



MEMORANDUM

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TO: House Judiciary Committee

FROM: Andy Hoover, Legislative Director

DATE: December 8, 2009

RE: OPPOSITION TO HOUSE BILL 1075

On Wednesday, the House Judiciary Committee is scheduled to consider House Bill 1075. This bill would require the Department of Corrections to conduct certain medical tests on inmates, including HIV-AIDS, hepatitis, tuberculosis, and sexually transmitted diseases. Due to concerns over privacy and discrimination, especially as it relates to HIV-AIDS, the American Civil Liberties Union of Pennsylvania opposes HB 1075. On behalf of the 16,000 members of the ACLU of Pennsylvania, I urge you to vote "no" on this legislation, as it is currently written.

The goal of protecting the health of inmates in prison settings and of residents in communities to which inmates return is laudable, and this goal can be achieved through modification of HB 1075. Forcing inmates to take these tests is not the answer, and the ACLU of Pennsylvania opposes all forms of mandatory HIV testing. Nearly 30 years after it first appeared, HIV-AIDS is a disease that still comes with a stigma, and people living with HIV or AIDS regularly face discrimination. This is especially true in a prison setting. Mandatory HIV testing of prisoners denies prisoners basic autonomy regarding medical procedures, perpetuates a false sense of security, and often has punitive consequences. Prisoners with HIV often face retaliation, threats, discrimination and stigma regarding their HIV status.

The ACLU stands with healthcare advocates in opposing forced HIV testing of inmates, including the American Public Health Association, the National Commission on Correctional Healthcare, and the World Health Organization.

Instead, conducting HIV tests through informed consent, which requires the patient to agree to the test, is a more prudent form of testing that can achieve the same ends. Studies indicate that most inmates take advantage of voluntary HIV testing programs. A study of a Rhode Island correctional facility found that 95 percent of inmates agreed to undergo rapid HIV testing.

Voluntary HIV testing in prisons should be conducted by trained health professionals, include pre- and post-test counseling and written informed consent, be linguistically

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and culturally appropriate, and include follow-up with counseling, education, and medical care. HB 1075 can be improved through amendment to ensure that these structures are in place. An HIV diagnosis requires lifelong, constant medical care and a trusting relationship with the patient's healthcare provider. Forcing an inmate to take a test does not build that trusting relationship.

HB 1075 does not designate at what time during an inmate's incarceration that these tests must occur. It simply states that the testing must be done "prior to releasing an inmate". Many persons who were incarcerated do not have access to healthcare when they leave prison. In fact, they sometimes have better healthcare in prison than they do on the outside. If the medical tests occur just prior to release, the testing will do nothing more than put more private information in the hands of the government. However, if the tests occur early enough in an inmate's sentence, he or she may be able to access proper treatment.

The goal of protecting public health and the health of inmates is commendable. But HB 1075, in its current form, is not the answer. Unless the bill is amended to address the problems outlined above, the ACLU of Pennsylvania urges you to oppose HB 1075.