

**REPORT OF THE  
DEPARTMENT OF CORRECTIONS**

**Screening Prisoners for Aids**

**TO THE GOVERNOR AND  
THE GENERAL ASSEMBLY OF VIRGINIA**



**House Document No. 31**

**COMMONWEALTH OF VIRGINIA  
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## EXECUTIVE SUMMARY

AIDS is a fatal disease syndrome caused by the HTLV-III virus. AIDS has become a major issue for public officials in many areas of government. Because of uncertainty, fear, and misinformation about the disease, public administrators of schools, hospitals and correctional systems must develop effective and equitable policies reflecting current medical information and address the unique responsibilities and circumstances of their respective professions. Within a correctional setting the challenge of AIDS is a formidable one since a substantial percentage of inmates fall within identified high risk groups.

The reported number of AIDS cases in the state of Virginia (N=254) is just over 1% of the national total of 21,302. The Virginia Department of Corrections' inmate population contains an average number of AIDS cases (N=3) based upon a statistical comparison of other states. New York and New Jersey have the highest percentage of AIDS victims in their prisons. Both states have large numbers of heroin addicts, who transmit the disease through intravenous drug abuse prior to incarceration. (See Appendix 2)

Screening for AIDS can be done by a commercial HTLV-III antibody test. The Department's research indicates that screening of individuals through use of this test is unreliable without repeated and back-up testing. Mass screening has been found to be very costly and in addition, there are legal and ethical concerns. The Department's policy is to continue extensive education of staff and inmates, segregate and treat all symptomatic AIDS cases, and medically follow suspected cases in the population. This policy is consistent with that implemented by other states, recommendations by the Virginia Department of Health, and the National Institute of Justice.

The Virginia Department of Corrections, through its Office of Health Services, has developed agency procedures and promoted agency education regarding the prevention and management of AIDS. (See Appendix 3)

## INTRODUCTION

House Joint Resolution No. 125 of the 1986 Session of the General Assembly of Virginia requested the Department of Corrections (DOC) to study the feasibility, cost-effectiveness, usefulness and methods of screening prisoners for the AIDS (acquired immune deficiency syndrome) virus. The Department was further asked to consider legal and ethical issues involved with respect to privacy when testing was "positive", particularly in view of the relative accuracy of present testing. (See Appendix 1)

This study was conducted by the Department of Corrections Office of Health Services for presentation to the 1987 session of the General Assembly. Research information provided by the National Institute of Justice is presented in this study and addresses issues and options based upon nationwide research of AIDS in Corrections.

This study presents background information on the AIDS disease, an assessment of the Virginia AIDS affected population, and present work of the DOC Office of Health Services. The study also compares the mass screening approach to screening practices of other states as well as the Virginia program with respect to method, cost effectiveness, and legal and ethical issues. Conclusions and recommendations present what is currently considered to be the most reasonable AIDS screening policy and method available.

## BACKGROUND

Since its first appearance in 1981, AIDS has become a major issue for public officials in all areas of the country and in all sectors of government. AIDS is a serious communicable disease that is spread usually by intimate direct contact such as sexual relations, by intravenous drug abuse and by transfusion via blood or blood products containing HTLV-III. It does not appear to be spread by casual contact. The disease undermines the body's immune system making an individual susceptible to a range of diseases which would not be life-threatening to persons with normally functioning immune systems. While the overall incidence of AIDS in the American population is still relatively small, the disease represents a serious public health problem. In corrections, the problem is enhanced by the fact that many inmates fall into identified high risk groups.

## METHODS OF SCREENING FOR AIDS

### COMMERCIAL TESTING

A commercial test was developed to screen blood for the HTLV-III antibody in 1985. While this test is useful to screen blood prior to its use in transfusions or other medical purposes, it is less useful when used to screen individuals for AIDS. A positive result simply means the individual was infected at some time in the past. The test cannot pinpoint the date of infection, determine whether the individual remains infected, or whether the individual will exhibit any symptoms of the disease. When the test is used, specimens testing positive are usually subjected to additional testing to confirm or deny the original result. Technical problems with this screening method include:

- o Initial screening results have shown incidences of false positives and false negatives.
- o Results only become useful when subjected to repeat and further testing.
- o The test is not reliable in identifying persons testing sero positive who will actually develop symptoms of the disease.

### ALTERNATIVE METHODS

Although screening is the only method of obtaining information on HTLV-III sero positivity there are alternate ways to identify high risk individuals and to diagnose AIDS:

- o Medical surveillance.
- o Alternative laboratory work for diagnosis.
- o Carefully designed epidemiological studies.

### FEASIBILITY OF MASS SCREENING OF PRISONERS

Inmate populations are by nature at risk regarding the AIDS virus. A few inmates have come into the correctional setting already having contracted the disease through intravenous drug abuse or through prior homosexual contact. However, only a handful of states such as Nevada and Colorado perform mass screening. Such mass screening is costly and raises a number of legal and ethical issues:

## Cost-Effectiveness

Two major issues must be considered in the cost of mass screening of prisoners.

- o The HTLV-III screening tests for AIDS are relatively expensive, costing \$35.00 per test. However, to achieve a reasonable rate of reliability, testing would need to be repeated twice a year for five years. Administering and readministering tests to large groups of prisoners would entail significant costs.
- o Recent price quotes from area laboratories indicate that follow-up confirmation testing for AIDS would be approximately \$90.00 per inmate. The mass screening of 12,000 to 15,000 inmates would obviously entail substantial cost.

## Legal, Ethical, Right to Privacy Issues

Legal, ethical, and privacy issues are surfacing in relation to AIDS management and control. There is currently very little case law specifically on correctional systems' policies regarding AIDS cases, even though several cases have been filed in New York and other states.

In a recent study by the National Institute of Justice in the Issues and Practices series titled AIDS in Correctional Facilities: Issues and Options, legal issues were found to be a major concern among corrections professionals. This study found that:

"...specific legal concerns remain largely hypothetical and speculative. Still there is substantial caselaw on correctional medical care in general, which is important for the administrators to consider in developing policies regarding AIDS. As already noted, AIDS should not necessarily be considered a unique correctional health issue; legal standards and correctional policies regarding communicable diseases in general may be applicable to AIDS and may have already been tested in court."

Challenges to treatment of inmates with AIDS are likely to fall into three separate categories: standards for correctional medical care, equal protection, and quality of care. Suits related to mass screening are likely to be brought in the same categories. The constitutionality of mass screening is still a matter at which there is no clear direction from the courts.

The National Institute of Justice study in looking at suits seeking damages by inmates for allegedly contracting AIDS while in a correctional facility concludes:

"A possible basis of such suits in the future might be failure to provide protection from sexual assault. However, even in the case of non-consensual acts, correctional systems can generally only be held to a standard of reasonable care; they have not been held to be insurers of absolute safety for inmates. In the case of transmission by consensual acts, the correctional system would appear to be on even stronger ground, particularly if it could establish an 'assumption of risk' defense by proving that the inmate had been given **education and training on known measures by which the infection is transmitted** (emphasis added)."

Some state correctional commissioners strongly recommend following existing standard screening procedures for infectious disease and that AIDS screening not be singled out. They hold that existing procedures have been tested in court and are adequate; that the current body of knowledge does not support the development of additional procedures just for AIDS; and if such were developed they would be subject to misapplication, as well as becoming vulnerable to new testing in court.

In addition to legal issues, mass screening presents several ethical issues:

- o Screening would create separate classes of inmates considered "safe" and "unsafe". Class distinctions, stigmatization and discrimination could easily occur.
- o Confidentiality of the inmate's medical information and the rights to privacy would be positioned against the correctional system's perceived legal or moral responsibility to protect its staff, other inmates and the public-at-large when inmates are released.
- o Given the level of fear of contracting AIDS, it may be impossible to maintain confidentiality of sero positive tests and inmates may become subject of other inmate's intimidation or assaults.

## CONCLUSIONS

There is a wide variation in states' correctional policies regarding HTLV-III Antibody testing. Some states do no testing and do not isolate antibody positive inmates. A few states do mass screening and require total isolation of all antibody positive inmates. Seventy-five percent (75%) of all AIDS cases in corrections are located in four systems: New York City, New York State, New Jersey and Florida. Even though the vast majority of the inmates had contracted AIDS prior to incarceration, methods and policies had to be developed to deal with issues related to the disease. Each of those systems, as well as Virginia, pursues the same policy towards AIDS management and control:

- o Continuing extensive staff and inmate education.
- o On-going medical surveillance of suspected cases in the population.
- o No mass screening of inmates for HTLV-III virus.
- o Medical segregation and treatment of all symptomatic AIDS cases.

## RECOMMENDATIONS

The following recommendations are considered to be the most prudent course of action for AIDS management and control at the present time:

- o The Office of Health Services of the Virginia Department of Corrections recommends that mass screening of all inmates for the HTLV-III antibody should continue to be reviewed, but implemented only if and when it is found to be medically indicated.
- o The latest information regarding AIDS should be continually communicated by the Office of Health Services to inmates and staff. In cooperation with the Center for Disease Control, the Virginia State Health Department and MCV, the Department will continue to update its information to assure the most effective treatment and prevention program possible.
- o Development of a medical ward close to the Medical College of Virginia within the next four years where 5 to 10 cases can be clinically managed at any one time.



Appendix 1  
**GENERAL ASSEMBLY OF VIRGINIA -- 1986 SESSION**  
**HOUSE JOINT RESOLUTION NO. 125**

*Requesting the Department of Corrections to study the screening of certain prisoners for acquired immune deficiency syndrome.*

Agreed to by the House of Delegates, February 10, 1986  
Agreed to by the Senate, March 6, 1986

**WHEREAS, acquired immune deficiency syndrome (AIDS) has become a problem attracting much attention and causing concern among the people in this country; and**

**WHEREAS, this disease causes a break-down in the body's immune system thereby making its victims highly susceptible to various diseases and, to date, there is no cure; and**

**WHEREAS, although the Public Health Service, and other research, report that AIDS cannot be spread through casual contact such as coughing, sneezing, or sharing meals, there is still great concern about the contagion of the disease; and**

**WHEREAS, prison population and the inherent nature of their living situation are causing great concern for officials and the public alike; and**

**WHEREAS, present tests for the AIDS virus can identify the presence of the virus in an individual's system, but this does not guarantee that the person will contract this deadly disease; now, therefore, be it**

**RESOLVED by the House of Delegates, the Senate concurring, That the Department of Corrections be requested to study the feasibility, cost-effectiveness, usefulness and methods of screening prisoners for the AIDS virus. The Department is asked to also consider, among other relevant topics, the legal and ethical issues involved with respect to privacy when the test is "positive," particularly in view of the relative accuracy of such test at the present time; and, be it**

**RESOLVED FURTHER, That the Department of Corrections shall report its findings and recommendations to the 1987 Session of the General Assembly; and, be it**

**RESOLVED FINALLY, That the Clerk of the House of Delegates transmit a copy of this resolution to the Director of the Department of Corrections.**

Appendix 2  
**STATISTICAL COMPARISONS**

AIDS IN VIRGINIA vs. THE NATION  
 (Non-inmate population)

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<u>Category</u>		<u>Virginia</u>	<u>National</u>
Number of Cases		254	21,302
Number of deaths		133	11,645
Sex:	Male	96%	94%
	Female	4%	6%
Age:	20 - 30	22%	18%
	30 - 40	46%	46%
	40 - 50	20%	26%
Risk Group:	Homo/Bisexual	80%	75%
	IV Drug Abuse	8%	17%
	Other	12%	8%

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AIDS IN VIRGINIA CORRECTIONAL FACILITIES  
 vs. NATIONAL CORRECTIONS

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<u>Category</u>		<u>Virginia</u>	<u>Correctional Facilities</u> <u>National*</u>
Number of cases		8	455
Number of deaths		3	275
Sex:	Male	100%	94%
	Female	0%	6%
Age:	20 - 50	100%	94%
Risk Group:	IV Drug Abuse	90%	90%
	Other/Unknown	10%	10%

\*Source: National Institute of Justice

Appendix 2 cont'd

PERCENTAGE OF AIDS CASES BY STATE  
(Non-inmate Population)

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<u>STATE</u>	<u>PERCENT OF TOTAL</u>
New York	34.7
California	24.1
Florida	6.9
New Jersey	5.9
Texas	5.0
Illinois	2.2
Pennsylvania	2.0
Massachusetts	1.9
District of Columbia	1.8
Georgia	1.7
Maryland	1.4
Puerto Rico	1.2
Washington	1.2
Virginia	1.1
All Other States	8.9

Appendix 3

DEPARTMENT OF CORRECTIONS  
OFFICE OF HEALTH SERVICES ACTIVITIES ON AIDS

- JUNE 1984
- o Medical transmittal #2 - "AIDS" distributed to all correctional facilities
    - reviewed current medical literature
    - requested reporting of all known/suspected cases of AIDS to Office of Health Services
- MARCH 1985
- o Medical transmittal #10 - "Update on AIDS" to all correctional facilities
    - providing current information
- MAY 1985
- o Similar information made available to jails
- SEPTEMBER 1985
- o Responded to questionnaire by the National Prison Project on AIDS
  - o Presented joint program with Public Health Department to Virginia Correctional Association annual meeting
    - Providing basic information on AIDS
- OCTOBER 1985
- o Participated in joint conference with Maryland and District of Columbia correctional officials sponsored by Federal Bureau of Prisons
  - o Distributed informational package on AIDS to all inmates
- NOVEMBER 1985
- o Director requested and received update on AIDS with special reference on screening inmates for HTLV-III anti-body. Also addressed were:
    - treatment
    - infection control
    - transportation
    - laundry control
    - food service
    - work assignment

APPENDIX 3 (continued)

- DECEMBER 1985      o Dr. Robert W. Fry, Chief Physician for the Department and Mr. William Muse of Attorney General's Office represented Virginia at U. S. Department of Justice, National Institute of Corrections Session on AIDS. During session National Policy Statement on AIDS was developed.
  
- JANUARY 1986      o Distributed booklet on AIDS to all inmates
  
- APRIL 1986        o Distributed VCR tape on AIDS to all Adult Services Regional Offices
  
- JULY 1986         o Medical transmittal #18 - "Procedure for Treating AIDS, ARC and HTLV III Positive" (procedural policy) distributed to all correctional facilities.





