

Act No. 565
Public Acts of 1996
Approved by the Governor
January 15, 1997
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**STATE OF MICHIGAN
88TH LEGISLATURE
REGULAR SESSION OF 1996**

Introduced by Rep. Galloway

Reps. Agee, Baade, Bodem, Bush, Crissman, Dalman, DeMars, Gernaat, Gilmer, Gire, Gnodtke, Goschka, Green, Harder, Hill, Hood, Horton, Jamian, Jaye, Jersevic, Johnson, Kukuk, Law, LeTarte, Llewellyn, London, Lowe, McBryde, McManus, Middaugh, Middleton, Perricone, Profit, Prusi, Rocca, Ryan, Sikkema, Tesanovich, Voorhees and Walberg named co-sponsors

ENROLLED HOUSE BILL No. 5881

AN ACT 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 67b.

The People of the State of Michigan enact:

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

Sec. 67. (1) Quarters for temporary confinement apart from those of regular inmates shall be provided for convicted prisoners upon commitment at each of the state correctional facilities, which the director shall designate as a reception center. Within 60 days after the arrival of a convicted prisoner at such a state correctional facility, the classification committee shall make and complete a comprehensive study of the prisoner, including physical and psychiatric examinations, to ensure that the prisoner is confined in the state correctional facility suited to the type of rehabilitation required in his or her case. The warden of the state correctional facility shall deliver a report of the study of the classification committee to the deputy director of the correctional facilities administration, who shall, within 5 days after receipt of the report, execute an order to confine the prisoner in the state correctional facility determined as suitable by the deputy director.

(2) Immediately upon arrival at a reception center designated pursuant to subsection (1), each incoming prisoner shall undergo a test for HIV or an antibody to HIV. This subsection does not apply if an incoming prisoner has been tested for HIV or an antibody to HIV under section 5129 of the public health code, Act No. 368 of the Public Acts of 1978, being section 333.5129 of the Michigan Compiled Laws, within the 3 months immediately preceding the date of the prisoner's arrival at the reception center, as indicated by the record transferred to the department by the court under that section.

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

(4) The department shall report each positive test result to the department of community health, in compliance with section 5114 of Act No. 368 of the Public Acts of 1978, being section 333.5114 of the Michigan Compiled Laws.

(5) If an employee of the department sustains a percutaneous, mucous membrane, or open wound exposure to the blood or body fluid of a prisoner, the employee may, and the department shall, proceed under section 67b.

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

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

(8) A prisoner who receives a positive HIV test result under subsection (5) shall not work in a health facility operated by the department.

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

(10) The results of a test for HIV or an antibody to HIV conducted under this section shall be disclosed by the department pursuant to section 67b.

(11) The deputy director of the correctional facilities administration shall take steps to ensure that all prisoners who receive HIV testing receive counseling regarding AIDS including, at a minimum, treatment, transmission, and protective measures.

(12) The department, in conjunction with the department of community health, shall develop and implement a comprehensive AIDS education program designed specifically for correctional environments. The program shall be conducted by the bureau within the department responsible for health care, for staff and for prisoners at each state correctional facility.

(13) By March 30, 1991, the department shall submit a report regarding the testing component, managerial aspects, and effectiveness of subsections (2) to (12) to the senate and house committees with jurisdiction over matters pertaining to corrections, and to the senate and house committees with jurisdiction over matters pertaining to public health.

(14) As used in this section:

(a) "AIDS" means acquired immunodeficiency syndrome.

(b) "HIV" means human immunodeficiency virus.

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

Sec. 67b. (1) If an employee of the department sustains a percutaneous, mucous membrane, or open wound exposure to the blood or body fluids of a prisoner, the employee may request that the prisoner be tested for HIV infection or HBV infection, or both, pursuant to this section.

(2) An employee shall make a request described in subsection (1) to the department in writing on a form provided by the department within 72 hours after the exposure occurs. The request form shall be dated and shall contain at a minimum the name and address of the employee making the request and a description of his or her exposure to the blood or other body fluids of the prisoner. The request form shall contain a space for the information required under subsection (6) and a statement that the requester is subject to the confidentiality requirements of subsection (8) and section 5131 of the public health code, Act No. 368 of the Public Acts of 1978, being section 333.5131 of the Michigan Compiled Laws. The request form shall not contain information that would identify the prisoner.

(3) Upon receipt of a request under this section, the department shall make a determination as to whether or not there is reasonable cause to believe that the exposure described in the request occurred and if it was a percutaneous, mucous membrane, or open wound exposure pursuant to R 325.70001 to R 325.70018 of the Michigan administrative code. If the department determines that there is reasonable cause to believe that the exposure described in the request occurred and was a percutaneous, mucous membrane, or open wound exposure, the department shall test the prisoner for HIV infection or HBV infection, or both, as indicated in the request, subject to subsection (4).

(4) In order to protect the health, safety, and welfare of department employees, the department may test a prisoner under subsection (3) whether or not the prisoner consents to the test. The department is not required to give the prisoner an opportunity for a hearing or to obtain an order from a court of competent jurisdiction before administering the test.

(5) The department is not required to provide HIV counseling pursuant to section 5133(1) of Act No. 368 of the Public Acts of 1978, being section 333.5133 of the Michigan Compiled Laws, to an employee who requests that a prisoner be tested for HIV under this section, unless the department tests the employee for HIV.

(6) The department shall comply with this subsection if the department receives a request under this section and determines either that there is not reasonable cause to believe the requester's description of his or her exposure or that the exposure was not a percutaneous, mucous membrane, or open wound exposure and as a result of the determination the department is not required to test the prisoner for HIV infection or HBV infection, or both. The department shall state in writing on the request form the reason it determined there was not reasonable cause to believe the requester's description of his or her exposure or for the department's determination that the exposure was not a percutaneous, mucous membrane, or open wound exposure, as applicable. The department shall transmit a copy of the completed request form to the requesting individual within 2 days after the date the department makes the determination described in this subsection.

(7) The department shall notify the requesting employee of the HIV or HBV test results, or both, whether positive or negative, within 2 days after the test results are obtained by the department. The notification shall be transmitted directly to the requesting employee or, upon request of the requesting employee, to his or her primary care physician or other health professional designated by the employee. The notice required under this subsection shall include an explanation of the confidentiality requirements of subsection (8).

(8) The notice required under subsection (7) shall not contain information that would identify the prisoner who tested positive or negative for HIV or HBV. The information contained in the notice is confidential and is subject to this section, the rules promulgated under section 5111(2) of Act No. 368 of the Public Acts of 1978, being section 333.5111 of the Michigan Compiled Laws, and section 5131 of Act No. 368 of the Public Acts of 1978, being section 333.5131 of the Michigan Compiled Laws. A person who receives confidential information under this section shall disclose the information to others only to the extent consistent with the authorized purpose for which the information was obtained.

(9) The department shall develop and distribute the forms required under this section.

(10) In addition to the penalties prescribed in the rules promulgated under section 5111(2) of Act No. 368 of the Public Acts of 1978 and in section 5131 of Act No. 368 of the Public Acts of 1978, a person who discloses information in violation of subsection (8) is guilty of a misdemeanor.

(11) The department shall report to the department of community health each test result obtained under this section that indicates that an individual is HIV infected, in compliance with section 5114 of Act No. 368 of the Public Acts of 1978, being section 333.5114 of the Michigan Compiled Laws.

(12) As used in this section:

(a) "Employee" means an individual who is employed by or under contract to the department of corrections.

(b) "HBV" means hepatitis B virus.

(c) "HBV infected" or "HBV infection" means the status of an individual who is tested as HBsAg-positive.

(d) "HIV" means human immunodeficiency virus.

(e) "HIV infected" means that term as defined in section 5101 of Act No. 368 of the Public Acts of 1978, being section 333.5101 of the Michigan Compiled Laws.

This act is ordered to take immediate effect.

Clerk of the House of Representatives.

Secretary of the Senate.

Approved -----

Governor.