

HOUSE BILL NO. 6541

December 18, 2020, Introduced by Reps. Aiyash, Gay-Dagnogo, Brenda Carter and Garza and referred to the Committee on Judiciary.

A bill to amend 1953 PA 232, entitled
"Corrections code of 1953,"
(MCL 791.201 to 791.285) by adding section 64a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 **Sec. 64a. (1) As used in this section and section 64b:**
2 **(a) "Correctional facility" includes a state correctional**
3 **facility operated by the department, a state youth correctional**
4 **facility operated by the department, and a correctional facility**
5 **operated by a private entity authorized under the laws of this**

1 state to receive and to house prisoners.

2 (b) "Disability" means a determinable physical or mental
3 characteristic of an individual, which may result from disease,
4 injury, congenital condition of birth, or functional disorder.

5 (c) "Level IV" means the security classification of level IV.

6 (d) "Level V" means the security classification of level V.

7 (e) "Medical provider" means an individual licensed or
8 otherwise authorized to engage in the practice of medicine or the
9 practice of osteopathic medicine and surgery under article 15 of
10 the public health code, 1978 PA 368, MCL 333.16101 to 18838; an
11 individual licensed as a registered professional nurse under part
12 172 of the public health code, 1978 PA 368, MCL 333.17201 to
13 333.17242, who has been issued a specialty certification as a nurse
14 practitioner by the Michigan board of nursing under section 17210
15 of the public health code, 1978 PA 368, MCL 333.17210; or a
16 physician's assistant.

17 (f) "Member of a vulnerable population" means a prisoner who
18 meets 1 or more of the following:

19 (i) Is 21 years of age or younger.

20 (ii) Is 65 years of age or older.

21 (iii) Has a disability based on a mental illness.

22 (iv) Has a history of psychiatric hospitalization.

23 (v) Has recently exhibited conduct, including, but not limited
24 to, serious self-mutilation, indicating the need for further
25 observation or evaluation to determine the presence of mental
26 illness.

27 (vi) Has a developmental disability, as that term is defined in
28 section 100a of the mental health code, 1974 PA 258, MCL 330.1100a.

29 (vii) Has a serious medical condition that cannot be

1 effectively treated in segregation.

2 (viii) Is pregnant, is in the postpartum period, or has recently
3 suffered a miscarriage or terminated a pregnancy.

4 (ix) Has a significant auditory or visual impairment.

5 (x) Is perceived to be lesbian, gay, bisexual, transgender, or
6 intersex.

7 (g) "Mental illness" means that term as defined in section 400
8 of the mental health code, 1974 PA 258, MCL 330.1400.

9 (h) "Physician's assistant" means an individual who is
10 licensed as a physician's assistant under part 170 or part 175 of
11 the public health code, 1978 PA 368, MCL 333.17001 to 333.17097 and
12 333.17501 to 333.17556.

13 (i) "Qualified mental health professional" means either of the
14 following:

15 (i) A physician, psychologist, psychiatrist, registered
16 professional nurse licensed or otherwise authorized to engage in
17 the practice of nursing, or licensed master's social worker, who is
18 a mental health professional as that term is defined in section
19 100b of the mental health code, 1974 PA 258, MCL 330.1100b.

20 (ii) A physician's assistant who has training and experience in
21 the areas of mental illness or mental disabilities.

22 (j) "Safe space cell" means a housing unit in a correctional
23 facility that provides safety for an individual who is in need of
24 protection and that does not restrict the standard property the
25 individual is allowed in his or her housing unit.

26 (k) "Security classification" means levels I to V that
27 designate the restrictiveness enforced in housing units in a
28 correctional facility, with level I being the least restrictive.

29 (l) "Segregation" means any confinement in which a prisoner is

1 isolated from the general population of prisoners in a correctional
2 facility for prisoner discipline or for administrative purposes
3 regarding facility management, security, or order.

4 (m) "Therapeutic mental health service model" means a model
5 developed by the bureau of health care services, in consultation
6 with an expert in the field of neuroscience and with a psychologist
7 or psychiatrist who provides trauma-specific mental health
8 services.

9 (2) A prisoner in a correctional facility who is a member of a
10 vulnerable population must receive therapeutic mental health
11 service, and must not be confined in segregation. A prisoner in a
12 correctional facility who is a member of a vulnerable population
13 may be secluded temporarily from other prisoners only in the
14 following situations:

15 (a) For health reasons under the procedure described in
16 section 742 of the mental health code, 1974 PA 258, MCL 330.1742.

17 (b) Subject to subsection (8), if the prisoner agrees to the
18 temporary segregation in a safe space cell, to protect the prisoner
19 from other prisoners who have threatened or harassed him or her.

20 (3) If a prisoner's existing or previous health record does
21 not indicate the prisoner is a member of a vulnerable population
22 and he or she is confined in segregation for a period of more than
23 12 hours, a qualified mental health professional shall conduct an
24 out-of-cell review of the prisoner's mental health status. The out-
25 of-cell review of the prisoner's mental health status must be
26 conducted within the first 24 hours following the prisoner's
27 presence in segregation for more than 12 hours.

28 (4) If a prisoner's existing or previous health record does
29 not indicate the prisoner is a member of a vulnerable population

1 and he or she is confined in segregation for a period of more than
2 12 hours, a medical provider shall conduct an out-of-cell physical
3 health examination of the prisoner. The out-of-cell physical health
4 examination must be conducted within the first 24 hours following
5 the prisoner's presence in segregation for more than 12 hours and
6 must include all of the following:

7 (a) Documentation that the prisoner's health record was
8 reviewed to determine if the prisoner has any significant physical
9 conditions or diseases that could be negatively impacted by
10 confinement in segregation.

11 (b) A written or verbal health record from the prisoner that
12 must be documented in his or her health record and sent to the
13 legal guardian, if applicable.

14 (c) Assessment of vital signs; blood pressure; temperature;
15 heart and respiration rates; condition of abdomen, neck, head,
16 skin, and extremities; and neurological, cardiac, and lung
17 functioning.

18 (5) If the prisoner remains confined in segregation after an
19 out-of-cell mental health review under subsection (3) and a
20 physical health examination under subsection (4), a qualified
21 mental health professional and a medical provider shall conduct
22 out-of-cell reassessments of the prisoner every 3 days to monitor
23 the prisoner's mental health and physical health status.

24 (6) A qualified mental health professional who conducts a
25 mental health review of a prisoner under subsection (3) shall
26 recommend the prisoner for removal from confinement in segregation
27 and placement in an existing therapeutic mental health service if
28 the prisoner is a member of a vulnerable population or if the
29 prisoner meets any of the following:

1 (a) The prisoner has been diagnosed with a traumatic brain
2 injury.

3 (b) The prisoner has been determined to be at risk of suicide
4 or self-harm.

5 (c) The prisoner's mental or emotional condition has
6 deteriorated substantially while in confinement.

7 (7) If a recommendation for the cessation of confinement in
8 segregation and placement in a therapeutic mental health service is
9 made under subsection (6), the prisoner must be removed from
10 confinement in segregation within 12 hours of the time that the
11 recommendation was made, and the recommended therapeutic mental
12 health service must commence as soon as possible. A recommendation
13 under subsection (6) is the sole responsibility of the examining
14 qualified mental health professional and is not subject to the
15 authority of the administrative or custodial staff of a
16 correctional facility or the department. Therapeutic mental health
17 service under this subsection must not utilize observation cells
18 unless the use is adopted within a therapeutic mental health
19 service model. The department shall create a written therapeutic
20 orientation plan for a prisoner before the department begins a
21 therapeutic mental health service required under this section. The
22 department shall allow a prisoner access to the prisoner's personal
23 property while the prisoner is receiving therapeutic mental health
24 service under this subsection.

25 (8) A prisoner who is confined in a safe space cell under
26 subsection (2)(b) must be allowed not less than 2 or more than 4
27 hours outside of the cell each day, phone calls, contact visits,
28 standard store orders, and an ability to order Securepak. The
29 department shall create a written plan for the creation of safe

1 space cells to use for confinement under subsection (2) (b) .

2 (9) There is a presumption against the imposition of
3 misconduct charges and pursuit of disciplinary actions, or any
4 other imposition of additional time confined in segregation or any
5 nontherapeutic confinement other than that allowed under subsection
6 (2) for a prisoner who is a member of a vulnerable population.

7 (10) No later than the effective date of the amendatory act
8 that added this section, a qualified mental health professional
9 shall have evaluated every prisoner confined in segregation for
10 potential applicability of this section.

11 (11) Except as provided in subsections (8) and (12), a
12 prisoner confined in segregation must not be housed in-cell for
13 more than 20 hours a day. The time the prisoner is not housed in-
14 cell may include time spent in a therapeutic environment or on
15 other activities, and time while being unshackled in an outdoor or
16 indoor area.

17 (12) Unless he or she is confined in segregation for an
18 assaultive act, has committed an assaultive act while confined in
19 segregation, or is subject to subsection (8), a prisoner confined
20 in segregation must be allowed out-of-cell for at least 4 hours a
21 day. A prisoner who is confined in segregation for an assaultive
22 act or who has committed an assaultive act while confined in
23 segregation must be allowed out-of-cell for at least 2 hours a day
24 and receive at least 2 hours a day of in-cell programming.

25 (13) A prisoner confined in segregation must not remain in
26 segregation for more than 20 days in any 60-day period.

27 (14) Safe space cells and all other holding or living spaces
28 utilized to house prisoners confined in segregation must be clean
29 and properly ventilated, lit, temperature controlled, and equipped

1 with properly functioning sanitary fixtures.

2 (15) The department shall develop a written plan to end the
3 use of restraining prisoners by the use of a hog-tying technique
4 and also to eliminate the equipment for that type of restraint from
5 correctional facilities.

6 Enacting section 1. This amendatory act does not take effect
7 unless Senate Bill No. _____ or House Bill No. 6542 (request no.
8 06682'20) of the 100th Legislature is enacted into law.