

FIRST REGULAR SESSION

# SENATE BILL NO. 250

95TH GENERAL ASSEMBLY

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INTRODUCED BY SENATOR SMITH.

Read 1st time January 26, 2009, and ordered printed.

TERRY L. SPIELER, Secretary.

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## AN ACT

To amend chapter 217, RSMo, by adding thereto four new sections relating to the stop HIV/AIDS in prison act.

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*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Chapter 217, RSMo, is amended by adding thereto four new sections, to be known as sections 217.625, 217.628, 217.631, and 217.634, to read as follows:

**217.625. 1. Sections 217.625 to 217.634 shall be known and may be cited as the "Stop HIV/AIDS in Prison Act of 2009".**

**2. As used in sections 217.625 to 217.634, the following terms shall mean:**

**(1) "AIDS", acquired immunodeficiency syndrome;**

**(2) "Department", the department of corrections;**

**(3) "HIV", the human immunodeficiency virus that causes acquired immunodeficiency syndrome (AIDS);**

**(4) "HIV/AIDS testing", performing a serological test or other tests upon a biological specimen to determine the presence of HIV or its antibodies in the specimen following HIV sampling.**

**217.628. 1. The department of corrections shall develop a comprehensive policy to provide HIV testing, treatment, and prevention for inmates within the state correctional setting and upon reentry.**

**2. The department shall consult with appropriate officials within the department of health and senior services regarding the development of this policy.**

**3. The policy developed under this section shall include all of the**

8 following:

9           (1) Testing and counseling upon intake. Medical personnel shall  
10 provide routine HIV testing to all inmates as a part of a comprehensive  
11 medical examination immediately following admission to a facility. For  
12 inmates admitted to a facility prior to the effective date of this policy,  
13 medical personnel shall provide routine HIV testing within no more  
14 than six months. HIV testing for such inmates may be performed in  
15 conjunction with other health services provided to such inmates by  
16 medical personnel;

17           (2) Pretest and post-test counseling. Medical personnel shall  
18 provide confidential pretest and post-test counseling to all inmates who  
19 are tested for HIV. Counseling may be included with other general  
20 health counseling provided to inmates by medical personnel;

21           (3) HIV/AIDS prevention education;

22           (a) Medical personnel shall improve HIV/AIDS awareness  
23 through frequent educational programs for all inmates. HIV/AIDS  
24 educational programs may be provided by community-based  
25 organizations, local health departments, and inmate peer  
26 educators. Such programs shall include information on modes of  
27 transmission, including transmission through tattooing, sexual contact,  
28 and intravenous drug use; prevention methods; treatment; and disease  
29 progression. Such programs shall be culturally sensitive, conducted in  
30 a variety of languages, and present scientifically accurate information  
31 in a clear and understandable manner;

32           (b) HIV/AIDS educational materials shall be made available to all  
33 inmates at orientation, at health care clinics, at regular educational  
34 programs, and prior to release. Both written and audio-visual  
35 materials shall be made available to all inmates. Such materials shall  
36 be culturally sensitive, written for low literacy levels, and available in  
37 a variety of languages;

38           (4) HIV testing upon request;

39           (a) Medical personnel shall allow inmates to obtain HIV tests  
40 upon request once per year or whenever an inmate has a reason to  
41 believe the inmate may have been exposed to HIV. Medical personnel  
42 shall, both orally and in writing, inform inmates, during orientation  
43 and periodically throughout incarceration, of their right to obtain HIV

44 tests;

45 (b) Medical personnel shall encourage inmates to request HIV  
46 tests if the inmate is sexually active, has been raped, uses intravenous  
47 drugs, receives a tattoo, or if the inmate is concerned that the inmate  
48 may have been exposed to HIV/AIDS;

49 (c) An inmate's request for an HIV test shall not be considered  
50 an indication that the inmate has put himself or herself at risk of  
51 infection or committed a violation of prison rules or both;

52 (5) HIV testing of pregnant women. Medical personnel shall  
53 provide routine HIV testing to all inmates who become pregnant;

54 (6) Comprehensive treatment;

55 (a) Medical personnel shall provide all inmates who test positive  
56 for HIV:

57 a. Timely comprehensive medical treatment;

58 b. Confidential counseling on managing their medical condition  
59 and preventing its transmission to other persons; and

60 c. Voluntary partner notification services;

61 (b) Medical care provided under this subdivision shall be  
62 consistent with current department of health and senior services  
63 guidelines and standard medical practice. Medical personnel shall  
64 discuss treatment options, the importance of adherence to  
65 antiretroviral therapy, and the side effects of medications with inmates  
66 receiving treatment;

67 (c) Medical and pharmacy personnel shall ensure that the facility  
68 formulary contains all FDA-approved medications necessary to provide  
69 comprehensive treatment for inmates living with HIV/AIDS, and the  
70 facility maintains adequate supplies of such medications to meet  
71 inmates' medical needs. Medical and pharmacy personnel shall also  
72 develop and implement automatic renewal systems for such  
73 medications to prevent interruptions in care;

74 (d) Correctional staff and medical and pharmacy personnel shall  
75 develop and implement distribution procedures to ensure timely and  
76 confidential access to medications;

77 (7) Protection of confidentiality;

78 (a) Medical personnel shall develop and implement procedures  
79 to ensure the confidentiality of inmate tests, diagnoses, and

80 treatment. Medical personnel and correctional staff shall receive  
81 regular training on the implementation of such procedures. Penalties  
82 for violations of inmate confidentiality by medical personnel or  
83 correctional staff shall be specified and strictly enforced;

84 (b) HIV testing, counseling, and treatment shall be provided in  
85 a confidential setting where other routine health services are provided  
86 and in a manner that allows the inmate to request and obtain such  
87 services as routine medical services;

88 (8) Testing, counseling, and referral prior to reentry;

89 (a) Medical personnel shall provide routine HIV testing to all  
90 inmates, other than inmates who have tested positive for HIV, no more  
91 than three months prior to their release and reentry into the  
92 community. Such requirement may be waived if an inmate's release  
93 occurs without sufficient notice to the department to allow medical  
94 personnel to perform a routine HIV test and notify the inmate of the  
95 results;

96 (b) For all inmates who have tested positive for HIV and all  
97 inmates who already are known to have HIV/AIDS, medical personnel  
98 shall provide:

99 a. Confidential prerelease counseling on managing their medical  
100 condition in the community, assessing appropriate treatment and  
101 services in the community, and preventing the transmission of their  
102 condition to family members and other persons in the community;

103 b. Referrals to appropriate health care providers and social  
104 service agencies in the community that meet the inmate's individual  
105 needs, including voluntary partner notification services and prevention  
106 counseling services for persons living with HIV/AIDS; and

107 c. A thirty-day supply of any medically necessary medications  
108 the inmate is currently receiving;

109 (9) Opt-out provision. Except as provided for in section 191.659,  
110 RSMo, inmates shall have the right to refuse routine HIV  
111 testing. Inmates shall be informed both orally and in writing of such  
112 right. Oral and written disclosure of such right may be included with  
113 other general health information and counseling provided to inmates  
114 by medical personnel. If an inmate refuses a routine test for HIV,  
115 medical personnel shall take note of the inmate's refusal in the inmate's

116 confidential medical records. However, the inmate's refusal shall not  
117 be considered a violation of prison rules or result in disciplinary  
118 action;

119 (10) Exposure incident testing. The department may perform  
120 HIV testing of an inmate who is involved in an exposure incident. For  
121 purposes of this subdivision, exposure incident means a possible  
122 transmission of HIV, whether intentional or unintentional, to any  
123 medical personnel, correctional staff, or other inmate. Such testing is  
124 not routine HIV testing for purposes of subdivision (9) of this  
125 subsection and does not require the inmate's consent. Medical  
126 personnel shall document the reason for exposure incident testing in  
127 the inmate's confidential medical records; and

128 (11) Timely notification of test results. Medical personnel shall  
129 provide timely notification to inmates of the results of HIV tests.

217.631. The department shall promulgate rules to implement the  
2 provisions of sections 217.625 to 217.634. Any rule or portion of a rule,  
3 as that term is defined in section 536.010, RSMo, that is created under  
4 the authority delegated in sections 217.625 to 217.634 shall become  
5 effective only if it complies with and is subject to all of the provisions  
6 of chapter 536, RSMo, and, if applicable, section 536.028,  
7 RSMo. Sections 217.625 to 217.634 and chapter 536, RSMo, are  
8 nonseverable and if any of the powers vested with the general assembly  
9 pursuant to chapter 536, RSMo, to review, to delay the effective date,  
10 or to disapprove and annul a rule are subsequently held  
11 unconstitutional, then the grant of rulemaking authority and any rule  
12 proposed or adopted after August 28, 2009, shall be invalid and void.

217.634. By February 1, 2011, and annually thereafter, the  
2 department shall provide a report to the governor and general  
3 assembly on department policies and procedures to provide testing,  
4 treatment, and prevention education programs for HIV/AIDS and the  
5 incidence among inmates of HIV/AIDS. Such report shall include, but  
6 not be limited to:

7 (1) The number of inmates who tested positive for HIV upon  
8 intake;

9 (2) The number of inmates who tested positive prior to reentry;

10 (3) The number of inmates who were not tested prior to reentry

11 **because they were released without sufficient notice;**

12 **(4) The number of inmates who opted out of taking the test;**

13 **(5) The number of inmates who were tested following exposure**

14 **incidents; and**

15 **(6) The number of inmates under treatment for HIV/AIDS.**

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