

110TH CONGRESS
1ST SESSION

H. R. 178

To reduce the spread of sexually transmitted infections in correctional facilities, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 4, 2007

Ms. LEE introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To reduce the spread of sexually transmitted infections in correctional facilities, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Justice for the Unpro-
5 tected Against Sexually Transmitted Infections among the
6 Confined and Exposed Act of 2007” or the “JUSTICE
7 Act of 2007”.

8 **SEC. 2. FINDINGS.**

9 The Congress makes the following findings:

1 (1) According to the Bureau of Justice Statis-
2 tics (BJS), 2,186,230 persons were incarcerated in
3 the United States as of midyear 2005. Between
4 1995 and midyear 2005, the number of persons in-
5 carcerated in Federal or State correctional facilities
6 increased by an average of 3.4 percent per year. One
7 in every 136 United States residents was incarcer-
8 ated in a Federal, State, or local correctional facility
9 as of midyear 2005.

10 (2) As of 2001, 64 percent of incarcerated per-
11 sons were racial or ethnic minorities. Based on cur-
12 rent incarceration rates, BJS estimates that 32 per-
13 cent of African-American males will enter State or
14 Federal correctional facilities during their lifetime,
15 compared with 17 percent of Hispanic males and 5.9
16 percent of White males.

17 (3) There is a disproportionately high rate of
18 HIV/AIDS among incarcerated persons, especially
19 among minorities. Approximately 25 percent of the
20 HIV-positive population of the United States passes
21 through correctional facilities each year. BJS deter-
22 mined that the rate of confirmed AIDS cases is 3
23 times higher among incarcerated persons than in the
24 general population. Minorities account for the major-
25 ity of AIDS-related deaths among incarcerated per-

1 sons, with African-American incarcerated persons
2 3.5 times more likely than White incarcerated per-
3 sons and 2.5 times more likely than Hispanic incar-
4 cerated persons to die from AIDS-related causes.

5 (4) Studies suggest that other sexually trans-
6 mitted infections (STIs), such as gonorrhea,
7 chlamydia, syphilis, genital herpes, viral hepatitis,
8 and human papillomavirus, also exist at a higher
9 rate among incarcerated persons than in the general
10 population. For instance, researchers have estimated
11 that the rate of Hepatitis C (HCV) infection among
12 incarcerated persons is somewhere between 8 and 20
13 times higher than that of the general population.

14 (5) Correctional facilities lack a uniform system
15 of STI testing and reporting. Establishing a uniform
16 data collection system would assist in developing and
17 targeting counseling and treatment programs for in-
18 carcerated persons. Better developed and targeted
19 programs may reduce the spread of STIs.

20 (6) Although Congress has acted to reduce the
21 spread of sexual violence in correctional facilities by
22 enacting the National Prison Rape Elimination Act
23 (PREA) of 2003, BJS reported 8,210 allegations of
24 sexual violence in correctional facilities in 2004.

1 (7) Approximately 95 percent of all incarcerated
2 ated persons eventually return to society. According
3 to one study, every year approximately 100,000 per-
4 sons infected with both HIV and HCV are released
5 from correctional facilities. These individuals com-
6 prise approximately 50 percent of all persons with
7 both infections in the United States.

8 (8) According to the Centers for Disease Con-
9 trol and Prevention (CDC), latex condoms, when
10 used consistently and correctly, are highly effective
11 in preventing the transmission of HIV. Latex
12 condoms also reduce the risk of other STIs. Despite
13 the effectiveness of condoms in reducing the spread
14 of STIs, the Bureau of Prisons does not recommend
15 their use in correctional facilities.

16 (9) The distribution of condoms in correctional
17 facilities is currently legal in certain parts of the
18 United States and the world. The States of Vermont
19 and Mississippi and the District of Columbia allow
20 condom distribution programs in their correctional
21 facilities. The cities of New York, San Francisco,
22 Los Angeles, and Philadelphia also allow condom
23 distribution in their correctional facilities. However,
24 these States and cities operate fewer than 1 percent
25 of all correctional facilities. In one study, researchers

1 found that 18 of 31 countries surveyed allowed
2 condom distribution in correctional facilities.

3 (10) In 2000 and 2001, researchers surveyed
4 300 incarcerated persons and 100 correctional offi-
5 cers at the Central Detention Facility, a correctional
6 facility operated by the District of Columbia at
7 which condoms are available. Researchers found that
8 both incarcerated persons and correctional officers
9 generally supported the condom distribution pro-
10 gram and considered it to be important. Further-
11 more, the researchers determined that the program
12 had not caused any major security infractions. In
13 Canada, the Expert Committee on AIDS and Pris-
14 ons surveyed more than 400 correctional officers in
15 the Federal prison system of Canada in 1995 and
16 reported that 82 percent of those responding indi-
17 cated that the availability of condoms had created no
18 problems at their facility.

19 (11) The American Public Health Association,
20 the United Nations Joint Program on HIV/AIDS,
21 and the World Health Organization have endorsed
22 the effectiveness of condom distribution programs in
23 correctional facilities.

24 (12) Many correctional facilities in the United
25 States do not provide comprehensive testing and

1 treatment programs to reduce the spread of STIs.
2 According to BJS surveys from 2000, only 899 of
3 the 1,668 Federal and State correctional facilities
4 (i.e. 54 percent) provided HIV/AIDS counseling pro-
5 grams. Only 1,104 of the 1,584 State correctional
6 facilities (i.e. 70 percent) reported having a policy of
7 treating incarcerated persons for HCV.

8 **SEC. 3. AUTHORITY TO ALLOW COMMUNITY ORGANIZA-**
9 **TIONS TO PROVIDE STI COUNSELING, STI**
10 **PREVENTION EDUCATION, AND SEXUAL BAR-**
11 **RIER PROTECTION DEVICES IN FEDERAL**
12 **CORRECTIONAL FACILITIES.**

13 (a) DIRECTIVE TO ATTORNEY GENERAL.—Not later
14 than 30 days after the date of enactment of this Act, the
15 Attorney General shall direct the Bureau of Prisons to
16 allow community organizations to distribute sexual barrier
17 protection devices and to engage in STI counseling and
18 STI prevention education in Federal correctional facilities.
19 These activities shall be subject to all relevant Federal
20 laws and regulations which govern visitation in correc-
21 tional facilities.

22 (b) INFORMATION REQUIREMENT.—Any community
23 organization permitted to distribute sexual barrier protec-
24 tion devices under subsection (a) must ensure that the
25 persons to whom the devices are distributed are informed

1 about the proper use and disposal of sexual barrier protec-
2 tion devices in accordance with established public health
3 practices. Any community organization conducting STI
4 counseling or STI prevention education under subsection
5 (a) must offer comprehensive sexuality education.

6 (c) POSSESSION OF DEVICE PROTECTED.—No Fed-
7 eral correctional facility may, because of the possession or
8 use of a sexual barrier protection device—

9 (1) take adverse action against an incarcerated
10 person; or

11 (2) consider possession or use as evidence of
12 prohibited activity for the purpose of any Federal
13 correctional facility administrative proceeding.

14 (d) IMPLEMENTATION.—The Attorney General and
15 Bureau of Prisons shall implement this section according
16 to established public health practices in a manner that
17 protects the health, safety, and privacy of incarcerated
18 persons and of correctional facility staff.

19 **SEC. 4. SENSE OF CONGRESS REGARDING DISTRIBUTION**
20 **OF SEXUAL BARRIER PROTECTION DEVICES**
21 **IN STATE PRISON SYSTEMS.**

22 It is the sense of Congress that States should allow
23 for the legal distribution of sexual barrier protection de-
24 vices in State correctional facilities to reduce the preva-
25 lence and spread of STIs in those facilities.

1 **SEC. 5. SURVEY OF AND REPORT ON CORRECTIONAL FA-**
2 **CILITY PROGRAMS AIMED AT REDUCING THE**
3 **SPREAD OF STIS.**

4 (a) SURVEY.—The Attorney General, after consulting
5 with the Secretary of Health and Human Services, State
6 officials, and community organizations, shall, to the max-
7 imum extent practicable, conduct a survey of all Federal
8 and State correctional facilities no later than 180 days
9 after the date of enactment of this Act and annually there-
10 after for five years to determine:

11 (1) PREVENTION EDUCATION OFFERED.—The
12 type of prevention education, information, or train-
13 ing offered to incarcerated persons and correctional
14 facility staff regarding sexual violence and the
15 spread of STIs, including whether such education,
16 information, or training—

17 (A) constitutes comprehensive sexuality
18 education;

19 (B) is compulsory for new incarcerated
20 persons and for new staff; and

21 (C) is offered on an on-going basis.

22 (2) ACCESS TO SEXUAL BARRIER PROTECTION
23 DEVICES.—Whether incarcerated persons can—

24 (A) possess sexual barrier protection de-
25 vices;

1 (B) purchase sexual barrier protection de-
2 vices;

3 (C) purchase sexual barrier protection de-
4 vices at a reduced cost; and

5 (D) obtain sexual barrier protection devices
6 without cost.

7 (3) INCIDENCE OF SEXUAL VIOLENCE.—The in-
8 cidence of sexual violence and assault committed by
9 incarcerated persons and by correctional facility
10 staff.

11 (4) COUNSELING, TREATMENT, AND SUP-
12 PORTIVE SERVICES.—Whether the correctional facil-
13 ity requires incarcerated persons to participate in
14 counseling, treatment, and supportive services re-
15 lated to STIs, or whether it offers such programs to
16 incarcerated persons.

17 (5) STI TESTING.—Whether the correctional
18 facility tests incarcerated persons for STIs or gives
19 them the option to undergo such testing—

20 (A) at intake;

21 (B) on a regular basis; and

22 (C) prior to release.

23 (6) STI TEST RESULTS.—The number of incar-
24 cerated persons who are tested for STIs and the out-

1 come of such tests at each correctional facility,
2 disaggregated to include results for—

3 (A) the type of sexually transmitted infec-
4 tion tested for;

5 (B) the race and/or ethnicity of individuals
6 tested;

7 (C) the age of individuals tested; and

8 (D) the gender of individuals tested.

9 (7) PRE-RELEASE REFERRAL POLICY.—Wheth-
10 er incarcerated persons are informed prior to release
11 about STI-related services or other health services in
12 their communities, including free and low-cost coun-
13 seling and treatment options.

14 (8) PRE-RELEASE REFERRALS MADE.—The
15 number of referrals to community-based organiza-
16 tions or public health facilities offering STI-related
17 or other health services provided to incarcerated per-
18 sons prior to release, and the type of counseling or
19 treatment for which the referral was made.

20 (9) OTHER ACTIONS TAKEN.—Whether the cor-
21 rectional facility has taken any other action, in con-
22 junction with community organizations or otherwise,
23 to reduce the prevalence and spread of STIs in that
24 facility.

1 (b) PRIVACY.—In conducting the survey, the Attor-
2 ney General shall not request or retain the identity of any
3 person who has sought or been offered counseling, treat-
4 ment, testing, or prevention education information regard-
5 ing an STI (including information about sexual barrier
6 protection devices), or who has tested positive for an STI.

7 (c) REPORT.—The Attorney General shall transmit
8 to Congress and make publicly available the results of the
9 survey required under subsection (a), both for the Nation
10 as a whole and disaggregated as to each State and each
11 correctional facility. To the maximum extent possible, the
12 Attorney General shall issue the first report no later than
13 1 year after the date of enactment of this Act and shall
14 issue reports annually thereafter for 5 years.

15 **SEC. 6. STRATEGY.**

16 (a) DIRECTIVE TO ATTORNEY GENERAL.—The At-
17 torney General, in consultation with the Secretary of
18 Health and Human Services, State officials, and commu-
19 nity organizations, shall develop and implement a 5-year
20 strategy to reduce the prevalence and spread of STIs in
21 Federal and State correctional facilities. To the maximum
22 extent possible, the strategy shall be developed, trans-
23 mitted to Congress, and made publicly available no later
24 than 180 days after the transmission of the first report
25 required under subsection 5(c) of this Act.

1 (b) CONTENTS OF STRATEGY.—The strategy shall in-
2 clude the following:

3 (1) PREVENTION EDUCATION.—A plan for im-
4 proving prevention education, information, and
5 training offered to incarcerated persons and correc-
6 tional facility staff, including information and train-
7 ing on sexual violence and the spread of STIs, and
8 comprehensive sexuality education.

9 (2) SEXUAL BARRIER PROTECTION DEVICE AC-
10 CESS.—A plan for expanding access to sexual barrier
11 protection devices in correctional facilities.

12 (3) SEXUAL VIOLENCE REDUCTION.—A plan
13 for reducing the incidence of sexual violence among
14 incarcerated persons and correctional facility staff,
15 developed in consultation with the National Prison
16 Rape Elimination Commission.

17 (4) COUNSELING AND SUPPORTIVE SERVICES.—
18 A plan for expanding access to counseling and sup-
19 portive services related to STIs in correctional facili-
20 ties.

21 (5) TESTING.—A plan for testing incarcerated
22 persons for STIs during intake, during regular
23 health exams, and prior to release, and that—

1 (A) is conducted in accordance with guide-
2 lines established by the Centers for Disease
3 Control;

4 (B) includes pre-test counseling;

5 (C) requires that incarcerated persons are
6 notified of their option to decline testing at any
7 time;

8 (D) requires that incarcerated persons are
9 confidentially notified of their test results in a
10 timely manner; and

11 (E) ensures that incarcerated persons test-
12 ing positive for STIs receive post-test coun-
13 seling, care, treatment and supportive services.

14 (6) TREATMENT.—A plan for ensuring that
15 correctional facilities have the necessary medicine
16 and equipment to treat and monitor STIs and for
17 ensuring that incarcerated persons living with or
18 testing positive for STIs receive and have access to
19 care and treatment services.

20 (7) STRATEGIES FOR DEMOGRAPHIC GROUPS.—
21 A plan for developing and implementing culturally
22 appropriate, sensitive, and specific strategies to re-
23 duce the spread of STIs among demographic groups
24 heavily impacted by STIs.

1 (8) LINKAGES WITH COMMUNITIES AND FACILI-
2 TIES.—A plan for establishing and strengthening
3 linkages to local communities and health facilities
4 that provide counseling, testing, care, and treatment
5 services and that may receive persons recently re-
6 leased from incarceration who are living with STIs.

7 (9) OTHER PLANS.—Any other plans developed
8 by the Attorney General for reducing the spread of
9 STIs or improving the quality of health care in cor-
10 rectional facilities.

11 (10) MONITORING SYSTEM.—A monitoring sys-
12 tem that establishes performance goals related to re-
13 ducing the prevalence and spread of STIs in correc-
14 tional facilities and which, where feasible, expresses
15 such goals in quantifiable form.

16 (11) MONITORING SYSTEM PERFORMANCE INDI-
17 CATORS.—Performance indicators that measure or
18 assess the achievement of the performance goals de-
19 scribed in paragraph (9).

20 (12) COST ESTIMATE.—A detailed estimate of
21 the funding necessary to implement the strategy at
22 the Federal and State levels for all 5 years, includ-
23 ing the amount of funds required by community or-
24 ganizations to implement the parts of the strategy in
25 which they take part.

1 (c) REPORT.—The Attorney General shall transmit
2 to Congress and make publicly available an annual
3 progress report regarding the implementation and effec-
4 tiveness of the strategy described in subsection (a). The
5 progress report shall include an evaluation of the imple-
6 mentation of the strategy using the monitoring system and
7 performance indicators provided for in paragraphs (9) and
8 (10) of subsection (b).

9 **SEC. 7. APPROPRIATIONS.**

10 (a) IN GENERAL.—There are authorized to be appro-
11 priated such sums as may be necessary to carry out this
12 Act for each of the fiscal years 2007 through 2013.

13 (b) AVAILABILITY OF FUNDS.—Amounts made avail-
14 able under paragraph (1) are authorized to remain avail-
15 able until expended.

16 **SEC. 8. DEFINITIONS.**

17 For the purposes of this Act:

18 (1) CORRECTIONAL FACILITY.—The term “cor-
19 rectional facility” means any prison, penitentiary,
20 adult detention facility, juvenile detention facility,
21 jail, or other facility to which persons may be sent
22 after conviction of a crime or act of juvenile delin-
23 quency within the United States.

24 (2) INCARCERATED PERSON.—The term “incar-
25 cerated person” means any person who is serving a

1 sentence in a correctional facility after conviction of
2 a crime.

3 (3) SEXUALLY TRANSMITTED INFECTION.—The
4 term “sexually transmitted infection” or “STI”
5 means any disease or infection that is commonly
6 transmitted through sexual activity, including HIV/
7 AIDS, gonorrhea, chlamydia, syphilis, genital her-
8 pes, viral hepatitis, and human papillomavirus.

9 (4) SEXUAL BARRIER PROTECTION DEVICE.—
10 The term “sexual barrier protection device” means
11 any FDA-approved physical device which has not
12 been tampered with and which reduces the prob-
13 ability of STI transmission or infection between sex-
14 ual partners, including female condoms, male
15 condoms, and dental dams.

16 (5) COMPREHENSIVE SEXUALITY EDUCATION.—
17 The term “comprehensive sexuality education”
18 means sexuality education that includes information
19 about abstinence and about the proper use and dis-
20 posal of sexual barrier protection devices and which
21 is—

- 22 (A) based on evidence;
23 (B) free from bias; and
24 (C) comprehensive.

1 (6) COMMUNITY ORGANIZATION.—The term
2 “community organization” means a public health
3 care facility or a non-profit organization which pro-
4 vides health or STI related services according to es-
5 tablished public health standards.

6 (7) STATE.—The term “State” includes the
7 District of Columbia, American Samoa, the Com-
8 monwealth of the North Mariana Islands, Guam,
9 Puerto Rico, and the Virgin Islands of the United
10 States.

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