

# SENATE BILL No. 1137

November 6, 2014, Introduced by Senator KAHN and referred to the Committee on Judiciary.

A bill to amend 1953 PA 232, entitled "Corrections code of 1953," by amending sections 67 and 67b (MCL 791.267 and 791.267b), section 67 as amended by 2012 PA 24 and section 67b as amended by 2010 PA 120.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1           Sec. 67. (1) Quarters for temporary confinement apart from  
2 those of regular inmates ~~shall~~ **MUST** be provided for convicted  
3 prisoners upon commitment at each of the state correctional  
4 facilities, which the director shall designate as a reception  
5 center. Within 60 days after the arrival of a convicted prisoner at  
6 a state correctional facility, the classification committee shall  
7 make and complete a comprehensive study of the prisoner, including  
8 physical and psychiatric examinations, to ensure that the prisoner

1 is confined in the state correctional facility suited to the type  
2 of rehabilitation required in his or her case. The warden of the  
3 state correctional facility shall deliver a report of the study of  
4 the classification committee to the deputy director of the  
5 correctional facilities administration, who shall, within 5 days  
6 after receipt of the report, execute an order to confine the  
7 prisoner in the state correctional facility determined as suitable  
8 by the deputy director.

9 (2) Immediately upon arrival at a reception center designated  
10 under subsection (1), each incoming prisoner ~~shall~~**MUST** undergo a  
11 test for HIV or an antibody to HIV **AND FOR HCV**. This subsection  
12 does not apply if an incoming prisoner has been tested for HIV or  
13 an antibody to HIV **OR FOR HCV** under section 5129 of the public  
14 health code, 1978 PA 368, MCL 333.5129, within the 3 months  
15 immediately preceding the date of the prisoner's arrival at the  
16 reception center, as indicated by the record transferred to the  
17 department by the court under that section.

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

26 (4) The department shall report each positive test result to  
27 the department of community health, in compliance with section 5114

1 of the public health code, 1978 PA 368, MCL 333.5114, **OR AS**  
2 **OTHERWISE REQUIRED FOR THE REPORTING OF SERIOUS COMMUNICABLE**  
3 **DISEASES OR INFECTIONS ESTABLISHED IN RULES PROMULGATED UNDER**  
4 **SECTION 5111 OF THE PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.5111.**

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

9 (6) Upon the request of an employee of the department, the  
10 department shall provide or arrange for a test for HIV or an  
11 antibody to HIV **OR FOR HCV** for that employee, free of charge.

12 (7) Upon the request of an employee of the department, the  
13 department shall provide to that employee the equipment necessary  
14 to implement universal precautions to prevent transmission of HIV  
15 infection **OR HCV INFECTION.**

16 (8) A prisoner who receives a positive HIV **OR HCV** test result  
17 shall not work in a health facility operated by the department.

18 (9) The department shall conduct a seroprevalence study of the  
19 prisoners in all state correctional facilities to determine the  
20 percentage of prisoners who are HIV infected **OR HCV INFECTED.**

21 (10) The results of a test for HIV or an antibody to HIV **OR**  
22 **FOR HCV** conducted under this section ~~shall~~ **MUST** be disclosed by the  
23 department under section 67b.

24 (11) The deputy director of the correctional facilities  
25 administration shall take steps to ensure that all prisoners who  
26 receive HIV **OR HCV** testing receive counseling regarding AIDS **OR HCV**  
27 including, at a minimum, treatment, transmission, and protective

1 measures.

2 (12) The department, in conjunction with the department of  
3 community health, shall develop and implement a comprehensive AIDS  
4 **AND HCV** education program designed specifically for correctional  
5 environments. The program ~~shall~~**MUST** 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) As used in this section:

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

10 (b) **"HCV" MEANS HEPATITIS C VIRUS.**

11 (c) **"HCV INFECTED" OR "HCV INFECTION" MEANS THAT TERM AS**  
12 **DEFINED IN SECTION 67B.**

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

14 (e) **"HIV INFECTED" OR "HIV INFECTION" MEANS THAT TERM AS**  
15 **DEFINED IN SECTION 67B.**

16 (f) ~~(e)~~"Positive test result" means a double positive enzyme-  
17 linked immunosorbent assay test, combined with a positive western  
18 blot assay test, or a positive test under an HIV **OR HCV** test that  
19 is considered reliable by the federal centers for disease control  
20 **AND PREVENTION** and is approved by the department of community  
21 health.

22 Sec. 67b. (1) If an employee of the department sustains a  
23 percutaneous, mucous membrane, or open wound exposure to the blood  
24 or body fluids of a prisoner, the employee may request that the  
25 prisoner be tested for HIV infection, ~~or~~ HBV infection, or ~~both~~,  
26 **HCV INFECTION, AS APPROPRIATE**, pursuant to this section.

27 (2) An employee shall make a request described in subsection

1 (1) to the department in writing on a form provided by the  
2 department within 72 hours after the exposure occurs. The request  
3 form ~~shall~~**MUST** be dated and ~~shall~~ contain at a minimum the name  
4 and address of the employee making the request and a description of  
5 his or her exposure to the blood or other body fluids of the  
6 prisoner. The request form ~~shall~~**MUST** contain a space for the  
7 information required under subsection (6) and a statement that the  
8 requester is subject to the confidentiality requirements of  
9 subsection (8) and section 5131 of the public health code, 1978 PA  
10 368, MCL 333.5131. The request form ~~shall~~**MUST** 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 is  
14 reasonable cause to believe that the exposure described in the  
15 request occurred and if it was a percutaneous, mucous membrane, or  
16 open wound exposure pursuant to R 325.70001 to ~~R 325.70018~~**R**  
17 **325.70016** of the Michigan administrative code. If the department  
18 determines that there is reasonable cause to believe that the  
19 exposure described in the request occurred and was a percutaneous,  
20 mucous membrane, or open wound exposure, the department shall test  
21 the prisoner for HIV infection, ~~or~~ HBV infection, or ~~both~~, **HCV**  
22 **INFECTION** as indicated 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) **REGARDLESS OF** whether ~~or not~~ the prisoner consents  
26 to the test. The department is not required to give the prisoner an  
27 opportunity for a hearing or to obtain an order from a court of

1 competent jurisdiction before administering the test.

2 (5) The department is not required to provide HIV counseling  
3 pursuant to section 5133(1) of the public health code, 1978 PA 368,  
4 MCL 333.5133, to an employee who requests that a prisoner be tested  
5 for HIV under this section, unless the department tests the  
6 employee for HIV.

7 (6) The department shall comply with this subsection if the  
8 department receives a request under this section and determines  
9 either that there is not reasonable cause to believe the  
10 requester's description of his or her exposure or that the exposure  
11 was not a percutaneous, mucous membrane, or open wound exposure and  
12 as a result of the determination the department is not required to  
13 test the prisoner for HIV infection, ~~or~~ HBV infection, or ~~both~~. **HCV**  
14 **INFECTION**. The department shall state in writing on the request  
15 form the reason it determined there was not reasonable cause to  
16 believe the requester's description of his or her exposure or for  
17 the department's determination that the exposure was not a  
18 percutaneous, mucous membrane, or open wound exposure, as  
19 applicable. The department shall transmit a copy of the completed  
20 request form to the requesting individual within 2 days after the  
21 date the department makes the determination described in this  
22 subsection.

23 (7) The department shall notify the requesting employee of the  
24 HIV, ~~or~~ HBV, **OR HCV** test results, ~~or both~~, whether positive or  
25 negative, within 2 days after the test results are obtained by the  
26 department. The **DEPARTMENT SHALL TRANSMIT THE** notification ~~shall be~~  
27 ~~transmitted~~ directly to the requesting employee or, upon request of

1 the requesting employee, to his or her primary care physician or  
2 other health professional designated by the employee. The notice  
3 required under this subsection ~~shall~~**MUST** include an explanation of  
4 the confidentiality requirements of subsection (8).

5 (8) The notice required under subsection (7) ~~shall~~**MUST** not  
6 contain information that would identify the prisoner who tested  
7 positive or negative for HIV, ~~or~~**HBV, OR HCV**. The information  
8 contained in the notice is confidential and is subject to this  
9 section, the rules promulgated under section 5111 of the public  
10 health code, 1978 PA 368, MCL 333.5111, and section 5131 of the  
11 public health code, 1978 PA 368, MCL 333.5131. A person ~~who~~**THAT**  
12 receives confidential information under this section shall disclose  
13 the information to others only to the extent consistent with the  
14 authorized purpose for which the information was obtained.

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

17 (10) In addition to the penalties prescribed in the rules  
18 promulgated under section 5111 of the public health code, 1978 PA  
19 368, MCL 333.5111 and in section 5131 of the public health code,  
20 1978 PA 368, MCL 333.5131, a person who discloses information in  
21 violation of subsection (8) is guilty of a misdemeanor.

22 (11) The department shall report to the department of  
23 community health each test result obtained under this section that  
24 indicates that an individual is HIV infected, in compliance with  
25 section 5114 of the public health code, 1978 PA 368, MCL 333.5114.  
26 **THE DEPARTMENT SHALL REPORT TO THE DEPARTMENT OF COMMUNITY HEALTH**  
27 **EACH TEST RESULT OBTAINED UNDER THIS SECTION THAT INDICATES THAT AN**

1 INDIVIDUAL IS HCV INFECTED AS REQUIRED FOR THE REPORTING OF SERIOUS  
2 COMMUNICABLE DISEASES OR INFECTIONS ESTABLISHED IN RULES  
3 PROMULGATED UNDER SECTION 5111 OF THE PUBLIC HEALTH CODE, 1978 PA  
4 368, MCL 333.5111.

5 (12) As used in this section:

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

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

9 (c) "HBV infected" or "HBV infection" means ~~the status of an~~  
10 ~~individual who is tested as HBsAg positive.~~ THAT TERM AS DEFINED IN  
11 SECTION 5204 OF THE PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.5204.

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

13 (E) "HCV INFECTED" OR "HCV INFECTION" MEANS THAT TERM AS  
14 DEFINED IN SECTION 5204 OF THE PUBLIC HEALTH CODE, 1978 PA 368, MCL  
15 333.5204.

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

17 (G) ~~(e)~~ "HIV infected" OR "HIV INFECTION" means that term as  
18 defined in section 5101 of the public health code, 1978 PA 368, MCL  
19 333.5101.

20 Enacting section 1. This amendatory act does not take effect  
21 unless Senate Bill No. 1130 of the 97th Legislature is enacted into  
22 law.