

STOP AIDS IN PRISON ACT OF 2007

SEPTEMBER 24, 2007.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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

R E P O R T

[To accompany H.R. 1943]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 1943) to provide for an effective HIV/AIDS program in Federal prisons, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

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PURPOSE AND SUMMARY

H.R. 1943 directs the Bureau of Prisons (BOP) to develop a comprehensive policy to provide HIV testing, treatment, and prevention for inmates during incarceration in Federal prisons and immediately before reentry into the community, while protecting confidentiality of prisoners and allowing them to refuse routine HIV testing.

BACKGROUND AND NEED FOR THE LEGISLATION

HIV/AIDS in prison poses a threat not only to prison inmates and prison employees, but ultimately to the community at large. Prisoners who are unaware of their condition or who do not know how to keep others safe from the infection can unwittingly infect fellow prisoners. Prison workers, including corrections officers, healthcare workers, and administrators, are also at risk from exposure incidents resulting from close interaction with the prison population. The threat to the community at large comes from infected prisoners being released without having had the proper screening, education, and treatment, thereby exposing friends and loved ones to the disease.

The Stop AIDS in Prison Act would require initial testing and counseling of inmates upon entry into the prison system, and then make ongoing testing available up to once a year upon the request of the inmate, or sooner if an inmate is exposed to the HIV/AIDS virus or becomes pregnant. The bill requires that the BOP make HIV/AIDS counseling and treatment available to prisoners, and give testing and treatment referrals to prisoners prior to their re-entering the outside community.

The bill may have a particularly beneficial effect on minority communities. According to the Centers for Disease Control and Prevention, racial minorities comprise 69% of all new HIV/AIDS cases in the nation. Since African Americans are disproportionately represented in the inmate population—41 percent of all inmates in the prison system at the end of 2004, according to the Bureau of Justice Statistics—the risks associated with contracting HIV/AIDS in prison are one factor putting minority communities at higher risk of exposure. The Stop AIDS in Prison Act is therefore one way to begin reversing the high incidence of HIV/AIDS in minority communities.

HEARINGS

The Committee's Subcommittee on Crime, Terrorism, and Homeland Security held 1 day of hearings on May 22, 2007. Testimony was received and heard from Mr. Devon Brown, Director of the Department of Corrections for the District of Columbia; Mr. Vincent Jones, Executive Director of the Center for Health Justice in West Hollywood California; Mr. Philip Fornaci, Director of the D.C. Prisoner's Project for the Washington Lawyer's Committee for Civil Rights and Urban Affairs; RADM Newton E. Kendig, M.D. the Assistant Director of the Health Services Division for the Federal Bureau of Prisons; and Mr. Willie Mitchell, Chairman of the Board for San Antonio Fighting Back.

COMMITTEE CONSIDERATION

On July 24, 2007, the Subcommittee on Crime, Terrorism and Homeland Security met in open session and ordered the bill H.R.1943 favorably reported by voice vote without amendment, a quorum being present. On July 25, 2007, the Committee met in open session and ordered the bill H.R. 1943 favorably reported without amendment by voice vote, a quorum being present.

COMMITTEE VOTES

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee advises that there were no recorded votes during the Committee's consideration of H.R. 1943

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee advises 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.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 1943, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 7, 2007.

Hon. JOHN CONYERS, Jr., *Chairman,*
Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1943, the Stop AIDS in Prison Act of 2007.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Leigh Angres, who can be reached at 226-2860.

Sincerely,

PETER R. ORSZAG,
DIRECTOR.

Enclosure

cc: Honorable Lamar S. Smith.
Ranking Member

H.R. 1943—Stop AIDS in Prison Act of 2007.

SUMMARY

H.R. 1943 would amend current law to require the Bureau of Prisons (BOP) to test all incoming and outgoing inmates for the human immunodeficiency virus (HIV). The legislation would offer an opt-out provision to most inmates. Presently, BOP performs HIV testing on those inmates who are sentenced to six months or more

in prison if they are determined to be at risk for HIV. CBO estimates that implementing H.R. 1943 would cost about \$3 million in fiscal year 2008 and \$12 million over the 2008–2012 period, assuming appropriation of the necessary funds. Enacting H.R. 1943 would not affect direct spending or revenues.

H.R. 1943 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on State, local, or tribal governments.

ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary impact of H.R. 1943 is shown in the following table. The costs of this legislation fall within budget function 750 (administration of justice).

By Fiscal Year, in Millions of Dollars

	2008	2009	2010	2011	2012
CHANGES IN SPENDING SUBJECT TO APPROPRIATION					
HIV Testing and Services for BOP Inmates					
Estimated Authorization Level	3	2	2	2	2
Estimated Outlays	3	2	2	2	2
Reporting Requirements					
Estimated Authorization Level	*	1	*	*	*
Estimated Outlays	*	1	*	*	*
Total Changes					
Estimated Authorization Level	3	3	2	2	2
Estimated Outlays	3	3	2	2	2

Note: HIV = Human Immunodeficiency Virus; BOP = Bureau of Prisons; * = less than \$500,000.

BASIS OF ESTIMATE

For this estimate, CBO assumes that H.R. 1943 will be enacted near the start of fiscal year 2008 and that the amounts estimated to be necessary will be appropriated for each fiscal year.

Current HIV Testing Procedures in Bureau of Prisons' Facilities

Under current law, BOP performs HIV testing on those inmates sentenced to six months or more in prison who are determined to be at risk for HIV—about 25,000 tests a year. Inmates can also request an HIV test once a year or when an inmate believes that he or she has been exposed to the virus. BOP also has the right to mandate testing for any inmate that it believes has intentionally or unintentionally transmitted the virus. For those who receive a test, BOP provides pre- and post-testing counseling, regardless of the diagnosis. Inmates who test positive for the virus—about 1 percent of the nearly 200,000 incarcerated by BOP a year—also receive treatment during their incarceration and a 30-day supply of medication upon their release.

New Testing Procedures under H.R. 1943

CBO estimates that implementing the expanded testing, medical treatment, and associated services under H.R. 1943 would cost \$11 million over the 2008–2012 period, subject to appropriation of the necessary amounts. H.R. 1943 would require BOP to test all incoming and outgoing inmates but would allow inmates to opt out of such testing. As under current law, if BOP believes that an inmate

intentionally or unintentionally transmitted the virus, the inmate would be subject to mandatory testing. For inmates admitted prior to the effective date of the new policy, a test would be required within six months.

Based on information from BOP, CBO expects that comprehensive HIV testing would likely be incorporated into the current medical examination system at an average cost of \$10 per inmate. We estimate that the cost of additional HIV testing on about 200,000 additional inmates in fiscal year 2008 under H.R. 1943 would be about \$2 million, subject to the availability of appropriated funds. That first-year total would include tests for all inmates admitted prior to implementation of the new policy near the middle of fiscal year 2008. We anticipate that for years after 2008, BOP would conduct about 110,000 additional tests a year (assuming that few inmates would opt out of testing), at a cost of about \$1 million annually, also subject to the availability of appropriated funds.

Testing of entering and exiting inmates may result in the diagnosis of some new HIV cases. CBO estimates that the cost of providing additional medical services for newly diagnosed inmates would be nearly \$1 million a year. We estimate that the cost of HIV education and counseling programs would be less than \$500,000.

Reporting Requirements

CBO estimates that BOP would spend about \$1 million over the 2008–2012 period to prepare two reports required by the bill, assuming the availability of appropriated funds. The first report would delineate BOP procedures for testing, treating, and preventing hepatitis and other infectious diseases. The second report would provide the Congress with statistics on HIV test results.

INTERGOVERNMENTAL AND PRIVATE-SECTOR IMPACT

H.R. 1943 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on State, local, or tribal governments.

ESTIMATE PREPARED BY:

Federal Costs: Leigh Angres (226–2860)
Impact on State, Local, and Tribal Governments: Melissa Merrell
(225–3220)
Impact on the Private Sector: Paige Piper-Bach (226–2940)

ESTIMATE APPROVED BY:

Peter H. Fontaine
Assistant Director for Budget Analysis

PERFORMANCE GOALS AND OBJECTIVES

The Committee states that pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, H.R. 1943 will help stem the spread of HIV/AIDS in the prison inmate population and in the community at large.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds the authority for this legislation in Article I, Section 8 of the Constitution.

ADVISORY ON EARMARKS

In accordance with clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 1943 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of Rule XXI.

SECTION-BY-SECTION ANALYSIS

SEC. 1. SHORT TITLE.

This section sets forth the short title of the bill as the “Stop AIDS in Prison Act of 2007.”

SEC. 2. COMPREHENSIVE HIV/AIDS POLICY.

This section requires the Bureau of Prisons to develop a comprehensive HIV testing, treatment and prevention policy to stop the spread of HIV/AIDS among inmates, protect prison guards, provide medical treatment to affected prisoners and to provide comprehensive AIDS education, within 1 year of enactment. All inmates who test positive shall be provided confidential pre-release counseling and referrals to appropriate health care providers, and a 30-day supply of medications the prisoner is currently receiving

SEC. 3. REQUIREMENTS FOR POLICY.

This section requires the BOP to administer a routing HIV test upon intake of all prisoners regardless of how long they will be in prison. The BOP must administer the test within 6 months of the date of enactment to prisoners who are already incarcerated. Prisoners shall be provided with pre-test and post-test counseling. Prisoners have the right to “opt out” and choose not to be tested.

Besides the testing upon admission, prisoners may obtain HIV tests upon request up to once a year. If a prisoner is involved in an “exposure incident,” the BOP may perform testing without the prisoners consent. Medical personnel shall notify prisoners of the test results and all results shall be confidential.

SEC. 4. CHANGES IN EXISTING LAW.

This section amends existing law to incorporate HIV test results from this Act including amending Title 18 sec 4014(d) so that all test results from this Act will be inadmissible in criminal or civil proceedings.

SEC. 5. REPORTING REQUIREMENTS.

This section requires the BOP to provide Congress a report on the policies and procedures to provide testing, treatment and prevention education programs for Hepatitis and other diseases transmitted through sexual activity and intravenous drug use within a year of enactment. This section also requires the BOP to report to Congress on the incidence of diseases transmitted through sexual

activity and intravenous drug use within 2 years of enactment. The report will also contain information about the incidence of HIV/AIDS in prison.

SECTION 6. APPROPRIATIONS.

This section authorizes the appropriation of such sums as necessary to carry out this Act.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) 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 (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, 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

* * * * *

§ 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**[**, as appropriate,**]** 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**]** *unless the individual declines. The Attorney General shall also cause such individual to be so tested before release unless the individual declines.*

* * * * *

(d) The results of a test under this section *or under the Stop AIDS in Prison Act of 2007* 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 the enactment of this section, the Attorney General shall issue rules to implement this section. Such rules shall require that the results of any test are communicated only to the person tested, and, if the results of the test indicate the presence of the virus, to correctional facility personnel consistent with guidelines issued by the Bureau of Prisons. 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. *Such rules shall also provide that the*

initial test under this section be performed as part of the routine health screening conducted at intake.

