

HOUSE BILL No. 4788

June 11, 1999, Introduced by Reps. Shackleton, Kowall, Tabor, Sheltroun, LaSata, Mortimer, Law, Rick Johnson, Allen, DeHart, Green, Ehardt, Bovin, Howell, Mans, DeWeese, Garcia, Bishop, Voorhees, Birkholz and Scranton and referred to the Committee on Criminal Law and Corrections.

A bill to amend 1953 PA 232, entitled

"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 allow for the operation of certain facilities by private entities; 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,"

by amending sections 67 and 67b (MCL 791.267 and 791.267b), section 67 as amended and section 67b as added by 1996 PA 565.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

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

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

9 (4) The department shall report each positive test result to
10 the department of community health, in compliance with section
11 5114 of ~~Act No. 368 of the Public Acts of 1978, being section~~
12 ~~333.5114 of the Michigan Compiled Laws~~ THE PUBLIC HEALTH CODE,
13 1978 PA 368, MCL 333.5114.

14 (5) IF EITHER OF THE FOLLOWING OCCURS TO AN EMPLOYEE OF THE
15 DEPARTMENT, THE EMPLOYEE MAY, AND THE DEPARTMENT SHALL, PROCEED
16 UNDER SECTION 67B:

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

21 (B) A PRISONER IN THE STATE CORRECTIONAL FACILITY IS ARREST-
22 ED, CHARGED, OR CONVICTED FOR A VIOLATION OF SECTION 81C OF THE
23 MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.81C, AND THE EMPLOYEE
24 IS THE VICTIM OF THE ASSAULT OR BATTERY UNDER THAT SECTION.

25 (6) Upon the request of an employee of the department, the
26 department shall provide or arrange for a test for HIV ~~or an~~
27 ~~antibody to HIV~~ INFECTION, HBV INFECTION, HCV INFECTION, OR A

1 COMBINATION OF OR ALL 3 INFECTIONS AND A TEST FOR 1 OR MORE
2 VENEREAL DISEASES for that employee, free of charge.

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

8 (8) A prisoner who receives a positive HIV test result OR IS
9 DETERMINED TO BE HBV INFECTED OR HCV INFECTED OR TO HAVE 1 OR
10 MORE VENEREAL DISEASES under subsection (5) shall not work in a
11 health 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, HBV INFECTED,
15 OR HCV INFECTED OR ARE INFECTED WITH A COMBINATION OF OR ALL 3
16 INFECTIONS OR WHO HAVE 1 OR MORE VENEREAL DISEASES.

17 (10) The results of a test for HIV ~~or an antibody to HIV~~
18 INFECTION, HBV INFECTION, OR HCV INFECTION OR VENEREAL DISEASE
19 conducted under this section shall be disclosed by the department
20 pursuant to section 67b.

21 (11) The deputy director of the correctional facilities
22 administration shall take steps to ensure that all prisoners who
23 ~~receive HIV testing~~ ARE TESTED FOR HIV INFECTION, HBV INFEC-
24 TION, HCV INFECTION, OR A COMBINATION OF OR ALL 3 INFECTIONS OR
25 VENEREAL DISEASE receive counseling regarding AIDS, HBV INFEC-
26 TION, HCV INFECTION, AND VENEREAL DISEASE including, at a
27 minimum, treatment, transmission, and protective measures.

1 (12) The department, in conjunction with the department of
2 community health, shall develop and implement a comprehensive
3 AIDS, HBV INFECTION, HCV INFECTION, AND VENEREAL DISEASE educa-
4 tion program designed specifically for correctional
5 environments. The program shall be conducted by the bureau
6 within the department responsible for health care, for staff and
7 for prisoners at each state correctional facility.

8 (13) By March 30, 1991, the department shall submit a report
9 regarding the testing component, managerial aspects, and effec-
10 tiveness of subsections (2) to (12) to the senate and house com-
11 mittees with jurisdiction over matters pertaining to corrections,
12 and to the senate and house committees with jurisdiction over
13 matters pertaining to public health.

14 (14) As used in this section:

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

16 (b) "HBV" MEANS HEPATITIS B VIRUS.

17 (c) "HBV INFECTED" OR "HBV INFECTION" MEANS THE STATUS OF AN
18 INDIVIDUAL WHO IS TESTED AS HBsAg-POSITIVE.

19 (d) "HCV" MEANS HEPATITIS C VIRUS.

20 (e) "HCV INFECTED" OR "HCV INFECTION" MEANS THE STATUS OF AN
21 INDIVIDUAL WHO HAS TESTED POSITIVE FOR THE PRESENCE OF HCV ANTI-
22 BODIES OR HAS TESTED POSITIVE FOR HCV USING AN RNA TEST.

23 (f) ~~(b)~~ "HIV" means human immunodeficiency virus.

24 (g) "HIV INFECTED" OR "HIV INFECTION" MEANS THE STATUS OF AN
25 INDIVIDUAL WHO HAS RECEIVED A POSITIVE TEST RESULT.

26 (h) ~~(c)~~ "Positive test result" means a double positive
27 enzyme-linked immunosorbent assay test, combined with a positive

1 western blot assay test, or a positive test under an HIV test
2 that is considered reliable by the federal centers for disease
3 control and is approved by the department of community health.

4 (I) "VENEREAL DISEASE" MEANS THAT TERM AS DEFINED IN SECTION
5 5101 OF THE PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.5101.

6 Sec. 67b. (1) IF EITHER OF THE FOLLOWING OCCURS, AN
7 EMPLOYEE MAY REQUEST THAT A PRISONER BE TESTED FOR HIV INFECTION,
8 HBV INFECTION, HCV INFECTION, OR A COMBINATION OF OR ALL 3 INFEC-
9 TIONS AND, IN THE CASE OF AN OCCURRENCE DESCRIBED IN SUBDIVISION
10 (B), FOR 1 OR MORE VENEREAL DISEASES, PURSUANT TO THIS SECTION:

11 (A) ~~(1) If an~~ AN employee of the department sustains a
12 percutaneous, mucous membrane, or open wound exposure to the
13 blood or body fluids of a prisoner. ~~, the employee may request~~
14 ~~that the prisoner be tested for HIV infection or HBV infection,~~
15 ~~or both, pursuant to this section.~~

16 (B) A PRISONER IS ARRESTED, CHARGED, OR CONVICTED OF A VIO-
17 LATION OF SECTION 81C OF THE MICHIGAN PENAL CODE, 1931 PA 328,
18 MCL 750.81C, AND THE EMPLOYEE IS THE VICTIM OF THE ASSAULT OR
19 BATTERY UNDER THAT SECTION.

20 (2) An employee shall make a request described in subsection
21 ~~(1)~~ (1)(A) to the department in writing on a form provided by
22 the department within 72 hours after the exposure occurs. The
23 request form shall be dated and shall contain at a minimum the
24 name and address of the employee making the request and a
25 description of his or her exposure to the blood or other body
26 fluids of the prisoner. The request form shall contain a space
27 for the information required under subsection (6) and a statement

1 that the requester is subject to the confidentiality requirements
2 of subsection (8) and section 5131 of the public health code,
3 ~~Act No. 368 of the Public Acts of 1978, being section 333.5131~~
4 ~~of the Michigan Compiled Laws~~ 1978 PA 368, MCL 333.5131. The
5 request form shall not contain information that would identify
6 the prisoner.

7 (3) AN EMPLOYEE WHO MAKES A REQUEST UNDER SUBSECTION (1)(B)
8 SHALL MAKE THE REQUEST TO THE DEPARTMENT IN WRITING ON A FORM
9 PROVIDED BY THE DEPARTMENT AS SOON AS POSSIBLE, BUT NOT LATER
10 THAN 72 HOURS, AFTER THE ASSAULT OR BATTERY DESCRIBED IN SUBSEC-
11 TION (1)(B). THE REQUEST FORM SHALL BE DATED AND SIGNED BY THE
12 EMPLOYEE AND SHALL CONTAIN, AT A MINIMUM, THE NAME AND ADDRESS OF
13 THE EMPLOYEE AND A DESCRIPTION OF THE ASSAULT OR BATTERY AND HIS
14 OR HER EXPOSURE TO THE BODY FLUID OR FECES OF THE PRISONER. THE
15 REQUEST FORM SHALL ALSO CONTAIN A STATEMENT THAT THE REQUESTER IS
16 SUBJECT TO SECTION 5131.

17 (4) ~~(3)~~ Upon receipt of a request under ~~this section~~
18 SUBSECTION (2), the department shall make a determination as to
19 whether or not there is reasonable cause to believe that the
20 exposure described in the request occurred and if it was a percu-
21 taneous, mucous membrane, or open wound exposure pursuant to
22 R 325.70001 to R 325.70018 of the Michigan administrative code.
23 If the department determines that there is reasonable cause to
24 believe that the exposure described in the request occurred and
25 was a percutaneous, mucous membrane, or open wound exposure, the
26 department shall test the prisoner for HIV infection, ~~or~~ HBV
27 infection, HCV INFECTION, or ~~both~~ A COMBINATION OF OR ALL 3

1 INFECTIONS, as indicated in the request, subject to subsection
2 ~~(4)~~ (5). UPON RECEIPT OF A REQUEST UNDER SUBSECTION (3), THE
3 DEPARTMENT SHALL ASSUME THAT THERE IS REASONABLE CAUSE TO BELIEVE
4 THAT THE ASSAULT OR BATTERY AND THE EXPOSURE OCCURRED, AND SHALL
5 TEST THE PRISONER FOR HIV INFECTION, HBV INFECTION, HCV INFECTION,
6 OR A COMBINATION OF OR ALL 3 INFECTIONS, AND FOR 1 OR MORE
7 VENEREAL DISEASES, AS INDICATED IN THE REQUEST, SUBJECT TO SUB-
8 SECTION (5).

9 (5) ~~(4)~~ In order to protect the health, safety, and wel-
10 fare of department employees, the department may test a prisoner
11 under subsection ~~(3)~~ (4) whether or not the prisoner consents
12 to the test. The department is not required to give the prisoner
13 an opportunity for a hearing or to obtain an order from a court
14 of competent jurisdiction before administering the test.

15 (6) ~~(5)~~ The department is not required to provide HIV
16 counseling pursuant to section 5133(1) of ~~Act No. 368 of the~~
17 ~~Public Acts of 1978, being section 333.5133 of the Michigan~~
18 ~~Compiled Laws~~ THE PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.5133,
19 to an employee who requests that a prisoner be tested for HIV
20 under this section, unless the department tests the employee for
21 HIV.

22 (7) ~~(6)~~ The department shall comply with this subsection
23 if the department receives a request under ~~this section~~
24 SUBSECTION (2) and determines either that there is not reasonable
25 cause to believe the requester's description of his or her expo-
26 sure or that the exposure was not a percutaneous, mucous
27 membrane, or open wound exposure and as a result of the

1 determination the department is not required to test the prisoner
2 for HIV infection, ~~or~~ HBV infection, HCV INFECTION, or ~~both~~ A
3 COMBINATION OF OR ALL 3 INFECTIONS. The department shall state
4 in writing on the request form the reason it determined there was
5 not reasonable cause to believe the requester's description of
6 his or her exposure or for the department's determination that
7 the exposure was not a percutaneous, mucous membrane, or open
8 wound exposure, as applicable. The department shall transmit a
9 copy of the completed request form to the requesting individual
10 within 2 days after the date the department makes the determina-
11 tion described in this subsection.

12 (8) ~~(7)~~ The department shall notify the requesting
13 employee of the RESULTS OF THE TESTS FOR HIV ~~or~~ INFECTION, HBV
14 ~~test results, or both~~ INFECTION, HCV INFECTION, OR A COMBINA-
15 TION OF OR ALL 3 INFECTIONS, AND THE RESULTS OF 1 OR MORE TESTS
16 FOR VENEREAL DISEASES, whether positive or negative, within 2
17 days after the test results are obtained by the department. The
18 notification shall be transmitted directly to the requesting
19 employee or, upon request of the requesting employee, to his or
20 her primary care physician or other health professional desig-
21 nated by the employee. The notice required under this subsection
22 shall include an explanation of the confidentiality requirements
23 of subsection ~~(8)~~ (9).

24 (9) ~~(8)~~ ~~The~~ EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSEC-
25 TION, THE notice required under subsection ~~(7)~~ (8) shall not
26 contain information that would identify the prisoner who tested
27 positive or negative for HIV ~~or~~ INFECTION, HBV INFECTION, OR

1 HCV INFECTION. The information contained in the notice is
2 confidential and is subject to this section, the rules promul-
3 gated under section 5111(2) of ~~Act No. 368 of the Public Acts of~~
4 ~~1978, being section 333.5111 of the Michigan Compiled Laws~~ THE
5 PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.5111, and section 5131
6 of ~~Act No. 368 of the Public Acts of 1978, being~~
7 ~~section 333.5131 of the Michigan Compiled Laws~~ THE PUBLIC HEALTH
8 CODE, 1978 PA 368, MCL 333.5131. A person who receives confiden-
9 tial information under this section shall disclose the informa-
10 tion to others only to the extent consistent with the authorized
11 purpose for which the information was obtained. THIS SUBSECTION
12 DOES NOT APPLY TO A TEST REQUESTED UNDER SUBSECTION (3), EXCEPT
13 THAT THE INFORMATION CONTAINED IN THE NOTICE IS SUBJECT TO SEC-
14 TION 5131 OF THE PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.5131.

15 (10) ~~(9)~~ The department shall develop and distribute the
16 forms required under this section.

17 (11) ~~(10)~~ In addition to the penalties prescribed in the
18 rules promulgated under section 5111(2) of ~~Act No. 368 of the~~
19 ~~Public Acts of 1978~~ THE PUBLIC HEALTH CODE, 1978 PA 368, MCL
20 333.5111, and in section 5131 of ~~Act No. 368 of the Public Acts~~
21 ~~of 1978~~ THE PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.5131, a
22 person who discloses information in violation of subsection ~~(8)~~
23 (9) is guilty of a misdemeanor.

24 (12) ~~(11)~~ The department shall report to the department of
25 community health each test result obtained under this section
26 that indicates that an individual is HIV infected, in compliance
27 with section 5114 of ~~Act No. 368 of the Public Acts of 1978,~~

1 ~~being section 333.5114 of the Michigan Compiled Laws~~ THE PUBLIC
 2 HEALTH CODE, 1978 PA 368, MCL 333.5114.

3 (12) As used in this section:

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

6 (b) "HBV" means hepatitis B virus.

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

9 (D) "HCV" MEANS HEPATITIS C VIRUS.

10 (E) "HCV INFECTED" OR "HCV INFECTION" MEANS THE STATUS OF AN
 11 INDIVIDUAL WHO HAS TESTED POSITIVE FOR THE PRESENCE OF HCV ANTI-
 12 BODIES OR HAS TESTED POSITIVE FOR HCV USING AN RNA TEST.

13 (F) ~~(d)~~ "HIV" means human immunodeficiency virus.

14 (G) ~~(e)~~ "HIV infected" means that term as defined in
 15 section 5101 of ~~Act No. 368 of the Public Acts of 1978, being~~
 16 ~~section 333.5101 of the Michigan Compiled Laws~~ THE PUBLIC HEALTH
 17 CODE, 1978 PA 368, MCL 333.5101.

18 (H) "VENEREAL DISEASE" MEANS THAT TERM AS DEFINED IN SECTION
 19 5101 OF THE PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.5101.

20 Enacting section 1. This amendatory act does not take
 21 effect unless all of the following bills of the 90th Legislature
 22 are enacted into law:

23 (a) Senate Bill No. _____ or House Bill No. _____
 24 (request no. 01146'99).

25 (b) Senate Bill No. _____ or House Bill No. _____
 26 (request no. 03239'99).