

MINUTES OF THE HOUSE COMMITTEE ON FEDERAL AND STATE AFFAIRS.

The meeting was called to order by Chairperson Clyde Graeber at 1:30 p.m. on February 10, 1993 in Room 526-S of the Capitol.

All members were present except: Representative Robert Krehbiel, Excused
Representative Rand Rock, Excused

Committee staff present: Mary Galligan, Legislative Research Department
Lynne Holt, Legislative Research Department
Mary Ann Torrence, Revisor of Statutes
June Evans, Committee Secretary

Conferees appearing before the committee: Dr. Donna Sweet, K.U. Medical Center, Wichita Branch
W. Robert Alderson, Casey's General Store
Secretary Gary Stotts, Department of Corrections
Representative Kenny Wilk
Deputy Secretary Ray Roberts
Darby White, Corrections Officer I, Lansing
Lyle Smith, Corrections Officer I, Hutchinson
Lt. Sam Grant, Kansas Highway Patrol
Andrew Pelletier, M.D., Department of Health and Environment

Others attending: See attached list

W. Robert Alderson, Casey's General Store, requested a committee bill redefining beer and cereal malt beverage of 5% or less alcohol by weight be sold in locations that are currently selling malt beverage.

Representative Lahti moved and Representative Smith seconded to accept the request as a committee bill. The motion carried.

Secretary Gary Stotts, Department of Corrections, requested a committee bill establishing a Kansas criminal justice coordinating council. (See Attachment #1)

Representative Sebelius moved and Representative Cox seconded to accept the request as a committee bill. The motion carried.

The Chairman opened the hearing on HB 2152.

Representative Wilk testified in support of HB 2152, stating this bill would give the state corrections employees an avenue to pursue blood testing should they come in contact with the body fluids of an inmate through the course of normal duties. (See Attachment #2)

Dr. Donna Sweet, Kansas University Medical Center, Wichita Branch, gave a briefing and slide presentation on certain infectious diseases (HIV or hepatitis B), stating this virus is only found in fluids that contain blood or cells. Once a person is infected they are always infected and can live there without damage on the average of 8-10 years. The average incubation period from the point of entry and infection if the person becomes infected to the disease we now know as AIDS is on the average of 10 years but may range from 2-3 years to 15 plus years. Blood has to enter the blood system from the donor. Putting blood on a part of the body will not cause infection unless there is an open wound. People that have contracted the disease through work have gotten thru exposure to sharp objects, i.e., needles and knife wounds. The development for antibodies for a positive test is not immediate, the test is a test that is attached to the virus not the virus itself. It is a test for antibodies and that test may take up to six months to be positive. During that window of opportunity there may be infection and at the same time not be positive on the test. The tests can be negative and the person can actually

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON FEDERAL AND STATE AFFAIRS, Room 526-S
Statehouse, at 1:30 p.m. on February 10, 1993.

have the infection but it takes a period of time to show positive, up to six months. HIV illness is from that very first moment when one becomes infected. Aids is somebody who is sick and develops later from the HIV illness. There will be a dramatic increase in the number of cases because there has been a change in the definition of Aids.

Gary Stotts, Secretary of Corrections, testified in support of HB 2152, stating the bill would make available a means of providing information about offenders who have infectious diseases -- specifically HIV and Hepatitis B -- to those employees of the department who have been exposed during the course of their duties, to the body fluids of an offender. (See Attachment #3)

Raymond N. Roberts, Deputy Secretary, Facility Management, testified in support of HB 2152, stating that employees of the Department of Corrections are placed at substantial risk of exposure to infectious disease such as AIDS and Hepatitis B on a daily basis. (See Attachment #4)

Darby White, Corrections Officer I, Lansing, testified in support of HB 2152, stating the employees were very concerned and this bill would give them some peace of mind. The officers frequently come in contact with body fluids and it is felt testing for the infection would be helpful as it is better to know if the infection is present.

Lyle Smith, Corrections Officer I, Hutchinson, testified in support of HB 2152, stated employees at the Hutchinson Correctional Facility are also very concerned about the HIV and Hepatitis B virus and feel the employees should be tested for the disease as they are at risk on a daily basis.

Lieutenant Samuel G. Grant, Kansas Highway Patrol, stated the Kansas Highway Patrol supports HB 2152, and their primary interest are the provisions of Section 2, K.S.A. 65-6004, which permits a physician who is performing medical or surgical procedures on a patient who has an infectious disease or has had a positive reaction to an infectious disease test to disclose such information regarding a patient's medical condition to other health care providers, emergency service employees, corrections employees or law enforcement employees who have been or will be placed in contact with body fluid of such patient. (See Attachment #5)

Andrew Pelletier, M.D., Acting State Epidemiologist, Bureau of Disease Control, Department of Health and Environment, opposed HB 2152, stating it is believed that it is necessary to define what is meant by a positive reaction to an infectious disease test. The definition of an AIDS test is clearly made, but not for a hepatitis B test. Testing for hepatitis B is complicated; the only test that indicates infectivity is hepatitis B surface antigen. KDHE suggest that a positive reaction to a hepatitis B test be defined as the confirmed presence of hepatitis B surface antigen.

The second major change proposed by Dr. Pelletier in this bill is contained in section 3. This section proposes to allow mandatory testing of inmates who refuse voluntary testing following exposure of a corrections employee. The Department of Health and Environment would strongly oppose this change for a number of reasons.

The best protection any employee has with respect to bloodborne diseases such as Hepatitis B and AIDS is the use of universal precautions. The second line of defense against bloodborne disease transmission is the widespread use of the hepatitis B vaccine which is now required to be offered to employees at risk by the Occupational Safety and Health Administration. Vaccination is a safe and effective means to protect employees from infection with Hepatitis B. It is much better to vaccinate employees before an exposure occurs than to test inmates afterwards. (See Attachment #6)

It was questioned if Dr. Harder endorses this concept?

Dr. Pelletier replied that Dr. Harder does endorse this procedure.

The Chairman closed the hearing and stated final action would be taken sometime next week.

Representative Cox moved and Representative Ruff seconded approval of the minutes for January 28 and February 2, 1993.

The meeting adjourned at 3:20 PM. The next meeting will be held February 11, 1993.

Date: 2/10/93

FEDERAL and STATE AFFAIRS COMMITTEE

NAME	ORGANIZATION	ADDRESS
Donna Newbold	Women/Men For Choice	N. Newton
Steve Montgomery	Pasey's General Store	Topeka
STEVE KEARNEY	CONSTAL	TOPEKA
Jim Coder	State Fire Marshal	Topeka
Andy Hochaba		LEWEXA
Samuel Grant	KHP	Topeka
John A. Schray	KHP	Topeka
John A. Schray	self	N. Newton
Kim Silvernale	CPAAA	Newton
Neal Whitaker	Ks Beer Wholesalers Assn	Topeka
Bob McDaniels	Board of EMS	Topeka

Date: 2/10/93

FEDERAL and STATE AFFAIRS COMMITTEE

NAME	ORGANIZATION	ADDRESS
JA Ladd	KS77A	Wichita
TREVA POTTER	TOPEKA	RETAIL LIQUOR DEALERS
Cordie Poser	Seavine	heelerworth
Lyle Smith	DOC	Hutchinson
DARBY F. WHITE	KDOC - LCF	LANSING, KS.
Andrew Pelletier	KDHE	Topeka
Chip Wheelen	KS Medical Soc.	Topeka
Sharon Nally	KS Gov. Consulting	Lawrence
Carl Lusk	KDOC	Hutchinson
Angela R. Davis	KDOC	LANSING
Ray Roberts	KDOC	Topeka
David McKune	Lansing Corr. Fac.	Lansing, KS
Charles Simmons	DOC	Topeka
Jan Johnson	DOC	Topeka
RuthAnn Liebert	WAM For CHOICE	N. Newton

Proposed Legislation -- Kansas Criminal Justice Coordinating Council

- (a) There is hereby established the Kansas criminal justice coordinating council.
- (b) The council shall consist of the following members: chief justice of the supreme court, attorney general, secretary of corrections, secretary of social and rehabilitation services, chairperson of the Kansas parole board, director of the Kansas bureau of investigation, and superintendent of the Kansas highway patrol.
- (c) The council shall employ a director who shall attend all meetings of the council, be responsible for keeping a record of council meetings, prepare reports of the council and perform such other duties as directed by the council. The director shall be in the unclassified service and shall receive compensation fixed by the council and approved by the governor. The director shall appoint other staff as necessary to carry out the duties of the council, subject to available appropriations. All employees of the council other than the director shall be in the classified service. On the effective date of the act, all existing employees of the Kansas sentencing commission shall be transferred to the Kansas criminal justice coordinating council.
- (d) The council shall elect a chairperson and vice-chairperson from among members of the council.
- (e) The council shall:
 - (1) define and analyze issues and processes in the criminal justice system, identify alternative solutions, and make recommendations for improvements.
 - (2) perform such criminal justice studies or tasks as the council determines beneficial or as may be requested by the governor or legislature.
- (f) When analyzing criminal justice issues and performing criminal justice studies, the council shall form such task groups as necessary and shall appoint individuals who appropriately represent law enforcement, the judiciary, legal profession, state, local, or federal government, the public, or other professions or groups as determined by the council, to represent the various aspects of the issue being analyzed or studied. A member of the council shall serve as the chairperson of each task group appointed by the council. The council may appoint other members of the council to any task group formed by the council. Individuals

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appointed by the council to task groups shall be eligible to receive travel and per diem expenses as provided by law.

- (g) The council shall review reports submitted by each task group named by the council and shall submit the report with the council's recommendations pertaining thereto to the governor and legislature for consideration and action.
- (h) The sentencing commission established pursuant to K.S.A. 74-9101 is hereby established as a standing task group of the council and shall assume the duties and responsibilities provided in this subsection. Each member serving on the sentencing commission on the effective date of this act shall continue to serve until reappointed or replaced by the governor, which action shall occur no later than 60 days after the effective date of this act. All appointments to the sentencing commission shall be filled by appointments made by the governor and all members other than those specified by this section as members shall serve at the pleasure of the governor. Members shall be appointed to represent and balance the interests of law enforcement, prosecution, defense, the judiciary, corrections, crime victims, and the public. The chief justice of the supreme court, the attorney general, chairperson of the Kansas parole board, the secretary of corrections shall serve on the sentencing commission and one of these officials shall serve as chairperson as determined by the council. The sentencing commission shall:
 - (1) consult with and advise the legislature with reference to implementation, management, monitoring, maintenance and operations of the sentencing guidelines system;
 - (2) direct implementation of the sentencing guidelines system;
 - (3) assist in the training of judges, county and district attorneys, court services officers, state parole officers, correctional officers, law enforcement officials and other criminal justice groups. For these purposes, the sentencing commission shall develop an implementation policy and shall construct an implementation manual for use in its training activities;
 - (4) receive presentence reports and journal entries for all persons who are sentenced for crimes committed on or after the effective date of sentencing guidelines legislation to develop post-implementation monitoring procedures and reporting methods to evaluate guideline sentences. In developing the evaluative criteria, the sentencing commission shall take into consideration rational and consistent sentencing standards which reduce sentence disparity to include, but not limited to, racial and regional biases;

- (5) advise and consult with the secretary of the department of corrections concerning the relationship of sentencing guidelines with correctional resources and policies;
- (6) make recommendations to the governor and the legislature regarding the philosophy and principles underlying the state's sentencing policies and practices.

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KENNY A. WILK
REPRESENTATIVE, 42ND DISTRICT
LEAVENWORTH COUNTY
701 S. DESOTO RD.
LANSING, KANSAS 66043
(913) 727-2453
ROOM 174-W, CAPITOL BLDG.
TOPEKA, KANSAS 66612-1504
(913) 296-7655



TOPEKA

House of Representatives

COMMITTEE ASSIGNMENTS
MEMBER: EDUCATION
FEDERAL & STATE AFFAIRS
JOINT COMMITTEE ON LEGISLATIVE
EDUCATIONAL PLANNING COMMITTEE

Testimony
HB2152 Infectious Disease

Mr. Chairman and members of the committee, thank you for the opportunity to appear before you today in support HB2152. This bill would give our state of Kansas corrections employees an avenue to pursue for blood testing should they come in contact with the body fluids of an inmate through the course of normal duties. Currently, should a corrections employee be exposed to the body fluids of an inmate, unless the inmate volunteers for a blood test, the employee has no way of knowing if they have been exposed to an infectious disease. HB2152 allows for the Secretary of Corrections to make application to a court of competent jurisdiction for an order requiring an inmate to submit to an infectious disease test. Infectious disease for this bill is defined as AIDS or Hepatitis B. The Secretary of Corrections would only make this request on behalf of a corrections employee.

It's important to remember that the state employees we're talking about work with convicted criminals. This bill is modeled after KSA 22-2913, which is a statute that allows the victim of a crime the right to a blood test if bodily fluids are transmitted. KSA 22-2913 applies only to convicted criminals as does HB2152.

I won't go into all the technical details of the bill, we have expert witnesses that are much more qualified than myself to elaborate on any questions. Included in those testifying today are corrections officers who put their lives on the line each day for our protection. We don't often hear from these quiet individuals, but today we have an opportunity to recognize them by repaying in

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some small measure their devotion, and their everyday courage to Kansas. We the legislative body can do this through the favorable passage of HB2152. This is a legitimate and responsible request.

It's difficult to mentally put ourselves in the place of a corrections officer. The physical boundary of their jobs is well defined, the walls of the prison. But the emotional aspect of their duties has no boundary. I believe it's an understatement to say they operate in a high risk environment. They work with people that society has rejected and convicted through a court of law. We can't change that, but we can let them know we appreciate their service and understand their need for HB2152.

On behalf of the 3300 plus employees of corrections I would ask that you consider HB2152 favorable for passage. Mr. Chairman I would be happy to stand for questions.

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STATE OF KANSAS



DEPARTMENT OF CORRECTIONS

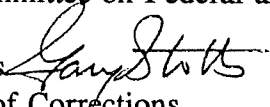
OFFICE OF THE SECRETARY

Landon State Office Building
900 S.W. Jackson—Suite 400-N
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(913) 296-3317

Joan Finney
Governor

Gary Stotts
Secretary

To: House Committee on Federal and State Affairs

From: Gary Stotts 
Secretary of Corrections

Date: February 10, 1993

Subject: House Bill 2152

HB 2152 is requested by the department to make available a means of providing information about offenders who have infectious diseases -- specifically HIV and Hepatitis B -- to those employees of the department who have been exposed during the course of their duties, to the body fluids of an offender. In providing this information it is the department's intent that it be done in a way that does not create an unacceptable breach of an offender's right to confidentiality and privacy.

Department employees are frequently placed in situations where they are exposed to an offender's bodily fluids. This exposure could result from such activities as an employee intervening in an altercation involving an inmate, in giving first aid to an inmate, and administering certain testing procedures. After an employee has been exposed to an offender's bodily fluids, the employee and his or her family naturally have apprehensions and concerns about the possibility of exposure to infectious diseases, including AIDS. Offenders as a class are considered a high risk group.

At the current time the Department of Corrections does not have the authority to cause a test to be administered, without the offender's consent, to determine if the offender has Hepatitis B, AIDS or is HIV positive. HB 2152 provides that whenever a corrections employee, while acting within the scope of his or her duties, comes into contact with or was exposed to the bodily fluids of another person, a court may, if requested by the secretary of corrections, order the person to submit to infectious disease testing. The results of the testing would then be disclosed to the employee and the person tested. Otherwise, the test results would be confidential.

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This bill also proposes amendments to K.S.A. 65-6004. This currently provides that in the event a physician knows an individual has AIDS or has had a positive reaction to an AIDS test, the physician may disclose that information to corrections officers, and others, who have been or will be placed in contact with bodily fluids of such individual. The amendment expands application to all KDOC employees (not just corrections officers), and to include Hepatitis B as well as AIDS.

An amendment to New Section 3 of HB 2152 should be made. It is our intent that the application of this section be limited to situations where a corrections employee has been exposed to the body fluids of an offender. New Section 3 is worded more broadly in that it refers to "person" rather than to offender. Accordingly, it is recommended that New Section 3 be amended by substituting the word "offender" for the word "person" and that offender be defined as "Any person who is in the legal custody of the secretary of corrections". These amendments are shown on the attachment.

Your favorable action on HB 2152, as amended as suggested above, is requested.

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Attachment

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HOUSE BILL No. 2152

By Representatives Wilk, Ruff, Dawson, Gatlin, Goodwin, Graeber,
Kejr, Mayans, Minor, Nichols, Pauls, Powers, M. Smith and
Standifer

1-28

10 AN ACT concerning certain infectious diseases; authorizing a court
11 to order tests for such diseases under certain circumstances; au-
12 thorizing disclosure of certain information; amending K.S.A. 65-
13 6001 and 65-6004 and repealing the existing sections.

14
15 *Be it enacted by the Legislature of the State of Kansas:*

16 Section 1. K.S.A. 65-6001 is hereby amended to read as follows:
17 65-6001. As used in K.S.A. 65-6001 to ~~65-6007, inclusive through~~
18 ~~65-6007 and section 3~~, and amendments thereto, unless the context
19 clearly requires otherwise:

20 (a) "AIDS" means the disease acquired immune deficiency
21 syndrome.

22 (b) "HIV" means the human immunodeficiency virus.

23 (c) "Positive reaction to an AIDS test" means a positive screening
24 test, approved by the secretary, indicating infection by HIV, with
25 a positive specific test as specified by the secretary comprising con-
26 firmed analytical results which are evidence of HIV infection.

27 (d) "Secretary" means the secretary of health and environment.

28 (e) "Physician" means any person licensed to practice medicine
29 and surgery.

30 (f) "Laboratory director" means the person responsible for the
31 professional, administrative, organizational and educational duties of
32 a laboratory.

33 (g) "HIV infection" means the presence of HIV in the body.

34 (h) "Racial/ethnic group" shall be designated as either white,
35 black, Hispanic, Asian/Pacific islander or American Indian/Alaskan
36 Native.

37 (i) "Law enforcement officer" means police officer or law
38 enforcement officer as such terms are defined under K.S.A. 74-
39 5602 and amendments thereto.

40 (j) "Corrections employee" means an employee of the department
41 of corrections.

42 (k) "Emergency services employee" means an attendant or first
43 respondent, as defined in K.S.A. 65-6112 and amendments thereto,

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1 or any firefighter.

2 (k) "Law enforcement employee" means:

3 (1) Any police officer or law enforcement officer, as defined in
4 K.S.A. 74-5602 and amendments thereto;

5 (2) any person in the service of a city police department or county
6 sheriff's office who performs law enforcement duties without pay
7 and is considered a reserve officer; or

8 (3) Any person employed by a city or county who is in charge
9 of a jail or section of jail, including jail guards and those who conduct
10 searches of persons taken into custody.

11 (l) "Infectious disease" means AIDS or hepatitis B.

12 (m) "Infectious disease tests" means tests approved by the sec-
13 retary for detection of infectious disease.

14 (n) "Body fluid" means blood, amniotic fluid, pericardial fluid,
15 pleural fluid, synovial fluid, cerebrospinal fluid, semen or vaginal
16 secretions, or any body fluid visibly contaminated with blood.

(o) "Offender" means a person in the legal custody
of the secretary of corrections.

17 Sec. 2. K.S.A. 65-6004 is hereby amended to read as follows:
18 65-6004. (a) Notwithstanding any other law to the contrary, a phy-
19 sician performing medical or surgical procedures on a patient who
20 the physician knows has ~~AIDS an infectious disease~~ or has had a
21 positive reaction to an ~~AIDS infectious disease~~ test may disclose
22 such information to other health care providers, emergency per-
23 sonnel, ~~correctional officers employed by the department of~~
24 ~~corrections or law enforcement officers services employees, cor-~~
25 ~~rections employees or law enforcement employees~~ who have been or
26 will be placed in contact with ~~bodily fluids~~ body fluid of such
27 patient. The information shall be confidential and shall not be dis-
28 closed by such health care providers, emergency personnel, ~~cor-~~
29 ~~rectional officers employed by the department of corrections~~
30 ~~or law enforcement officers services employees, corrections em-~~
31 ~~ployees or law enforcement employees~~ except as may be necessary
32 in providing treatment for such patient.

33 (b) Notwithstanding any other law to the contrary, a physician
34 who has reason to believe that the spouse or partner of a person
35 who has had a positive reaction to an ~~AIDS infectious disease~~ test
36 or who has ~~AIDS an infectious disease~~ may have been exposed to
37 ~~HIV the infectious disease~~ and is unaware of such exposure may
38 inform the spouse or partner of the risk of exposure. The information
39 shall be confidential and shall not be disclosed by such spouse or
40 partner to other persons except to the spouse or partner who has
41 had a positive reaction to an ~~AIDS infectious disease~~ test or who
42 has ~~AIDS an infectious disease~~.

43 (c) Nothing in this section shall be construed to create a duty to

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1 warn any person of possible exposure to ~~HIV~~ *an infectious disease*.
2 (d) Any physician who discloses information in accordance with
3 the provisions of this section in good faith and without malice shall
4 have immunity from any liability, civil or criminal, that might oth-
5 erwise be incurred or imposed in an action resulting from such
6 disclosure. Any such physician shall have the same immunity with
7 respect to participation in any judicial proceeding resulting from such
8 disclosure.

9 New Sec. 3. (a) If a corrections employee has been placed in
10 contact with body fluid from one or more ~~other persons~~ while per-
11 forming duties within the scope of such employee's duties as an
12 employee, the secretary of corrections may make application to a
13 court of competent jurisdiction for an order requiring such ~~other~~
14 ~~person or persons~~ to submit to infectious disease tests. Such appli-
15 cation shall include an allegation that the ~~person or persons~~ sought
16 to be tested have been requested to voluntarily submit to infectious
17 disease tests and have refused the tests. When any such application
18 is received, the court shall hold a hearing forthwith and shall issue
19 its order thereon immediately if the court finds that: (1) There is
20 probable cause to believe that the employee involved has been placed
21 in contact with body fluid of the ~~person or persons~~ sought to be
22 tested; and (2) the ~~person or persons~~ sought to be tested have been
23 requested to submit to the tests and have refused, unless the court
24 makes a further finding that exigent circumstances exist that would,
25 in the court's judgment, excuse the applicant from making such a
26 request.

offenders

offender or offenders

offender or offenders

offender or offenders

offender or offenders

(b) If an infectious disease test ordered pursuant to this section results in a negative reaction, the court, upon proper application, shall order the person tested to submit to another infectious disease test six months after the date the first test was administered.

offender

31 (c) The results of any infectious disease test ordered pursuant to
32 this section shall be disclosed to the court that ordered the test, the
33 employee and the person tested.

offender

(d) When a court orders a person to submit to infectious disease tests under this section, the withdrawal of the blood may be performed only by: (1) A person licensed to practice medicine and surgery or a person acting under the supervision of such licensed person; (2) a licensed professional nurse or a licensed practical nurse; or (3) a qualified medical technician. No person authorized by this subsection to withdraw blood, no person assisting in the performance of the infectious disease tests nor any medical care facility where blood is withdrawn or tested that has been ordered by the court to withdraw or test blood shall be liable in any civil or criminal action

an offender

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1 when the act is performed in a reasonable manner according to
2 generally accepted medical practices.

3 (e) The results of tests or reports, or information therein, ob-
4 tained under this section shall be confidential and shall not be di-
5 vulged to any person not authorized by this act to receive such
6 results, reports or information. Any violation of this subsection is a
7 class C misdemeanor.

8 Sec. 4. K.S.A. 65-6001 and 65-6004 are hereby repealed.

9 Sec. 5. This act shall take effect and be in force from and after
10 its publication in the statute book.

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TESTIMONY
of
Raymond N. Roberts
Deputy Secretary, Facility Management
House Bill # 2152

Employees of the Department of Corrections are placed at substantial risk of exposure to infectious diseases such as AIDS and Hepatitis B on a daily basis. According to a National Institute of Justice bulletin, "The incidence rate of AIDS for the entire U.S. population was 14.65 cases per 100,000 in 1989. The aggregate incidence rate for state and federal correctional systems was 202 cases per 100,000."¹ Based on this data, it would appear that the rate of infection among inmates by this particular disease is nearly 14 times that of the U.S. population in general.

A significant number of inmates in our population have a past history of I.V. drug usage, and involvement in other high risk activity. While in prison, many of these same inmates engage in homosexual activities, and tattooing with unsanitary equipment. These high risk behaviors lend themselves well to the spread of contagious disease in the correctional environment.

Routine duties of correctional employees provide enhanced opportunities for exposure to infectious diseases. Correctional staff may be exposed to diseases as a result of a direct physical assault, as the result of rendering aid to a victim of such an assault, or as the result of rendering aid necessitated by other medical emergencies. Correctional staff are also required to perform forced cell moves with unruly inmates, and conduct frequent cell searches. If an employee becomes injured during these activities by sustaining a cut from a used razor blade or other personal items used by inmates, the potential for exposure to contaminated bodily fluids is great.

During FY 1992, there were 177 inmate on inmate assaults, 63 inmate on staff assaults, and 433 incidents in which staff applied physical force to inmates in our correctional facilities.

Many of our employees, particularly those working on the front lines with daily inmate contact, report considerable dissatisfaction over not being provided AIDS testing results after exposure to body fluids. I have personally witnessed the anxiety and morale problems created for staff and their families when vital health information from the source of the exposure is withheld.

We recently conducted an informal survey of several states to assess the current status of mandatory infectious disease testing

¹ "National Institute of Justice AIDS Bulletin", U.S. Department of Justice, Office of Justice Programs, National Institute of Justice; September, 1990, pp. 4

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Raymond N. Roberts
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in other jurisdictions. The states included in this survey were Arkansas, Florida, Kentucky, Massachusetts, Missouri, Nebraska, and Oklahoma. In all of these states, there is some provision for seeking a court order for such testing, in the event the inmate refuses. Only one state, Massachusetts, reported any significant problems. These problems were reportedly caused by the refusal of the state to disseminate testing results to employees who have become exposed to bodily fluids. In Massachusetts, statutory testing requirements are so stringent that an inmate could not be forced to submit to such a test (even under court order) unless a "potentially life threatening situation" is shown to exist. Because of these restrictions, the Department of Corrections in that state has never attempted to obtain a court order for mandatory AIDS testing.

While the Department is sensitive to privacy issues associated with AIDS testing, we do not think that the inmate's interest in privacy should override the health and emotional interests of the employee who has become exposed to bodily fluids either by accident, or by outright misconduct of an inmate. It should be recognized that the bill does not eliminate the inmate's right to privacy; it simply allows those who have been exposed to bodily fluids the opportunity to know what, if any, infectious diseases to which they have been exposed. The recipient of such information is still obligated to maintain confidentiality.

I believe in and support House Bill 2152. This proposed legislation provides the Department of Corrections with the authority to provide employees with information vital to their personal health status, consistent with the inmate's right to privacy. Further, this bill is consistent with the statutes and policies and practices of other jurisdictions.

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SUMMARY OF TESTIMONY

Before the House Federal and State Affairs Committee

February 10, 1993

House Bill 2152

Presented by the Kansas Highway Patrol
(Lieutenant Samuel G. Grant)

Appeared in Support of House Bill 2152

The Kansas Highway Patrol supports House Bill 2152.

Our primary interest in House Bill 2152 are the provisions of Section 2. K.S.A. 65-6004, which permits a physician who is performing medical or surgical procedures on a patient who has an infectious disease or has had a positive reaction to an infectious disease test to disclose such information regarding a patients medical condition to other health care providers, emergency services employees, corrections employees or law enforcement employees who have been or will be placed in contact with body fluid of such patient.

It appears that the only changes in Section 2. K.S.A. 65-6004, are terminological to comply with OSHA regulations published December 6, 1991 in Title 29 Code of Federal Regulations (CFR), Part 1910.1030, and went into effect March 6, 1992. The change in terminology is certainly acceptable to this agency.

The Kansas Highway Patrol has expended a significant amount of time and resources to comply with the same OSHA requirements and to protect our employees from exposure to bloodborne pathogens.

Unfortunately, regardless of the effort that we put forth in reducing the risk of exposure, occasional exposures do occur due to the nature of our profession.

Last week there were four officers in Kansas exposed to the AIDS virus in a single incident. The incident occurred after officers attempted to stop a traffic offender. The offender fled and a chase ensued. The offender was apprehended when his vehicle was involved in a minor accident and became stuck in the median. The offender sustained superficial lacerations in the accident, But, still didn't go with the officers peacefully, he went kicking, screaming, scratching, biting, and spitting. He told the officers "I have AIDS, and I hope you all get it and Die!" **This type of occurrence is becoming more and more common.**

It is important that when an exposure incident does occur, the emergency services personnel and/or Health Care Professional who is evaluating the exposed employee is apprised of the infectivity of the source individual, if known. Knowledge of the infectivity of the source individual will greatly aid the Health Care Professional in determining the treatment indicated.

F&SA
2-10-93
A/ch #5



Department of Health and Environment

Azzie Young, Ph.D., Secretary

Robert C. Harder, Secretary

Reply to:

Testimony presented to

House Federal and State Affairs Committee

by

The Kansas Department of Health and Environment

House Bill 2152

Good afternoon. I am Dr. Andrew Pelletier, the acting state epidemiologist in the Department of Health and Environment. I will be speaking on House Bill 2152 which proposes to revise existing statutes dealing with AIDS.

There are two major changes in the proposed bill. First, the definition of an infectious disease has been expanded to include hepatitis B as well as AIDS. The Department of Health and Environment does not object to this change, but believes that it is necessary to define what is meant by a positive reaction to an infectious disease test. The definition of an AIDS test is clearly made, but not for a hepatitis B test. Testing for hepatitis B is complicated; the only test that indicates infectivity is hepatitis B surface antigen. KDHE suggests that a positive reaction to a hepatitis B test be defined as the confirmed presence of hepatitis B surface antigen.

The second major change proposed in this bill is contained in section 3. This section proposes to allow mandatory testing of inmates who refuse voluntary testing following exposure of a corrections employee. The Department of Health and Environment would strongly oppose this change for a number of reasons.

First, the best protection any employee has with respect to bloodborne diseases such as hepatitis B and AIDS is the use of universal precautions. Universal precautions is the practice of treating every individuals as if he or she were infected with a bloodborne disease. The same precautions are taken for everyone thereby protecting both health care workers and patients or, in this case, corrections staff and inmates. It would be a mistake to give any corrections employee a false sense of security based on mandatory testing.

The second line of defense against bloodborne disease transmission is the widespread use of the hepatitis B vaccine which is now required to be offered to employees at risk by the Occupational Safety and Health Administration. Vaccination is a safe and effective means to protect employees from infection with hepatitis B. It is much better to vaccinate employees before an exposure occurs than to test inmates afterwards.

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Atch #6

The third objection to this proposal is that mandatory testing would not be able to provide results in the timeframe required to make decisions. Persons potentially exposed to hepatitis B need to start treatment within 24 hours of exposure if at all possible. It is very doubtful if court orders and laboratory results could ever be obtained this quickly. Although there is no proven prophylaxis for the AIDS virus following accidental exposure, experimental treatments that have been proposed also need to be started immediately. Decisions have to be made based on available information, not on future lab tests.

The final objection to this proposed change is that laboratory tests have certain limitations. A person can transmit HIV and hepatitis B and still have a negative laboratory test. Retesting six months after the initial test would help to eliminate this problem, but would not provide much help at the time of the exposure. Conversely, the presence of a positive test does not indicate that transmission of disease has occurred. With HIV, approximately 1 in 300 needle sticks from an infected patient to a health care worker results in transmission of the virus. For hepatitis B, the figure is closer to 1 in 3.

Although I understand the concerns of corrections staff regarding bloodborne diseases, I believe that mandatory testing of inmates would not provide employees with additional protection. Universal precautions and hepatitis B vaccine should be the cornerstones of prevention efforts.

Thank you for your attention. I will be happy to answer any questions that you might have.

Testimony presented by: Andrew Pelletier, M.D.
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Bureau of Disease Control
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