

HB3784



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

HB3784

Introduced 2/22/2021, by Rep. Aaron M. Ortiz

SYNOPSIS AS INTRODUCED:

55 ILCS 5/3-15003.7 new
730 ILCS 5/3-6-2

from Ch. 38, par. 1003-6-2

Amends the Counties Code and the Unified Code of Corrections. Provides that if an incarcerated person is capable of providing consent, no medical procedure shall be performed without such informed consent.

LRB102 13605 KMF 18954 b

A BILL FOR

1 AN ACT concerning criminal law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Counties Code is amended by adding Section
5 3-15003.7 as follows:

6 (55 ILCS 5/3-15003.7 new)

7 Sec. 3-15003.7. Informed Consent. Notwithstanding any
8 provision of law to the contrary, if an incarcerated person is
9 capable of providing consent, no medical procedure shall be
10 performed without such informed consent.

11 Section 10. The Unified Code of Corrections is amended by
12 changing Section 3-6-2 as follows:

13 (730 ILCS 5/3-6-2) (from Ch. 38, par. 1003-6-2)

14 Sec. 3-6-2. Institutions and facility administration.

15 (a) Each institution and facility of the Department shall
16 be administered by a chief administrative officer appointed by
17 the Director. A chief administrative officer shall be
18 responsible for all persons assigned to the institution or
19 facility. The chief administrative officer shall administer
20 the programs of the Department for the custody and treatment
21 of such persons.

1 (b) The chief administrative officer shall have such
2 assistants as the Department may assign.

3 (c) The Director or Assistant Director shall have the
4 emergency powers to temporarily transfer individuals without
5 formal procedures to any State, county, municipal or regional
6 correctional or detention institution or facility in the
7 State, subject to the acceptance of such receiving institution
8 or facility, or to designate any reasonably secure place in
9 the State as such an institution or facility and to make
10 transfers thereto. However, transfers made under emergency
11 powers shall be reviewed as soon as practicable under Article
12 8, and shall be subject to Section 5-905 of the Juvenile Court
13 Act of 1987. This Section shall not apply to transfers to the
14 Department of Human Services which are provided for under
15 Section 3-8-5 or Section 3-10-5.

16 (d) The Department shall provide educational programs for
17 all committed persons so that all persons have an opportunity
18 to attain the achievement level equivalent to the completion
19 of the twelfth grade in the public school system in this State.
20 Other higher levels of attainment shall be encouraged and
21 professional instruction shall be maintained wherever
22 possible. The Department may establish programs of mandatory
23 education and may establish rules and regulations for the
24 administration of such programs. A person committed to the
25 Department who, during the period of his or her incarceration,
26 participates in an educational program provided by or through

1 the Department and through that program is awarded or earns
2 the number of hours of credit required for the award of an
3 associate, baccalaureate, or higher degree from a community
4 college, college, or university located in Illinois shall
5 reimburse the State, through the Department, for the costs
6 incurred by the State in providing that person during his or
7 her incarceration with the education that qualifies him or her
8 for the award of that degree. The costs for which
9 reimbursement is required under this subsection shall be
10 determined and computed by the Department under rules and
11 regulations that it shall establish for that purpose. However,
12 interest at the rate of 6% per annum shall be charged on the
13 balance of those costs from time to time remaining unpaid,
14 from the date of the person's parole, mandatory supervised
15 release, or release constituting a final termination of his or
16 her commitment to the Department until paid.

17 (d-5) A person committed to the Department is entitled to
18 confidential testing for infection with human immunodeficiency
19 virus (HIV) and to counseling in connection with such testing,
20 with no copay to the committed person. A person committed to
21 the Department who has tested positive for infection with HIV
22 is entitled to medical care while incarcerated, counseling,
23 and referrals to support services, in connection with that
24 positive test result. Implementation of this subsection (d-5)
25 is subject to appropriation.

26 (e) A person committed to the Department who becomes in

1 need of medical or surgical treatment but is incapable of
2 giving consent thereto shall receive such medical or surgical
3 treatment by the chief administrative officer consenting on
4 the person's behalf. Before the chief administrative officer
5 consents, he or she shall obtain the advice of one or more
6 physicians licensed to practice medicine in all its branches
7 in this State. If such physician or physicians advise:

8 (1) that immediate medical or surgical treatment is
9 required relative to a condition threatening to cause
10 death, damage or impairment to bodily functions, or
11 disfigurement; and

12 (2) that the person is not capable of giving consent
13 to such treatment; the chief administrative officer may
14 give consent for such medical or surgical treatment, and
15 such consent shall be deemed to be the consent of the
16 person for all purposes, including, but not limited to,
17 the authority of a physician to give such treatment.

18 Notwithstanding any provision of law to the contrary, if
19 an incarcerated person is capable of providing consent, no
20 medical procedure shall be performed without such informed
21 consent.

22 (e-5) If a physician providing medical care to a committed
23 person on behalf of the Department advises the chief
24 administrative officer that the committed person's mental or
25 physical health has deteriorated as a result of the cessation
26 of ingestion of food or liquid to the point where medical or

1 surgical treatment is required to prevent death, damage, or
2 impairment to bodily functions, the chief administrative
3 officer may authorize such medical or surgical treatment.

4 (f) In the event that the person requires medical care and
5 treatment at a place other than the institution or facility,
6 the person may be removed therefrom under conditions
7 prescribed by the Department. Neither the Department of
8 Corrections nor the Department of Juvenile Justice may require
9 a committed person or person committed to any facility
10 operated by the Department of Juvenile Justice, as set forth
11 in Section 3-2.5-15 of this Code, to pay any co-payment for
12 receiving medical or dental services.

13 (f-5) The Department shall comply with the Health Care
14 Violence Prevention Act.

15 (g) Any person having sole custody of a child at the time
16 of commitment or any woman giving birth to a child after her
17 commitment, may arrange through the Department of Children and
18 Family Services for suitable placement of the child outside of
19 the Department of Corrections. The Director of the Department
20 of Corrections may determine that there are special reasons
21 why the child should continue in the custody of the mother
22 until the child is 6 years old.

23 (h) The Department may provide Family Responsibility
24 Services which may consist of, but not be limited to the
25 following:

26 (1) family advocacy counseling;

- 1 (2) parent self-help group;
- 2 (3) parenting skills training;
- 3 (4) parent and child overnight program;
- 4 (5) parent and child reunification counseling, either
5 separately or together, preceding the inmate's release;
6 and
- 7 (6) a prerelease reunification staffing involving the
8 family advocate, the inmate and the child's counselor, or
9 both and the inmate.
- 10 (i) (Blank).
- 11 (j) Any person convicted of a sex offense as defined in the
12 Sex Offender Management Board Act shall be required to receive
13 a sex offender evaluation prior to release into the community
14 from the Department of Corrections. The sex offender
15 evaluation shall be conducted in conformance with the
16 standards and guidelines developed under the Sex Offender
17 Management Board Act and by an evaluator approved by the
18 Board.
- 19 (k) Any minor committed to the Department of Juvenile
20 Justice for a sex offense as defined by the Sex Offender
21 Management Board Act shall be required to undergo sex offender
22 treatment by a treatment provider approved by the Board and
23 conducted in conformance with the Sex Offender Management
24 Board Act.
- 25 (l) Prior to the release of any inmate committed to a
26 facility of the Department or the Department of Juvenile

1 Justice, the Department must provide the inmate with
2 appropriate information verbally, in writing, by video, or
3 other electronic means, concerning HIV and AIDS. The
4 Department shall develop the informational materials in
5 consultation with the Department of Public Health. At the same
6 time, the Department must also offer the committed person the
7 option of testing for infection with human immunodeficiency
8 virus (HIV), with no copayment for the test. Pre-test
9 information shall be provided to the committed person and
10 informed consent obtained as required in subsection (d) of
11 Section 3 and Section 5 of the AIDS Confidentiality Act. The
12 Department may conduct opt-out HIV testing as defined in
13 Section 4 of the AIDS Confidentiality Act. If the Department
14 conducts opt-out HIV testing, the Department shall place signs
15 in English, Spanish and other languages as needed in multiple,
16 highly visible locations in the area where HIV testing is
17 conducted informing inmates that they will be tested for HIV
18 unless they refuse, and refusal or acceptance of testing shall
19 be documented in the inmate's medical record. The Department
20 shall follow procedures established by the Department of
21 Public Health to conduct HIV testing and testing to confirm
22 positive HIV test results. All testing must be conducted by
23 medical personnel, but pre-test and other information may be
24 provided by committed persons who have received appropriate
25 training. The Department, in conjunction with the Department
26 of Public Health, shall develop a plan that complies with the

1 AIDS Confidentiality Act to deliver confidentially all
2 positive or negative HIV test results to inmates or former
3 inmates. Nothing in this Section shall require the Department
4 to offer HIV testing to an inmate who is known to be infected
5 with HIV, or who has been tested for HIV within the previous
6 180 days and whose documented HIV test result is available to
7 the Department electronically. The testing provided under this
8 subsection (1) shall consist of a test approved by the
9 Illinois Department of Public Health to determine the presence
10 of HIV infection, based upon recommendations of the United
11 States Centers for Disease Control and Prevention. If the test
12 result is positive, a reliable supplemental test based upon
13 recommendations of the United States Centers for Disease
14 Control and Prevention shall be administered.

15 Prior to the release of an inmate who the Department knows
16 has tested positive for infection with HIV, the Department in
17 a timely manner shall offer the inmate transitional case
18 management, including referrals to other support services.

19 (m) The chief administrative officer of each institution
20 or facility of the Department shall make a room in the
21 institution or facility available for substance use disorder
22 services to be provided to committed persons on a voluntary
23 basis. The services shall be provided for one hour once a week
24 at a time specified by the chief administrative officer of the
25 institution or facility if the following conditions are met:

26 (1) the substance use disorder service contacts the

1 chief administrative officer to arrange the meeting;

2 (2) the committed person may attend the meeting for
3 substance use disorder services only if the committed
4 person uses pre-existing free time already available to
5 the committed person;

6 (3) all disciplinary and other rules of the
7 institution or facility remain in effect;

8 (4) the committed person is not given any additional
9 privileges to attend substance use disorder services;

10 (5) if the substance use disorder service does not
11 arrange for scheduling a meeting for that week, no
12 substance use disorder services shall be provided to the
13 committed person in the institution or facility for that
14 week;

15 (6) the number of committed persons who may attend a
16 substance use disorder meeting shall not exceed 40 during
17 any session held at the correctional institution or
18 facility;

19 (7) a volunteer seeking to provide substance use
20 disorder services under this subsection (m) must submit an
21 application to the Department of Corrections under
22 existing Department rules and the Department must review
23 the application within 60 days after submission of the
24 application to the Department; and

25 (8) each institution and facility of the Department
26 shall manage the substance use disorder services program

1 according to its own processes and procedures.

2 For the purposes of this subsection (m), "substance use
3 disorder services" means recovery services for persons with
4 substance use disorders provided by volunteers of recovery
5 support services recognized by the Department of Human
6 Services.

7 (Source: P.A. 100-759, eff. 1-1-19; 100-1051, eff. 1-1-19;
8 101-81, eff. 7-12-19; 101-86, eff. 1-1-20.)