

**NLWJC - Kagan**

**DPC - Box 002 - Folder 005**

**AIDS - Prison Testing**



Jose Cerda III

08/10/98 01:00:01 PM

Record Type: Record

To: Bruce N. Reed/OPD/EOP, Elena Kagan/OPD/EOP, Leanne A. Shimabukuro/OPD/EOP  
cc: Laura Emmett/WHO/EOP  
Subject: Correction Officer Health and Safety Act

BR:

Per my mention at today's staff meeting...jc3

----- Forwarded by Jose Cerda III/OPD/EOP on 08/10/98 12:58 PM -----



Todd A. Summers

08/07/98 12:02:04 PM

Record Type: Record

To: Jose Cerda III/OPD/EOP, Ronald E. Jones/OMB/EOP  
cc: Sandra Thurman/OPD/EOP, Richard J. Turman/OMB/EOP  
Subject: Correction Officer Health and Safety Act

I just spoke with DoJ's leg person handling this bill, and told her that we were leaning to recommending that the Administration's position move from "strongly oppose" to silent. Here is why we support that position:

**The Policy**

**Requiring Testing**

We do not want to support mandatory testing. We have always maintained that voluntary counseling and testing is adequate. That remains our position on a number of bills, including Rep. Coburn's. If we were to adopt a different stance for prisoners, it opens us up to charges of hypocrisy and deflates our argument on non-prisoners. Moreover, it could potentially be infused with racial connotations since prisoners are predominantly black men. Given the heat that the CDC, NAACP and others are putting on us for the racial disparities in the epidemic, it might be prudent to avoid a conflict here.

I understand that Rep. Waters has participated in amending this bill, so it is clearly on her radar screen. Her staff says that she's in a position of not actively opposing the bill. Rep. Pelosi's staff says the same.

That being said, we now test everyone on the way out of jail so the bill just moves up the inevitable. From a scientific perspective, that is better for prisoners since early detection and treatment of HIV is recommended. From a BoP policy perspective, the testing done on the way out is "voluntary" except that it's required as part of the package of things that must be done to be released. So BoP argues that they don't do mandatory or "forced" testing, but that's

semantics.

The bill requires counseling, support, and care for all those who test HIV-positive. We think that's a good mandate, even if it may be redundant (BoP's principal objection to the bill, as I understand it). I think this works more to the advantage of correction officers, staff, and visitors than prisoners because the policy now is that prisoners get care if they're HIV-positive. (The President's Advisory Council on HIV/AIDS has been adamant that they believe that there is a difference between policy and practice at some Federal institutions, but we cannot confirm that and BoP says it's not true.)

The bill also provides that the Attorney General develop standards of care and prevention for States, which we think is good. State, county and local jails ought to be the object of far greater attention since the prevalence of HIV there is so much higher than Federal institutions. I think BoP and DoJ like this part of the bill.

#### **Testing After Potential Exposure**

HR2070 also requires testing, or re-testing, after an exposure by a prisoner to an officer, staff person, or visitor. This is hard to argue, particularly because there are now protocols for post-exposure prophylaxis that may be efficacious (not a lot of data yet). We like that the determination of whether the exposure risk was significant lies with DoJ/BoP and should therefore be based on scientific standards and not subjective fears ("he spit on me, I want him tested"). Universal precautions should minimize instances of exposure, and BoP encourages their implementation, but exposures are certainly possible.

#### **The Unions**

I've spoken with the leg. director for AFSCME, which represents some (100,000) of the correctional officers and have a call into SEIU, which represents others. AFSCME says this is a very big deal for the correctional officers, and they feel that the bill that passed is a significant improvement over the original draft that we strongly opposed. They are less concerned about our active support than they are about our active opposition--they'd be content if we moved from "strongly oppose" to silent.

This also makes BoP's objection that officer's are going to be put at risk during mandatory testing because they might have to hold prisoners down to take their blood. First of all, I am not convinced this is a significant issue for Federal prisoners. Second, if the officers' unions are supporting the bill, why are we objecting on their behalf?

#### **Recommendation**

We recommend that the Administration:

1. remove it's strong opposition to the bill
2. not actively oppose or support the bill
3. indicate to Senator Hatch and others that we'll acquiesce to a Senate version that parallels that which passed the House, and that the Administration would strongly oppose a version that reverts to the original version of HR2070.

Please let me know if you have any questions.



Kate P. Donovan  
08/03/98 07:31:41 PM

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Record Type: Record

To: Elena Kagan/OPD/EOP, Laura Emmett/WHO/EOP

cc:

Subject: HR 2070 - Correction Officers Health and Safety Act

DOJ did send a letter with "oppose" on 5/7/98 regarding HR 2070. Our SAP elevated that to "strongly oppose". Please let me know if you didn't receive the copy that I faxed. When we prepared a revised SAP for the Senate, I will forward the draft for you to review. Thanks for your help on this one.

----- Forwarded by Kate P. Donovan/OMB/EOP on 08/03/98 07:28 PM -----

From: Ingrid M. Schroeder on 08/03/98 05:17:55 PM

Record Type: Record

To: Gordon P. Agress/OMB/EOP@EOP, Richard J. Turman/OMB/EOP@EOP, David J. Haun/OMB/EOP@EOP

cc: James J. Jukes/OMB/EOP@EOP, Ronald E. Jones/OMB/EOP@EOP, Kate P. Donovan/OMB/EOP@EOP

Subject: HR 2070 - Correction Officers Health and Safety Act

OMB/LA reports that HR 2070 passed by voice, before we were able to get the issue on the SAP resolved. Justice has heard that Hatch is interested in taking this bill up when the Senate returns. So although we have a few weeks to breathe on this, it looks like it is going to come up in the Senate. Stay tuned.

ARDS- prison testing

~~Clear~~



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