) CLERICAL AMENDMENT.—The table of sections
23 at the beginning of chapter 301 of title 18, United States
24 Code, is amended by adding at the end the following new
25 item:

“4014. Testing for human immunodeficiency virus.”.

1 (c) GUIDELINES FOR STATES.—Not later than 1 year
2 after the date of the enactment of this Act, the Attorney
3 General, in consultation with the Secretary of Health and
4 Human Services, shall provide to the several States pro-
5 posed guidelines for the prevention, detection, and treat-
6 ment of incarcerated persons and correctional employees
7 who have, or may be exposed to, infectious diseases in cor-
8 rectional institutions.

Passed the House of Representatives August 3,
1998.

Attest:

ROBIN H. CARLE,
Clerk.

Bill Summary & Status for the 105th Congress

[NEW SEARCH](#) | [HOME](#) | [HELP](#) | [ABOUT STATUS](#)

H.R.2070**SPONSOR:** Rep Solomon (introduced 06/25/97)

STATUS: Detailed Legislative Status

House Actions**Jun 25, 97:**

Referred to the House Committee on the Judiciary.

Jul 1, 97:

Referred to the Subcommittee on Crime.

Mar 26, 98:

Subcommittee Hearings Held.

May 7, 98:

Subcommittee Consideration and Mark-up Session Held.

May 7, 98:

Forwarded by Subcommittee to Full Committee (Amended) by Voice Vote.

Jul 21, 98:

Committee Consideration and Mark-up Session Held.

Jul 21, 98:

Ordered to be Reported (Amended) by Voice Vote.

Jul 31, 98:Reported to House (Amended) by House Committee on Judiciary. H. Rept. 105-665.**Jul 31, 98:**

Placed on the Union Calendar, Calendar No. 372.

Aug 3, 98:

Called up by House under suspension of the rules.

Passed House (Amended) by voice vote.

Senate Actions**Aug 31, 98:**

Received in the Senate and read twice and referred to the Committee on Judiciary.

CORRECTION OFFICERS HEALTH AND SAFETY ACT OF 1998

JULY 31, 1998.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. MCCOLLUM, from the Committee on the Judiciary,
submitted the following

R E P O R T

[To accompany H.R. 2070]

The Committee on the Judiciary, to whom was referred the bill (H.R. 2070) to amend title 18, United States Code, to provide for the mandatory testing for serious transmissible diseases of incarcerated persons whose bodily fluids come into contact with corrections personnel and notice to those personnel of the results of the tests, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

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The amendments are as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Correction Officers Health and Safety Act of 1998".

SEC. 2. TESTING FOR HUMAN IMMUNODEFICIENCY VIRUS.

(a) **IN GENERAL.**—Chapter 301 of title 18, United States Code, is amended by adding at the end the following:

“§ 4014. Testing for human immunodeficiency virus

“(a) The Attorney General shall cause each individual convicted of a Federal offense who is sentenced to incarceration for a period of 6 months or more to be tested for the presence of the human immunodeficiency virus not earlier than 3 nor later than 4 months after the commencement of that incarceration.

“(b) If the Attorney General has a well founded reason to believe that a person sentenced to a term of imprisonment for a Federal offense, or ordered detained before trial under section 3142(e), may have intentionally or unintentionally transmitted the human immunodeficiency virus to any officer or employee of the United States, or to any person lawfully present in a correctional facility who is not incarcerated there, the Attorney General shall, upon the request of the affected officer, employee, or other person, cause the person who may have transmitted the virus to be promptly tested for the presence of such virus and communicate the test results as soon as practicable to the person requesting that the test be performed and to the person tested, if person tested so requests.

“(c) If the results of the test indicate the presence of the virus, the Attorney General shall provide appropriate access for counselling, health care, and support services to the affected officer, employee, or other person, and the person tested.

“(d) The results of a test under this section are inadmissible against the person tested in any Federal or State civil or criminal case or proceeding.

“(e) Not later than one year after the date of enactment of this section, the Attorney General shall make rules to implement this section. Such rules shall require that the results of any test are communicated only to a person requesting the test, to the person tested, and, if the results of the test indicate the presence of the virus, to the chief administrative officer of the correctional facility in which the person tested is imprisoned or detained. Such rules shall also provide for procedures designed to protect the privacy of a person requesting that the test be performed and the privacy of the person tested.”

(b) **CLERICAL AMENDMENT.**—The table of sections at the beginning of chapter 301 of title 18, United States Code, is amended by adding at the end the following new item:

“4014. Testing for human immunodeficiency virus.”

(c) **GUIDELINES FOR STATES.**—Not later than one year after the date of the enactment of this Act, the Attorney General, in consultation with the Secretary of Health and Human Services, shall provide to the several States proposed guidelines for the prevention, detection, and treatment of incarcerated persons and correctional employees who have, or may be exposed to, infectious diseases in correctional institutions.

Amend the title so as to read:

A bill to amend title 18, United States Code, to provide for the testing of certain persons who are incarcerated or ordered detained before trial, for the presence of the human immunodeficiency virus, and for other purposes.

PURPOSE AND SUMMARY

H.R. 2070, the Corrections Officers Health and Safety Act, is intended to protect corrections officers and others who work with incarcerated persons from exposure to the human immunodeficiency virus, commonly known as the HIV virus, which causes the disease known as acquired immune deficiency syndrome or AIDS. This bill requires the testing of all persons convicted of a federal offense and sentenced to a period of incarceration of six months or more within a specific period of time after that incarceration has begun.

The bill also requires the testing of any inmate incarcerated in the federal prison system, or any person who has been ordered detained before trial, when there is reason to believe that the person may have intentionally or unintentionally transmitted the HIV virus to any Federal government employee or other person lawfully

present in a federal correctional facility. Under the bill, whenever an incident occurs that, under guidelines developed by the Attorney General in conjunction with Secretary of Health and Human Services, it is possible that an inmate or detained person could have transmitted the HIV virus, the exposed person may request that the inmate or detained person involved be tested for the virus. The bill then requires that the test results be communicated directly to the person requesting the test be performed.

The bill also authorizes the test results be given to the person tested, if that person requests. If the test is positive, the results are also to be communicated to the chief administrative officer, usually the warden, of the correctional facility in which the person tested is imprisoned or detained. Further, the bill requires that guidelines be developed to protect the privacy of the person requesting the test and the person tested.

The bill also requires the Attorney General to develop model guidelines for states to follow to prevent, detect, and treat infectious diseases in correctional facilities. The Attorney General is to distribute these guidelines to the States so that they can use them when developing their own procedures for managing diseases in correctional settings.

BACKGROUND AND NEED FOR THE LEGISLATION

The need for this legislation is simple. Drugs have now been developed which can prevent the transmission of the HIV virus after exposure to someone who carries the virus. The drugs are effective in preventing transmission approximately 80 per cent of the time. However, for optimal effect, the drugs must be administered within one to two hours after exposure and no later than 24 to 36 hours after exposure. Also, these drugs cause extremely unpleasant side effects in most persons. If a corrections officer comes in contact with the blood of a inmate, knowing the HIV status of the inmate will enable the officer and his or her doctor to make a more informed decision as to whether to undergo this course of treatment. Unfortunately, some inmates refuse to be tested when corrections officials request. This bill will require that they be tested.

HEARINGS

The Committee's Subcommittee on Crime held one day of hearings on H.R. 2070 on March 26, 1998. Testimony was received from four witnesses, representing three organizations, with no additional material submitted.

COMMITTEE CONSIDERATION

On May 7, 1998, the Subcommittee on Crime met in open session and ordered favorably reported the bill H.R. 2070, as amended, by voice vote, a quorum being present. On July 21, 1998, the Committee met in open session and ordered favorably reported the bill H.R. 2070, with amendment, by voice vote, a quorum being present.

VOTE OF THE COMMITTEE

Mr. Watt offered an amendment that would have deleted that portion of the bill which allows corrections officers and other persons to require an inmate or detained person to be tested for the HIV virus following an incident during which the HIV virus could have been transmitted. The amendment would have placed the decision to test an inmate or detained person solely with the Attorney General. The amendment was defeated by a roll call vote of 5 to 20.

AYES

Mr. Conyers
Mr. Scott
Mr. Watt
Ms. Jackson Lee
Ms. Waters

NAYS

Mr. Hyde
Mr. McCollum
Mr. Gekas
Mr. Coble
Mr. Smith
Mr. Canady
Mr. Goodlatte
Mr. Buyer
Mr. Chabot
Mr. Barr
Mr. Jenkins
Mr. Hutchinson
Mr. Pease
Mr. Rogan
Ms. Bono
Mr. Frank
Mr. Delahunt
Mr. Rothman
Mr. Bryant
Mr. Inglis

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT FINDINGS

No findings or recommendations of the Committee on Government Reform and Oversight were received as referred to in clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 2(l)(3)(B) of House Rule XI is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

COMMITTEE COST ESTIMATE

In compliance with clause 7(a) of rule XIII of the Rules of the House of Representatives, the Committee believes that the cost incurred in carrying out H.R. 2070 would be no more than \$400,000 per year.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to rule XI, clause 2(1)(4) of the Rules of the House of Representatives, the Committee finds the authority for this legislation in Article I, section 8 of the Constitution.

SECTION-BY-SECTION ANALYSIS

Sec. 1. Short title

Section 1 states the short title of the bill as the "Corrections Officers Health and Safety Act of 1998."

Sec. 2. Testing for human immunodeficiency virus

This section adds new section 4014 to title 18 of the United States Code to provide for the testing of certain persons who are incarcerated or ordered detained before trial for the presence of the human immunodeficiency virus, more commonly referred to as the HIV virus. New section 4014 contains five subsections.

Subsection (a) of new section 4014 requires the Attorney General to test all persons convicted of a federal offense and sentenced to a period of incarceration of six months or more for the presence of the HIV virus. This provision applies regardless of whether the incarcerated person is incarcerated in a federal facility or in a state or privately operated facility under contract with the Federal government. The test is to be administered after a person has been incarcerated for at least three months and before the person has been incarcerated for four months. The purpose of this provision is to help ensure that the test will detect the presence of the virus in a person who contracted the virus immediately prior to their incarceration. The Committee has been informed that existing tests will not reliably detect the virus until after three months following contraction.

Subsection (b) provides that, in certain circumstances, an officer or employee of the Federal government may request that a person imprisoned for a federal offense, or a person who has been ordered detained pending trial for a federal offense pursuant to 18 U.S.C. § 3142(e), be tested for the HIV virus. The circumstances under which such a test may be requested are to be specified by the Attorney General through the issuance of regulations to implement section 4014. Generally speaking, however, the Committee expects the Attorney General to allow these tests to be requested in situations where the officer or employee was exposed to the bodily fluids of an incarcerated or detained person in such a manner that transmission of the virus to the officer or employee could have occurred had the incarcerated or detained person been infected. The Committee expects that the Attorney General will consult with the Secretary of Health and Human Services in developing these regulations.

In such a situation, the officer or employee may request that the incarcerated or detained person be tested for the HIV virus. The bill requires that the test be performed promptly. The Committee expects that the test would be administered immediately and, barring extreme circumstances, no later than 48 hours from the time the request is made. The test results are to be communicated as soon as practicable to the person requesting the test. If the person tested requests, the test results are to be communicated to them as well.

In addition to officers and employees of the United States, other persons who were lawfully present in a correctional facility and who were involved in an incident as described in the regulations promulgated by the Attorney General may also request that the inmate or detained person involved be tested. This provision is designed to benefit state and local law enforcement officials who might be present in a federal facility as well as visitors to the facility. This provision does not apply to inmates or persons detained in a facility while awaiting trial.

In some cases, a person required to be tested under this bill may be incarcerated or detained in a state or privately operated facility. In such a case, the person may be tested by state officials pursuant to an agreement with the Federal government which may be, but need not be, the contract under which the inmate or detained person is housed in the non-Federal facility. If no such arrangement has or can be made, the Committee expects that the Attorney General will cause the person to be tested by Bureau of Prisons or Public Health Service employees in the non-federal facility or will transport the person to a federal facility and test them there.

Subsection (c) of new section 4014 requires that in the event a test is positive, the Attorney General is to provide appropriate access for counseling, health care, and support services to the affected officer, employee, or other person, and the person tested. In the case of incarcerated or detained persons, the Committee expects that the Attorney General will provide appropriate health care, including medical and psychological care, to the inmate either through Bureau of Prisons and Public Health Service employees, or through contractual arrangements with civilian health care providers. In the case of officers and employees of the Federal government, the Committee expects that the Attorney General will make available health care to augment, if needed, care that the officer or employee receives through their own private health care providers. In the case of other persons to whom the statute relates, the Attorney General is to provide information about national hotlines, health care referral centers, and other sources of information concerning treatment for HIV and AIDS.

The Committee further expects that when a person who has tested positive for the HIV virus is released from incarceration or, in the event a person ordered detained before trial is released from that detention, the person will be provided with information concerning counseling, health care, and support services that are available to them with respect to HIV and AIDS. The Committee does not expect Bureau of Prisons personnel to attempt to elicit from the person tested information concerning where they plan to reside upon release in order to provide the names of health care

providers in that location. It is sufficient that the Bureau of Prisons provides information about national hotlines, health care referral centers, and other sources of information concerning treatment for HIV and AIDS. The Committee also encourages the Attorney General to provide such information to any government officer and employee, at the time their employment with the government ends, if they have contracted the virus through contact with inmates or detained persons.

Subsection (d) of section 4014 provides that the results of a test under this section are inadmissible against the person tested in any Federal or State civil or criminal case or proceeding. The purpose of this subsection is to ensure that section 4014 is used solely to help government employees and others know if they have been exposed to the HIV virus so that appropriate treatment may be quickly obtained. While the results of a test obtained under this section are inadmissible in a Federal or State civil or criminal case or proceeding, nothing in this bill prevents the court in such a case from ordering a separate test, provided it is otherwise appropriate under applicable law, and procedural and evidentiary rules.

Subsection (e) of new section 4014 requires the Attorney General to make rules to implement section 4014. As part of the rules, the Attorney General is required to provide for procedures designed to protect the privacy of the person requesting a test and the person tested under this section, and also limiting the dissemination of the test results to only those persons specified in the bill.

Subsection (b) of the bill makes a clerical amendment to the table of sections in title 18 of the United States Code.

Subsection (c) of the bill requires the Attorney General to develop guidelines for the prevention, detection, and treatment of incarcerated persons and correctional employees who have, or may be exposed to, infectious diseases in correctional institutions. The guidelines are then to be provided to the States for their use in developing policies to manage these diseases in correctional settings. The Committee intends for these guidelines to address not only HIV and AIDS, but tuberculosis, Hepatitis B, and Hepatitis C, and any other disease that the Attorney General deems appropriate to be included in the guidelines. In developing the guidelines, the Attorney General is to consult with the Secretary of Health and Human Services. It is the Committee's understanding that the Attorney General will direct the Bureau of Prisons and the Public Health Service to develop these guidelines, and that they will consider the guidance on these issues developed by the Centers for Disease Control and the Occupational Safety and Health Administration. The Committee encourages the Attorney General to also consult with non-governmental organizations which may have developed expertise in this area, such as the National Commission on Correctional Health Care.

AGENCY VIEWS

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF LEGISLATIVE AFFAIRS,
Washington, DC, June 22, 1998.

Hon. HENRY HYDE,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: This letter presents the views of the Department of Justice on the substitute amendment offered by Rep. McCollum to H.R. 2070, the "Correction Officers Health and Safety Act of 1997." Rep. McCollum's amendment to H.R. 2070 would require the Attorney General to test Federal inmates and Federal pre-trial offenders for the human immunodeficiency virus (HIV) at the request of a Federal employee or other person, if the Attorney General believes that the inmate or offender may have transmitted the virus to the individual. It also provides for the disclosure of the test results to the requester.

We have previously provided comments to H.R. 2070 and wish to reiterate our opposition to any legislation which would require the Bureau of Prisons to conduct forcible testing for the HIV. As we have stated previously, if an inmate refuses to submit to a test, the BOP does not want to be in a position of exposing additional staff to another possible transmission incident by forcibly testing the inmate. The BOP already has a range of sanctions available to persuade inmates to voluntarily submit to testing. Our concerns with the bill could be addressed by replacing the first occurrence of the phrase "the Attorney General shall" in section 4014(a) with the phrase "the Attorney General may." In this way, the BOP could forcibly test an inmate if to do so would not jeopardize the safety and security of others, but would not be required to do so in every circumstance regardless of the risk to staff.

We also note that this bill, like the introduced version, does not limit itself to exposure incidents which occur within a Federal correctional facility. As currently written, the subsection permits individuals to request testing for a possible transmission which may have occurred prior to the inmate's confinement. The bill also permits individuals to request testing on Federal inmates or pre-trial offenders who are not being held in Federal facilities. The only limitation on any request is that the Attorney General does not have reason to believe the transmission did not occur. Correctional management interests are not served by requiring testing for exposure incidents which occurred outside of the offender's confinement. Likewise, we believe it would be impractical, in certain instances, to require the Attorney General to test offenders who are confined in non-Federal facilities.

Thank you for the opportunity to present our views. Please do not hesitate to call upon us if we may be of further assistance. The Office of Management and Budget has advised us that there was insufficient time to clear this letter throughout the Administration.

Sincerely,

L. ANTHONY SUTIN,
Acting Assistant Attorney General.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italic and existing law in which no change is proposed is shown in roman):

TITLE 18, UNITED STATES CODE

* * * * *

PART III—PRISONS AND PRISONERS

* * * * *

CHAPTER 301—GENERAL PROVISIONS

Sec.

4001. Limitation on detention; control of prisons.

* * * * *

4014. *Testing for human immunodeficiency virus.*

* * * * *

§ 4014. *Testing for human immunodeficiency virus*

(a) *The Attorney General shall cause each individual convicted of a Federal offense who is sentenced to incarceration for a period of 6 months or more to be tested for the presence of the human immunodeficiency virus not earlier than 3 nor later than 4 months after the commencement of that incarceration.*

(b) *If the Attorney General has a well founded reason to believe that a person sentenced to a term of imprisonment for a Federal offense, or ordered detained before trial under section 3142(e), may have intentionally or unintentionally transmitted the human immunodeficiency virus to any officer or employee of the United States, or to any person lawfully present in a correctional facility who is not incarcerated there, the Attorney General shall, upon the request of the affected officer, employee, or other person, cause the person who may have transmitted the virus to be promptly tested for the presence of such virus and communicate the test results as soon as practicable to the person requesting that the test be performed and to the person tested, if person tested so requests.*

(c) *If the results of the test indicate the presence of the virus, the Attorney General shall provide appropriate access for counselling, health care, and support services to the affected officer, employee, or other person, and the person tested.*

(d) *The results of a test under this section are inadmissible against the person tested in any Federal or State civil or criminal case or proceeding.*

(e) *Not later than one year after the date of enactment of this section, the Attorney General shall make rules to implement this section. Such rules shall require that the results of any test are communicated only to a person requesting the test, to the person tested, and, if the results of the test indicate the presence of the virus, to the chief administrative officer of the correctional facility in which the person tested is imprisoned or detained. Such rules shall also*

provide for procedures designed to protect the privacy of a person requesting that the test be performed and the privacy of the person tested.

* * * * *



Total Pages: 6

LRM ID: REJ553

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Friday, July 31, 1998

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below

FROM: Ronald E. Jones (for) Assistant Director for Legislative Reference *Rj*

OMB CONTACT: Ronald E. Jones

PHONE: (202)395-3386 FAX: (202)395-3109

SUBJECT: Statement of Administration Policy on HR2070 Correction Officers Health and Safety Act

DEADLINE:

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

August 3rd

COMMENTS: HR 2070 is on the House suspension calendar for Monday. A copy of the substitute amendment approved by the House Judiciary Committee is attached.

DISTRIBUTION LISTAGENCIES:

61-JUSTICE - L. Anthony Sutin - (202) 514-2141
52-HHS - Sondra S. Wallace - (202) 690-7760
89-Office of National Drug Control Policy - John Carnevale - (202) 395-6736
95-Office of Science and Technology Policy - Jeff Smith - (202) 456-6047

EOP:

Peter G. Jacoby
Jose Cerda III
Leanne A. Shimabukuro
Christopher C. Jennings
Todd A. Summers
Kate P. Donovan
Elizabeth Gore
James J. Jukes
Richard J. Turman
Kevin P. Cichetti
Chin-Chin Ip
David J. Haun
Steven M. Mertens
Victoria Wassmer

RESPONSE TO LEGISLATIVE REFERRAL MEMORANDUM

_____ **Concur**

_____ **No Objection**

_____ **No Comment**

_____ **See proposed edits on pages** _____

_____ **Other:** _____

FAX RETURN of _____ pages, attached to this response sheet

DRAFT -- NOT FOR CIRCULATION

**July 31, 1998
(House)**

H.R. 2070 - Correction Officers Health and Safety Act of 1997
(Solomon (R) New York and 21 cosponsors)

The Administration strongly opposes H.R. 2070, which could require the Bureau of Prisons (BOP) to conduct forcible testing of prisoners for HIV if it receives a request from a person who believes the prisoner may have exposed the person to the virus. Forcibly testing an inmate who refuses to be tested voluntarily could unnecessarily expose additional BOP staff to the virus, and the BOP already has sanctions available to persuade inmates to submit to testing voluntarily.

* * * * *

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H.L.C.

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 2070
OFFERED BY MR. MCCOLLUM**

Strike all after the enacting clause and insert the
following:

1 SECTION 1. SHORT TITLE.

**2 This Act may be cited as the "Correction Officers
3 Health and Safety Act of 1998".**

4 SEC. 2. TESTING FOR HUMAN IMMUNODEFICIENCY VIRUS.

5 (a) IN GENERAL.—Chapter 301 of title 18, United
**6 States Code, is amended by adding at the end the follow-
7 ing:**

8 "§ 4014. Testing for human immunodeficiency virus

**9 "(a) If the Attorney General has reason to believe
10 that a person sentenced to a term of imprisonment for
11 a Federal offense, or ordered detained before trial under
12 section 3142(e), may have intentionally or unintentionally
13 transmitted the human immunodeficiency virus to any of-
14 ficer or employee of the United States, or to any person
15 lawfully present in a correctional facility who is not incar-
16 cerated there, the Attorney General shall, upon the re-
17 quest of the affected officer, employee, or other person,
18 cause the person who may have transmitted the virus to
19 be promptly tested for the presence of such virus and com-**

P:\M5\MCCOLL\MCCOLL.114

H.L.C.

2

1 municate the test results as soon as practicable to the per-
2 son requesting that the test be performed and to the per-
3 son tested, if the tested person so requests. If the results
4 of the test indicate the presence of the virus, the Attorney
5 General shall provide appropriate referrals for counselling,
6 health care, and support services to the affected officer,
7 employee, or other person.

8 “(b) Not later than one year after the date of enact-
9 ment of this section, the Attorney General shall make
10 rules to implement this section. Such rules shall require
11 that the results of any test are communicated only to the
12 person requesting the test and to the tested person. Such
13 rules shall also provide for procedures designed to protect
14 the privacy of the person requesting that the test be per-
15 formed and the privacy of the tested person.

16 (b) CLERICAL AMENDMENT.—The table of sections
17 at the beginning of chapter 301 of title 18, United States
18 Code, is amended by adding at the end the following new
19 item:

“4014. Testing for human immunodeficiency virus.”.

20 (c) GUIDELINES FOR STATES.—Not later than one
21 year after the date of the enactment of this Act, the Attor-
22 ney General, in consultation with the Secretary of Health
23 and Human Services, shall provide to the several States
24 proposed guidelines for the prevention, detection, and
25 treatment of incarcerated persons and correctional em-

LRM ID: REJ456
Safety Act

SUBJECT: JUSTICE Report on HR2070 Correction Officers Health and

**RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM**

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:

(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or

(2) sending us a memo or letter

Please include the LRM number shown above, and the subject shown below.

TO: Ronald E. Jones Phone: 395-3386 Fax: 395-3109
Office of Management and Budget
Branch-Wide Line (to reach legislative assistant): 395-3454

FROM: May 5, 1998 (Date)
Todd Summers (Name)
AIDS Policy (Agency)
(202) 456-2437 (Telephone)

The following is the response of our agency to your request for views on the above-captioned subject:

☒ Concur☐ No Objection☐ No Comment☐ See proposed edits on pages _____☐ Other: _____☐ FAX RETURN of _____ pages, attached to this response sheet

*Note typo (missing language) on p. 3, paragraph 2
("Third, this ...")*



U. S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

The Honorable Bill McCollum
Chairman
Subcommittee on Crime
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This letter presents the views of the Department of Justice on H.R. 2070, the "Correction Officers Health and Safety Act of 1997." H.R. 2070 would require the Attorney General to test inmates in Federal correctional facilities for certain transmissible diseases if their body fluids came into contact with correctional personnel or other persons. It also provides for the disclosure of the inmate's test results to the exposed individual. We oppose the bill.

We recognize that the sponsors are attempting to address very important public health concerns that inmates might transmit communicable diseases to correctional staff. However, we believe that existing Bureau of Prisons ("BOP") policy -- which is consistent with both Centers for Disease Control ("CDC") and Occupational Safety and Health Act ("OSHA") guidelines -- adequately addresses these concerns.

The BOP provides both staff and inmates with training, education, and counseling on disease prevention. As a matter of policy, BOP requires staff to observe universal precautions. This method of infection control requires the individual to assume that all human blood and specified human body fluids are infectious for HIV, Hepatitis B ("HBV"), and other bloodborne pathogens. Where types of body fluids cannot be differentiated, all body fluids are to be considered as potentially infectious. BOP policy also provides for engineering controls (e.g., self-sheathing needles, puncture-resistant disposal containers, and resuscitation bags), work practice controls (e.g.,

restricting eating, drinking, and applying cosmetics, and providing and requiring the use of handwashing facilities); and the use of personal protection equipment. In addition to these preventative measures, the BOP provides staff with numerous testing services.

Staff members are provided with the Hepatitis B vaccine and vaccination series, as well as all medical evaluations and follow-up, at no cost to employees. All prospective employees at BOP institutions receive a Mantoux ("PPD") tuberculin skin test (or a chest x-ray if clinically indicated) as a condition of employment. All employees at BOP institutions also are offered a yearly PPD skin test or chest x-ray.

When an exposure incident occurs, employees who feel they have been exposed to hazardous blood and body fluids while on duty are required to report this exposure to their supervisor and the medical department. If the institution physician determines that possible exposure occurred, HIV as well as HBV testing and pre- and post-test counseling are offered to the employees. Retesting also is offered to the employees if the institution's clinical director deems it necessary. The institution absorbs all costs associated with this program. These employees may seek medical care from their private physicians and may pursue reimbursement for other medical care through worker's compensation. Any release of information concerning an exposure incident, including the source individual's medical condition, is done in accordance with the Freedom of Information Act and the Privacy Act. No party to whom confidential medical information regarding another individual is communicated may share this information by any means with any other person.

As the above discussion shows, the BOP views infectious disease management and prevention very seriously and takes steps to ensure that the risks of infection for staff are reduced as much as possible. Consequently, we do not believe that the legislation is necessary and we oppose it. Our additional concerns are outlined below.

Section 1. Short Title: The title of the bill is the "Correction Officers Health and Safety Act of 1997." However, as currently drafted, the scope of individuals who may request testing under the bill includes not only Federal employees, but any person who may have come in contact with the inmate at any time (contract personnel, visitors, family members, volunteers, etc.).

Section 2. Testing for Transmissible Disease: Proposed section 4014(a) of the bill would require the BOP to test an inmate if the inmate's "bodily fluids" came into contact with a Federal employee or any non-incarcerated person. First, we note that the bill does not contain any specific provisions concerning follow-up tests. In certain instances, six- and twelve-month follow-up

tests should occur after the initial test. See e.g., 42 U.S.C. § 14011(b)(3) (providing for HIV testing of criminal defendants).

Second, this subsection provides that a test will occur if any requesting individual indicates that he or she has had contact with an inmate's bodily fluids. We do not believe that testing should occur unless medical staff have determined that there has been possible exposure.

Third, this subsection contains does not limit further disclosures of sensitive information relating to test results. The individual who received this information would be able to make further disclosures to other individuals, notwithstanding those individual's "need to know." Cf. 42 U.S.C. § 14011(b)(5) (restricting disclosures of certain medical test results).

Proposed section 4014(b) does not define the term "bodily fluids."¹ Additionally, the word "tuberculosis" should not be included in the list of "serious transmissible diseases" in this subsection. Tuberculosis is transmitted via airborne pathogens and thus, its inclusion in the list is inconsistent with the intent of the proposed legislation to protect against disease transmission via body fluids.

Proposed section 4014⁶ should be deleted. This subsection would require the creation of national transmissible disease testing guidelines. Such guidelines already have been created by the CDC and BOP has adopted these guidelines as its own.

As a final and important matter, the legislation does not indicate what should happen if an inmate refuses to be tested. Forcibly testing a resisting inmate might expose additional staff to yet another possible transmission incident. This is particularly true when, as mentioned earlier, anyone who has come in contact with the inmate potentially could request a test. The legislation does not permit the BOP to forego forcibly testing an inmate if to do so would jeopardize the safety and security of others.

Thank you for the opportunity to present our views. Please do not hesitate to call upon us if we may be of further assistance. The Office of Management and Budget has advised us

¹CF. CDC guidelines, defining "infectious bodily fluids" to include: blood, semen, and vaginal secretions; cerebrospinal, synovial, pleural, peritoneal, pericardial, and amniotic fluids; or body substances visibly contaminated with blood.

that from the perspective of the Administration's program, there is no objection to submission of this letter.

Sincerely,

Ann M. Harkins
Acting Assistant Attorney General

cc: The Honorable Charles E. Schumer
Ranking Minority Member

105TH CONGRESS
1ST SESSION

H. R. 2070

To amend title 18, United States Code, to provide for the mandatory testing for serious transmissible diseases of incarcerated persons whose bodily fluids come into contact with corrections personnel and notice to those personnel of the results of the tests, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 25, 1997

Mr. SOLOMON (for himself and Mr. CONDIT) introduced the following bill;
which was referred to the Committee on the Judiciary

A BILL

To amend title 18, United States Code, to provide for the mandatory testing for serious transmissible diseases of incarcerated persons whose bodily fluids come into contact with corrections personnel and notice to those personnel of the results of the tests, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Correction Officers
5 Health and Safety Act of 1997".

1 SEC. 2. TESTING FOR TRANSMISSIBLE DISEASE OF CER-
2 TAIN INCARCERATED PERSONS.

3 (a) IN GENERAL.—Chapter 301 of title 18, United
4 States Code, is amended by adding at the end the follow-
5 ing:

6 “§ 4014. Testing for transmissible disease

7 “(a) If the bodily fluids, of a person who is incarcer-
8 ated in a Federal correctional facility, that are capable of
9 causing a serious transmissible disease come into contact
10 with any officer or employee of the United States or any
11 other person not so incarcerated, the Attorney General
12 shall, under such rules as the Attorney General makes to
13 carry out this section, cause the incarcerated person to
14 be tested for those diseases and promptly communicate in
15 writing the results of the tests to the person with whom
16 such fluids came into contact. If any such tests indicate
17 that such a disease might have been transmitted, the At-
18 torney General shall make appropriate referrals for coun-
19 seling and health care and support services.

20 “(b) As used in this section, the term ‘serious trans-
21 missible disease’ means the human immunodeficiency
22 virus (HIV) or any of its derivatives, hepatitis and any
23 of its derivatives, tuberculosis, and any other serious ill-
24 ness which an exposed person might reasonably expect to
25 contract from the contact.”.

3

1 (b) CLERICAL AMENDMENT.—The table of sections
2 at the beginning of chapter 301 of title 18, United States
3 Code, is amended by adding at the end the following:

"4014. Testing for transmissible disease."

4 (c) Not later than one year after the date of the en-
5 actment of this section, the Attorney General, in consulta-
6 tion with the Corrections and Criminal Justice Coalition,
7 shall make voluntary national guidelines for testing for se-
8 rious transmissible diseases of incarcerated persons whose
9 bodily fluids come into contact with corrections personnel
10 or other persons and for the provision of notice to persons
11 with whom those bodily fluids came into contact of the
12 results of such tests.

O

Total Pages: 9

LRM ID: REJ456

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Monday, May 4, 1998

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below

FROM: James J. Jukes (for) Assistant Director for Legislative Reference *Gaymon*

OMB CONTACT: Ronald E. Jones

PHONE: (202)395-3386 FAX: (202)395-3109

SUBJECT: JUSTICE Report on HR2070 Correction Officers Health and Safety Act

DEADLINE: 4:00 PM Tomorrow Tuesday, May 5, 1998

In accordance with OMB Circular A-19, ~~OMB requests the views of your agency on the above~~ subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: Justice reports HR 2070, copy attached, may be marked-up on Wednesday.

DISTRIBUTION LIST

AGENCIES:

52-HHS - Sondra S. Wallace - (202) 690-7760
89-Office of National Drug Control Policy - John Carnevale - (202) 395-6736
95-Office of Science and Technology Policy - Jeff Smith - (202) 456-6047

EOP:

Peter G. Jacoby
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James C. Murr
Richard J. Turman
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Victoria Wassmer
Bob Pellicci

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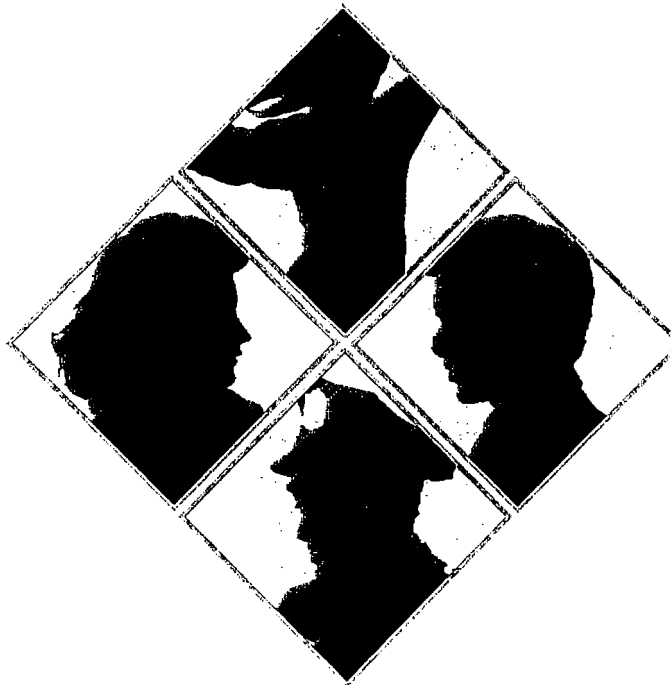
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1998 Monthly Action Kit

Keeping Kids in School:

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