Honorable Larry Dixon  
Alabama State Senator  
25th District  
820 E. Fairview Avenue  
Montgomery, Alabama 36106

Municipalities - Prisons and Prisoners - A.I.D.S.

Prisoners in a municipal jail may be tested for AIDS under strict guidelines.

Dear Senator Dixon:

Reference is made to your request for an opinion from the Attorney General as to whether a municipality can require the involuntary testing of prisoners in a municipal jail for the AIDS virus.

Although there has been no specific court case on the matter, it is generally believed that mandatory blood testing for AIDS, although a minor personal invasion, would infringe on an individual's protected privacy interest in avoiding disclosure of personal matters unless it can be shown that the mandatory test requirement is necessary to advance the public health. The Constitutional Rights of AIDS Carriers 99 Harvard Law Review 1274 (1986). AIDS testing may violate an individual's right to be free from unreasonable search and seizures under the Fourth Amendment. Carey and Arthur, The Developing Law on AIDS in the Workplace, 46 Maryland Law Review 284 (1987). However, it must be noted that lawful incarceration brings about the necessary withdrawal or limitation of many privileges and rights, including restrictions on a prisoner's expectation to the right of privacy. Bell v. Wolfish, 441 U.S. 520 (1979).
In Judd v. Packard, ___ F.Supp. ___, Civ. Pr. No. S 87-1514 (D.Md. Sept. 24, 1987) the right of state prison officials to isolate a known AIDS victim in a state prison was discussed and a summary judgment was granted in favor of the defendant prison officials. The District Court of Maryland noted the dangers of AIDS in a closed community of a penal institution and the possibility that prison officials could face a $1983 suit for failure to isolate a AIDS patient or carrier.

In the case of testing prisoners in a municipal jail for AIDS, the inmate's right to privacy and unreasonable searches, though limited, must be weighed against the necessity of preventing the possible spread or infestation of AIDS in a closed penal environment. Furthermore, the differences between state and municipal prison facilities must be considered. For example, the average length of stay for an inmate in a municipal jail is likely to be shorter than that of an inmate in a state institution.

However, notwithstanding these factors, it is well established that AIDS poses a significant danger to public health and that danger is heightened in the closed community of a penal institution where carriers of the virus may readily transmit it. Thus, the identification of potential AIDS carriers as part of a program of AIDS prevention is certainly a legitimate purpose to be furthered by municipal officials. It is the opinion of the Attorney General that the necessity of AIDS prevention in the penal environment of a municipal jail by the identification and treatment of AIDS carriers outweighs the privacy right of a prisoner in a municipal jail. Therefore, such prisoners may be tested for the AIDS virus, voluntarily or involuntarily, where certain guidelines regarding the testing are established and uniformly applied.

Among the guidelines to be established for the testing of municipal prisoners for AIDS are the following: (1) The testing must be done for health and safety reasons only, that is, for the prevention of the spread of AIDS, to be followed by counseling, and medical treatment where necessary, for those found to have the AIDS virus; and (2) The test results of the inmates must be kept confidential. South Florida Blood Service v. Rasmussen, 467 So.2d 798 (Fla. App. 3 Dist. 1985).
It must be stated that the question of AIDS testing is the subject of much pending litigation and until a definite determination in this matter is made by the courts, extreme caution should be followed when a decision is made regarding AIDS testing.

I hope that your question has been adequately answered. If our office can be of further assistance, please do not hesitate to call on us.

Sincerely yours,

DUN STEGELMAN
Attorney General