

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(1)(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(1)(3)(D) of rule XI of the Rules of the House of Representatives.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 2(1)(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(l)(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

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PART III—PRISONS AND PRISONERS

* * * * *

CHAPTER 301—GENERAL PROVISIONS

Sec.

4001. Limitation on detention; control of prisons.

* * * * *

4014. *Testing for human immunodeficiency virus.*

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§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.

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