



HOUSE BILL No. 5881

May 9, 1996, Introduced by Rep. Galloway and referred to the Committee on Health Policy.

A bill to amend section 67 of Act No. 232 of the Public Acts of 1953, entitled as amended

"An act to revise, consolidate, and codify the laws relating to probationers and probation officers, to pardons, reprieves, commutations, and paroles, to the administration of correctional institutions, correctional farms, and probation recovery camps, to prisoner labor and correctional industries, and to the supervision and inspection of local jails and houses of correction; to provide for the siting of correctional facilities; to create a state department of corrections, and to prescribe its powers and duties; to provide for the transfer to and vesting in said department of powers and duties vested by law in certain other state boards, commissions, and officers, and to abolish certain boards, commissions, and offices the powers and duties of which are transferred by this act; to prescribe the powers and duties of certain other state departments and agencies; to provide for the creation of a local lockup advisory board; to prescribe penalties for the violation of the provisions of this act; to make certain appropriations; to repeal certain parts of this act on specific dates; and to repeal all acts and parts of acts inconsistent with the provisions of this act,"

as amended by Act No. 510 of the Public Acts of 1988, being section 791.267 of the Michigan Compiled Laws; and to add section 67a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Section 67 of Act No. 232 of the Public Acts of
2 1953, as amended by Act No. 510 of the Public Acts of 1988, being
3 section 791.267 of the Michigan Compiled Laws, is amended and
4 section 67a is added to read as follows:

5 Sec. 67. (1) Quarters for temporary confinement apart from
6 those of regular inmates shall be provided for convicted prison-
7 ers upon commitment at each of the state correctional facilities,
8 which the ~~commission~~ DIRECTOR shall designate as a reception
9 center. Within 60 days after the arrival of a convicted prisoner
10 at such a state correctional facility, the classification commit-
11 tee shall make and complete a comprehensive study of the prison-
12 er, including physical and psychiatric examinations, to ensure
13 that the prisoner is confined in the state correctional facility
14 suited to the type of rehabilitation required in his or her
15 case. The warden of the state correctional facility shall
16 deliver a report of the study of the classification committee to
17 the deputy director ~~in charge~~ of the ~~bureau of~~ correctional
18 facilities ADMINISTRATION, who shall, within 5 days after receipt
19 of the report, execute an order to confine the prisoner in the
20 state correctional facility determined as suitable by the deputy
21 director.

22 (2) Immediately upon arrival at a reception center desig-
23 nated pursuant to subsection (1), each incoming prisoner shall
24 undergo a test for HIV or an antibody to HIV. This subsection
25 ~~shall~~ DOES not apply if an incoming prisoner has been tested
26 for HIV or an antibody to HIV under section 5129 of the public

1 health code, Act No. 368 of the Public Acts of 1978, being
2 section 333.5129 of the Michigan Compiled Laws, within the 3
3 months immediately preceding the date of the prisoner's arrival
4 at the reception center, as indicated by the record transferred
5 to the department by the court under that section.

6 (3) If a prisoner receives a positive test result ~~—~~ and is
7 subsequently subject to discipline by the department for sexual
8 misconduct that could transmit HIV, illegal intravenous use of
9 controlled substances, or assaultive or predatory behavior that
10 could transmit HIV, the department shall house that prisoner in
11 administrative segregation, an inpatient health care unit, or a
12 unit separate from the general prisoner population, as determined
13 by the department.

14 (4) The department shall report each positive test result to
15 the department of ~~public~~ COMMUNITY health, IN COMPLIANCE WITH
16 SECTION 5114 OF ACT NO. 368 OF THE PUBLIC ACTS OF 1978, BEING
17 SECTION 333.5114 OF THE MICHIGAN COMPILED LAWS.

18 (5) If an employee of the department ~~is exposed~~ SUSTAINS A
19 PERCUTANEOUS, MUCOUS MEMBRANE, OR OPEN WOUND EXPOSURE to the
20 blood or body fluid of a prisoner, ~~by that prisoner in a manner~~
21 ~~that could transmit HIV, the prisoner shall be tested for HIV or~~
22 ~~an antibody to HIV. If the prisoner refuses to undergo the test,~~
23 ~~he or she shall be considered by the department to be HIV~~
24 ~~positive~~ THE EMPLOYEE MAY, AND THE DEPARTMENT SHALL, PROCEED
25 UNDER SECTION 67A.

1 (6) Upon the request of an employee of the department, the
2 department shall provide or arrange for a test for HIV or an
3 antibody to HIV for that employee, free of charge.

4 (7) Upon the request of an employee of the department, the
5 department shall provide to that employee the equipment necessary
6 to implement universal precautions to prevent transmission of HIV
7 infection.

8 (8) A prisoner who receives a positive HIV test result ~~or~~
9 ~~who is considered by the department to be HIV positive pursuant~~
10 ~~to this section~~ UNDER SUBSECTION (5) shall not work in a health
11 facility operated by the department.

12 (9) The department shall conduct a seroprevalence study of
13 the prisoners in all state correctional facilities to determine
14 the percentage of prisoners who are HIV infected.

15 (10) The results of a test for HIV or an antibody to HIV
16 conducted under this section shall be disclosed by the department
17 ~~only to persons who demonstrate to the department a need to know~~
18 ~~the test results, and as otherwise provided in subsection (4)~~
19 PURSUANT TO SECTION 67A.

20 (11) The deputy director ~~in charge~~ of the ~~bureau of~~ cor-
21 rectional facilities ADMINISTRATION shall take steps to ensure
22 that all prisoners who receive HIV testing receive counseling
23 regarding ~~acquired immunodeficiency syndrome and acquired immu-~~
24 ~~nodeficiency syndrome related complex,~~ AIDS including, at a min-
25 imum, treatment, transmission, and protective measures.

26 (12) The department, in conjunction with the department of
27 ~~public~~ COMMUNITY health, shall develop and implement a

1 comprehensive AIDS education program designed specifically for
2 correctional environments. The program shall be conducted by the
3 bureau within the department responsible for health care, for
4 staff and for prisoners at each state correctional facility.

5 (13) ~~Two years after the effective date of the amendatory~~
6 ~~act that added this subsection~~ BY MARCH 30, 1991, the department
7 shall submit a report regarding the testing component, managerial
8 aspects, and effectiveness of subsections (2) to (12) to the
9 senate and house committees with jurisdiction over matters per-
10 taining to corrections, and to the senate and house committees
11 with jurisdiction over matters pertaining to public health.

12 (14) As used in this section:

13 (a) "AIDS" means acquired immunodeficiency syndrome.

14 (b) "HIV" means human immunodeficiency virus.

15 (c) "Positive test result" means a double positive
16 enzyme-linked immunosorbent assay test, combined with a positive
17 western blot assay test, or a positive test under an HIV test
18 that is considered reliable by the federal centers for disease
19 control and is approved by the department of ~~public~~ COMMUNITY
20 health.

21 SEC. 67A. (1) IF AN EMPLOYEE OF THE DEPARTMENT SUSTAINS A
22 PERCUTANEOUS, MUCOUS MEMBRANE, OR OPEN WOUND EXPOSURE TO THE
23 BLOOD OR BODY FLUIDS OF A PRISONER, THE EMPLOYEE MAY REQUEST THAT
24 THE PRISONER BE TESTED FOR HIV INFECTION OR HBV INFECTION, OR
25 BOTH, PURSUANT TO THIS SECTION.

26 (2) AN EMPLOYEE SHALL MAKE A REQUEST DESCRIBED IN
27 SUBSECTION (1) TO THE DEPARTMENT IN WRITING ON A FORM PROVIDED BY

1 THE DEPARTMENT WITHIN 72 HOURS AFTER THE EXPOSURE OCCURS. THE
2 REQUEST FORM SHALL BE DATED AND SHALL CONTAIN AT A MINIMUM THE
3 NAME AND ADDRESS OF THE EMPLOYEE MAKING THE REQUEST AND A
4 DESCRIPTION OF HIS OR HER EXPOSURE TO THE BLOOD OR OTHER BODY
5 FLUIDS OF THE PRISONER. THE REQUEST FORM SHALL CONTAIN A SPACE
6 FOR THE INFORMATION REQUIRED UNDER SUBSECTION (6) AND A STATEMENT
7 THAT THE REQUESTER IS SUBJECT TO THE CONFIDENTIALITY REQUIREMENTS
8 OF SUBSECTION (8) AND SECTION 5131 OF THE PUBLIC HEALTH CODE, ACT
9 NO. 368 OF THE PUBLIC ACTS OF 1978, BEING SECTION 333.5131 OF THE
10 MICHIGAN COMPILED LAWS. THE REQUEST FORM SHALL NOT CONTAIN
11 INFORMATION THAT WOULD IDENTIFY THE PRISONER.

12 (3) UPON RECEIPT OF A REQUEST UNDER THIS SECTION, THE
13 DEPARTMENT SHALL MAKE A DETERMINATION AS TO WHETHER OR NOT THERE
14 IS REASONABLE CAUSE TO BELIEVE THAT THE EXPOSURE DESCRIBED IN THE
15 REQUEST OCCURRED AND IF IT WAS A PERCUTANEOUS, MUCOUS MEMBRANE,
16 OR OPEN WOUND EXPOSURE PURSUANT TO R 325.70001 TO R 325.70018 OF
17 THE MICHIGAN ADMINISTRATIVE CODE. IF THE DEPARTMENT DETERMINES
18 THAT THERE IS REASONABLE CAUSE TO BELIEVE THAT THE EXPOSURE
19 DESCRIBED IN THE REQUEST OCCURRED AND WAS A PERCUTANEOUS, MUCOUS
20 MEMBRANE, OR OPEN WOUND EXPOSURE, THE DEPARTMENT SHALL TEST THE
21 PRISONER FOR HIV INFECTION OR HBV INFECTION, OR BOTH, AS INDI-
22 CATED IN THE REQUEST, SUBJECT TO SUBSECTION (4).

23 (4) IN ORDER TO PROTECT THE HEALTH, SAFETY, AND WELFARE OF
24 DEPARTMENT EMPLOYEES, THE DEPARTMENT MAY TEST A PRISONER UNDER
25 SUBSECTION (3) WHETHER OR NOT THE PRISONER CONSENTS TO THE TEST.
26 THE DEPARTMENT IS NOT REQUIRED TO GIVE THE PRISONER AN

1 OPPORTUNITY FOR A HEARING OR TO OBTAIN AN ORDER FROM A COURT OF
2 COMPETENT JURISDICTION BEFORE ADMINISTERING THE TEST.

3 (5) THE DEPARTMENT IS NOT REQUIRED TO PROVIDE HIV COUNSELING
4 PURSUANT TO SECTION 5133(1) OF ACT NO. 368 OF THE PUBLIC ACTS OF
5 1978, BEING SECTION 333.5133 OF THE MICHIGAN COMPILED LAWS, TO AN
6 EMPLOYEE WHO REQUESTS THAT A PRISONER BE TESTED FOR HIV UNDER
7 THIS SECTION, UNLESS THE DEPARTMENT TESTS THE EMPLOYEE FOR HIV.

8 (6) THE DEPARTMENT SHALL COMPLY WITH THIS SUBSECTION IF THE
9 DEPARTMENT RECEIVES A REQUEST UNDER THIS SECTION AND DETERMINES
10 EITHER THAT THERE IS NOT REASONABLE CAUSE TO BELIEVE THE
11 REQUESTER'S DESCRIPTION OF HIS OR HER EXPOSURE OR THAT THE EXPO-
12 SURE WAS NOT A PERCUTANEOUS, MUCOUS MEMBRANE, OR OPEN WOUND EXPO-
13 SURE AND AS A RESULT OF THE DETERMINATION THE DEPARTMENT IS NOT
14 REQUIRED TO TEST THE PRISONER FOR HIV INFECTION OR HBV INFECTION,
15 OR BOTH. THE DEPARTMENT SHALL STATE IN WRITING ON THE REQUEST
16 FORM THE REASON IT DETERMINED THERE WAS NOT REASONABLE CAUSE TO
17 BELIEVE THE REQUESTER'S DESCRIPTION OF HIS OR HER EXPOSURE OR FOR
18 THE DEPARTMENT'S DETERMINATION THAT THE EXPOSURE WAS NOT A PERCU-
19 TANEOS, MUCOUS MEMBRANE, OR OPEN WOUND EXPOSURE, AS APPLICABLE.
20 THE DEPARTMENT SHALL TRANSMIT A COPY OF THE COMPLETED REQUEST
21 FORM TO THE REQUESTING INDIVIDUAL WITHIN 2 DAYS AFTER THE DATE
22 THE DEPARTMENT MAKES THE DETERMINATION DESCRIBED IN THIS
23 SUBSECTION.

24 (7) THE DEPARTMENT SHALL NOTIFY THE REQUESTING EMPLOYEE OF
25 THE HIV OR HBV TEST RESULTS, OR BOTH, WHETHER POSITIVE OR NEGA-
26 TIVE, WITHIN 2 DAYS AFTER THE TEST RESULTS ARE OBTAINED BY THE
27 DEPARTMENT. THE NOTIFICATION SHALL BE TRANSMITTED DIRECTLY TO

1 THE REQUESTING EMPLOYEE OR, UPON REQUEST OF THE REQUESTING
2 EMPLOYEE, TO HIS OR HER PRIMARY CARE PHYSICIAN OR OTHER HEALTH
3 PROFESSIONAL DESIGNATED BY THE EMPLOYEE.

4 (8) THE NOTICE REQUIRED UNDER SUBSECTION (7) SHALL NOT CON-
5 TAIN INFORMATION THAT WOULD IDENTIFY THE PRISONER WHO TESTED POS-
6 ITIVE OR NEGATIVE FOR HIV OR HBV. THE INFORMATION CONTAINED IN
7 THE NOTICE IS CONFIDENTIAL AND IS SUBJECT TO THIS SECTION, THE
8 RULES PROMULGATED UNDER SECTION 5111(2) OF ACT NO. 368 OF THE
9 PUBLIC ACTS OF 1978, BEING SECTION 333.5111 OF THE MICHIGAN
10 COMPILED LAWS, AND SECTION 5131 OF ACT NO. 368 OF THE PUBLIC ACTS
11 OF 1978, BEING SECTION 333.5131 OF THE MICHIGAN COMPILED LAWS. A
12 PERSON WHO RECEIVES CONFIDENTIAL INFORMATION UNDER THIS SECTION
13 SHALL DISCLOSE THE INFORMATION TO OTHERS ONLY TO THE EXTENT CON-
14 SISTENT WITH THE AUTHORIZED PURPOSE FOR WHICH THE INFORMATION WAS
15 OBTAINED.

16 (9) THE DEPARTMENT SHALL DEVELOP AND DISTRIBUTE THE FORMS
17 REQUIRED UNDER THIS SECTION.

18 (10) IN ADDITION TO THE PENALTIES PRESCRIBED IN THE RULES
19 PROMULGATED UNDER SECTION 5111(2) OF ACT NO. 368 OF THE PUBLIC
20 ACTS OF 1978 AND IN SECTION 5131 OF ACT NO. 368 OF THE PUBLIC
21 ACTS OF 1978, A PERSON WHO DISCLOSES INFORMATION IN VIOLATION OF
22 SUBSECTION (8) IS GUILTY OF A MISDEMEANOR.

23 (11) THE DEPARTMENT SHALL REPORT TO THE DEPARTMENT OF COMMU-
24 NITY HEALTH EACH TEST RESULT OBTAINED UNDER THIS SECTION THAT
25 INDICATES THAT AN INDIVIDUAL IS HIV INFECTED, IN COMPLIANCE WITH
26 SECTION 5114 OF ACT NO. 368 OF THE PUBLIC ACTS OF 1978, BEING
27 SECTION 333.5114 OF THE MICHIGAN COMPILED LAWS.

1 (12) AS USED IN THIS SECTION:

2 (A) "EMPLOYEE" MEANS AN INDIVIDUAL WHO IS EMPLOYED BY OR
3 UNDER CONTRACT TO THE DEPARTMENT OF CORRECTIONS.

4 (B) "HBV" MEANS HEPATITIS B VIRUS.

5 (C) "HBV INFECTED" OR "HBV INFECTION" MEANS THE STATUS OF AN
6 INDIVIDUAL WHO IS TESTED AS HBSAG-POSITIVE.

7 (D) "HIV" MEANS HUMAN IMMUNODEFICIENCY VIRUS.

8 (E) "HIV INFECTED" MEANS THAT TERM AS DEFINED IN
9 SECTION 5101 OF ACT NO. 368 OF THE PUBLIC ACTS OF 1978, BEING
10 SECTION 333.5101 OF THE MICHIGAN COMPILED LAWS.