



HOUSE BILL No. 5225

January 19, 2000, Introduced by Reps. Schauer, Bogardus, Woodward, Scranton and Godchaux and referred to the Committee on Health Policy.

A bill to amend 1978 PA 368, entitled "Public health code," by amending sections 5204 and 5205 (MCL 333.5204 and 333.5205), section 5204 as added and section 5205 as amended by 1997 PA 57.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 5204. (1) A police officer, a ~~fire fighter~~
2 FIREFIGHTER, a local correctional officer or other county employ-
3 ee, a court employee, ~~or~~ an individual making a lawful arrest,
4 OR AN ELEMENTARY OR SECONDARY SCHOOL TEACHER OR OTHER ELEMENTARY
5 OR SECONDARY SCHOOL EMPLOYEE may proceed under this section if he
6 or she has received training in the transmission of bloodborne
7 diseases under the rules governing exposure to bloodborne dis-
8 eases in the workplace promulgated by the occupational health
9 standards commission or incorporated by reference under the

1 Michigan occupational safety and health act, 1974 PA 154,
2 MCL 408.1001 to 408.1094.

3 (2) A police officer, a ~~fire fighter~~ FIRE FIGHTER, a local
4 correctional officer or other county employee, a court employee,
5 ~~or~~ an individual making a lawful arrest, OR AN ELEMENTARY OR
6 SECONDARY SCHOOL TEACHER OR OTHER ELEMENTARY OR SECONDARY SCHOOL
7 EMPLOYEE who has received the training described in subsection
8 (1) and who, while performing his or her official duties or oth-
9 erwise performing the duties of his or her employment, determines
10 that he or she has sustained a percutaneous, mucous membrane, or
11 open wound exposure to the blood or body fluids of an arrestee,
12 correctional facility inmate, parolee, ~~or~~ probationer, OR PUPIL
13 may request that the arrestee, correctional facility inmate,
14 parolee, ~~or~~ probationer, OR PUPIL be tested for HIV infection,
15 HBV infection, HCV infection, or A COMBINATION OF OR all 3 infec-
16 tions, pursuant to this section.

17 (3) ~~An officer or employee or an individual making a lawful~~
18 ~~arrest~~ A PERSON who IS ENTITLED TO AND desires to make a request
19 described in subsection (2) shall make the request to his or her
20 employer in writing on a form provided by the department as soon
21 as possible, but not later than 72 hours, after the exposure
22 occurs. The request form shall be dated and shall contain, at a
23 minimum, the name and address of the ~~officer, employee, or indi-~~
24 ~~vidual making a lawful arrest making the request~~ REQUESTER and a
25 description of his or her exposure to the blood or other body
26 fluids of the arrestee, correctional facility inmate, parolee,
27 ~~or~~ probationer, OR PUPIL. The request form shall also contain

1 a statement that the requester is subject to the confidentiality
2 requirements of subsection (7) and section 5131. The request
3 form shall not contain information that would identify the
4 arrestee, correctional facility inmate, parolee, ~~or~~
5 probationer, OR PUPIL by name, except if necessary to identify
6 the individual for purposes of testing under this section.

7 (4) The employer of an individual making a request under
8 subsections (2) and (3) shall accept as fact the requester's
9 description of his or her exposure to blood or other body fluids
10 as described in subsection (2). The requester's employer shall
11 have the test for HIV infection, HBV infection, HCV infection, or
12 A COMBINATION OF OR all 3 infections performed by the local
13 health department or by a health care provider designated by the
14 local health department. If the test subject consents to the
15 performance of the test or tests named in the request, the
16 requester's employer shall transport the test subject to the
17 local health department or designated health care provider for
18 testing, or a representative of the local health department or
19 designated health care provider shall come to where the test
20 subject is held or housed OR ATTENDING SCHOOL to take a blood or
21 other body fluid sample for testing, as soon as practicable after
22 the local health department receives the request for testing from
23 the requester's employer. If the test subject refuses to undergo
24 1 or more tests specified in the request, the requester's
25 employer may proceed with a petition to the family division of
26 the circuit court in the manner provided in section 5205 or 5207,
27 as appropriate.

1 (5) A local health department or a health care provider
2 designated by the local health department that performs 1 or more
3 tests under this section may charge the ~~officer or employee or~~
4 ~~arresting individual requesting the test~~ INDIVIDUAL MAKING A
5 REQUEST UNDER SUBSECTIONS (2) AND (3) for the reasonable and cus-
6 tomary charges of each test. The ~~officer or employee or arrest-~~
7 ~~ing individual requesting the test~~ REQUESTER is responsible for
8 the payment of the charges if the charges are not payable by the
9 ~~officer's or employee's or arresting individual's~~ REQUESTER'S
10 employer, pursuant to an agreement between the ~~officer or~~
11 ~~employee or arresting individual~~ REQUESTER and the employer, or
12 by the ~~officer's or employee's or arresting individual's~~
13 REQUESTER'S health care payment or benefits plan. A local health
14 department or a health care provider designated by the local
15 health department to perform an HIV test under this section is
16 not required to provide HIV counseling pursuant to
17 section 5133(1) to ~~an officer or employee or arresting~~
18 ~~individual~~ A REQUESTER who requests that an arrestee, correc-
19 tional facility inmate, parolee, ~~or~~ probationer, OR PUPIL be
20 tested for HIV under this section, unless the local health
21 department or designated health care provider tests the ~~officer~~
22 ~~or employee or arresting individual~~ REQUESTER for HIV.

23 (6) A local health department or a health care provider des-
24 ignated by the local health department to perform a test under
25 this section shall, on a form provided by the department, notify
26 the ~~requesting officer or employee or arresting~~ individual
27 MAKING A REQUEST UNDER SUBSECTIONS (2) AND (3) of the HIV test,

1 HBV test, or HCV test results, as applicable, whether positive or
2 negative, within 2 days after the test results are obtained by
3 the local health department or designated health care provider.
4 The notification shall be transmitted directly to the ~~requesting~~
5 ~~officer or employee or arresting individual~~ REQUESTER or ~~, upon~~
6 ~~request of the requesting officer or employee or arresting~~
7 ~~individual,~~ to ~~his or her~~ A primary care physician or ~~to~~
8 ~~another~~ OTHER health professional designated by the ~~officer or~~
9 ~~employee or arresting individual~~ REQUESTER. The notification
10 required under this subsection shall include an explanation of
11 the confidentiality requirements of subsection (7). The notifi-
12 cation required under this subsection shall also contain a state-
13 ment recommending that the ~~requesting officer, employee, or~~
14 ~~arresting individual~~ REQUESTER undergo an HIV test, an HBV test,
15 or an HCV test, or A COMBINATION OF OR all 3 tests.

16 (7) The notice required under subsection (6) shall not con-
17 tain information that would identify the arrestee, correctional
18 facility inmate, parolee, ~~or~~ probationer, OR PUPIL who tested
19 positive or negative for HIV, HBV, or HCV. The information con-
20 tained in the notice is confidential and is subject to this sec-
21 tion, the rules promulgated under section 5111(2), and
22 section 5131. A person who receives confidential information
23 under this section shall disclose the information to others only
24 to the extent consistent with the authorized purpose for which
25 the information was obtained.

1 (8) The department may promulgate rules to administer this
2 section. The department shall develop and distribute the forms
3 required under this section.

4 (9) In addition to the penalties prescribed in the rules
5 promulgated under section 5111(2) and in section 5131, a person
6 who discloses information in violation of subsection (7) is
7 guilty of a misdemeanor.

8 (10) A local health department or designated health care
9 provider shall report to the department each test result obtained
10 under this section that indicates that an individual is HIV
11 infected, in compliance with section 5114.

12 (11) A person or governmental entity that makes a good faith
13 effort to comply with subsections (1) to (6) is immune from civil
14 liability or criminal penalty based on compliance with, or the
15 failure to comply with, those subsections.

16 (12) As used in this section and section 5205:

17 (a) "Correctional facility" means a municipal or county
18 jail, work camp, lockup, holding center, halfway house, community
19 corrections center, or any other facility maintained by a munici-
20 pality or county that houses adult prisoners. Correctional
21 facility does not include a facility owned or operated by the
22 department of corrections.

23 (b) "Employee" means a county employee or a court employee.

24 (c) "HBV" means hepatitis B virus.

25 (d) "HBV infected" or "HBV infection" means the status of an
26 individual who is tested as HBsAg-positive.

1 (e) "HCV" means hepatitis C virus.

2 (f) "HCV infected" or "HCV infection" means the status of an
3 individual who has tested positive for the presence of HCV anti-
4 bodies or has tested positive for HBV using an RNA test.

5 (g) "HIV" means human immunodeficiency virus.

6 (h) "HIV infected" means that term as defined in
7 section 5101.

8 (i) "Individual making a lawful arrest" or "arresting
9 individual" means 1 of the following:

10 (i) A private security police officer authorized to make an
11 arrest without a warrant under section 30 of the private security
12 guard act of 1968, 1968 PA 330, MCL 338.1080, ~~and~~ OR section 15
13 of the code of criminal procedure, 1927 PA 175, MCL 764.15.

14 (ii) A merchant, agent of a merchant, employee of a mer-
15 chant, or independent contractor providing security for a mer-
16 chant authorized to make an arrest in the merchant's store and in
17 the course of his or her employment as prescribed by section
18 16(d) of the code of criminal procedure, 1927 PA 175,
19 MCL 764.16. Individual making a lawful arrest or arresting indi-
20 vidual does not include a private person authorized to make an
21 arrest under section 16(a) and (b) of the code of criminal proce-
22 dure, 1927 PA 175, MCL 764.16.

23 (j) "Local correctional officer" means an individual
24 employed by a local governmental unit in a correctional facility
25 as a corrections officer.

26 (k) "Officer" means a law enforcement officer, motor carrier
27 officer, or property security officer employed by the state, a

1 law enforcement officer employed by a local governmental unit, a
2 ~~fire fighter~~ FIREFIGHTER employed by or volunteering for a
3 local governmental unit, or a local correctional officer.

4 Sec. 5205. (1) If a department representative or a local
5 health officer knows or has reasonable grounds to believe that an
6 individual has failed or refused to comply with a warning notice
7 issued under section 5203, the department or local health depart-
8 ment may petition the circuit court for the county of Ingham or
9 for the county served by the local health department for an order
10 as described in subsection (6).

11 (2) A petition filed under subsection (1) shall state all of
12 the following:

13 (a) The grounds and underlying facts that demonstrate that
14 the individual is a health threat to others and, unless an emer-
15 gency order is sought under section 5207, has failed or refused
16 to comply with a warning notice issued under section 5203.

17 (b) The petitioner's effort to alleviate the health threat
18 to others before the issuance of the warning notice, unless an
19 emergency order is sought under section 5207.

20 (c) The type of relief sought.

21 (d) A request for a court hearing on the allegations set
22 forth in the petition.

23 (3) If a test subject refuses to undergo a test requested by
24 an officer, ~~or~~ employee, ~~or~~ an arresting individual, OR AN
25 ELEMENTARY OR SECONDARY SCHOOL TEACHER OR OTHER ELEMENTARY OR
26 SECONDARY SCHOOL EMPLOYEE under section 5204, the ~~officer's or~~
27 ~~employee's or arresting individual's~~ REQUESTER'S employer may

1 petition the circuit court for the county in which the employer
2 is located for an order as described in subsection (7).

3 (4) A petition filed under subsection (3) shall state all of
4 the following:

5 (a) Substantially the same information contained in the
6 request made to ~~an officer's or employee's or arresting~~
7 ~~individual's~~ A REQUESTER'S employer under section 5204(2) and
8 (3), except that the petition shall contain the name of the
9 arrestee, correctional facility inmate, parolee, ~~or~~
10 probationer, OR PUPIL who is the proposed test subject.

11 (b) The reasons for the ~~officer's or employee's or arrest-~~
12 ~~ing individual's~~ REQUESTER'S determination that the exposure
13 described in the request made under section 5204(2) and (3) could
14 have transmitted HIV, HBV, or HCV, or a combination of those
15 viruses, along with the date and place the ~~officer or employee~~
16 ~~or arresting individual~~ REQUESTER received the training in the
17 transmission of bloodborne diseases required under section
18 5204(1).

19 (c) The fact that the arrestee, correctional facility
20 inmate, parolee, ~~or~~ probationer, OR PUPIL has refused to
21 undergo the test or tests requested under section 5204(2) and
22 (3).

23 (d) The type of relief sought.

24 (e) A request for a court hearing on the allegations set
25 forth in the petition.

26 (5) Upon receipt of a petition filed under subsection (1) or
27 (3), the circuit court shall fix a date for hearing that shall be

1 as soon as possible, but not later than 14 days after the date
2 the petition is filed. Notice of the petition and the time and
3 place of the hearing shall be served personally on the individual
4 or the proposed test subject under section 5204 and on the peti-
5 tioner not less than 3 days before the date of the hearing.
6 Notice of the hearing shall include notice of the individual's or
7 proposed test subject's right to appear at the hearing, the right
8 to present and cross-examine witnesses, and the right to counsel
9 as provided in subsection (13). The individual or the proposed
10 test subject and the petitioner may waive notice of hearing, and
11 upon filing of the waiver in writing, the court may hear the
12 petition immediately.

13 (6) Upon a finding by the circuit court that the department
14 or local health department has proven the allegations set forth
15 in a petition filed under subsection (1) by clear and convincing
16 evidence, the circuit court may issue 1 or more of the following
17 orders:

18 (a) An order that the individual participate in a designated
19 education program.

20 (b) An order that the individual participate in a designated
21 counseling program.

22 (c) An order that the individual participate in a designated
23 treatment program.

24 (d) An order that the individual undergo medically accepted
25 tests to verify the individual's status as a carrier or for
26 diagnosis.

1 (e) An order that the individual notify or appear before
2 designated health officials for verification of status, testing,
3 or other purposes consistent with monitoring.

4 (f) An order that the individual cease and desist conduct
5 that constitutes a health threat to others.

6 (g) An order that the individual live part-time or full-time
7 in a supervised setting for the period and under the conditions
8 set by the circuit court.

9 (h) Subject to subsection (8), an order that the individual
10 be committed to an appropriate facility for the period and under
11 the conditions set by the circuit court. A commitment ordered
12 under this subdivision shall not be for more than 6 months,
13 unless the director of the facility, upon motion, shows good
14 cause for continued commitment.

15 (i) Any other order considered just by the circuit court.

16 (7) Upon a finding by the circuit court that the ~~officer's~~
17 ~~or employee's or arresting individual's~~ REQUESTER'S employer has
18 proven the allegations set forth in a petition filed under sub-
19 section (3), including, but not limited to, the ~~requesting~~
20 ~~officer's or employee's or arresting individual's~~ REQUESTER'S
21 description of his or her exposure to the blood or body fluids of
22 the proposed test subject, the court may issue an order requiring
23 the proposed test subject to undergo a test for HIV infection,
24 HBV infection, or HCV infection, or A COMBINATION OF OR all 3
25 infections, subject to subsection (9).

26 (8) The circuit court shall not issue an order authorized
27 under subsection (6)(h) unless the court first considers the

1 recommendation of a commitment review panel appointed by the
2 court under this subsection to review the need for commitment of
3 the individual to a health facility. The commitment review panel
4 shall consist of 3 physicians appointed by the court from a list
5 of physicians submitted by the department. Not less than 2 of
6 the physicians shall have training and experience in the diagno-
7 sis and treatment of serious communicable diseases and
8 infections. However, upon the motion of the individual who is
9 the subject of the order, the court shall appoint as 1 member of
10 the commitment review panel a physician who is selected by the
11 individual. The commitment review panel shall do all of the
12 following:

13 (a) Review the record of the proceeding.

14 (b) Interview the individual, or document the reasons why
15 the individual was not interviewed.

16 (c) Recommend either commitment or an alternative or alter-
17 natives to commitment, and document the reasons for the
18 recommendation.

19 (9) The circuit court shall not issue an order authorized
20 under subsection (7) unless the court first considers the recom-
21 mendation of a review panel appointed by the court under this
22 subsection to review the need for testing the proposed test
23 subject for HIV infection, HBV infection, HCV infection, or A
24 COMBINATION OF OR all 3 infections. The review panel shall con-
25 sist of 3 physicians appointed by the court from a list of physi-
26 cians submitted by the department. Not less than 2 of the
27 physicians shall have training and experience in the diagnosis

1 and treatment of serious communicable diseases and infections.

2 However, upon the motion of the individual who is the subject of

3 the order, the court shall appoint as 1 member of the review

4 panel a physician who is selected by that individual. The review

5 panel shall do all of the following:

6 (a) Review the record of the proceeding.

7 (b) Interview the individual who is the subject of the

8 order, or document the reasons why the individual was not

9 interviewed.

10 (c) Recommend either that the individual who is the subject

11 of the order be tested for HIV infection, HBV infection, HCV

12 infection, or A COMBINATION OF OR all 3 infections, or that the

13 individual not be tested for any of the infections, and document

14 the reasons for the recommendation.

15 (10) An individual committed to a facility under subsection

16 (6)(h) may appeal to the circuit court for a commitment review

17 panel recommendation as to whether or not the patient's commit-

18 ment should be terminated. Upon the filing of a claim of appeal

19 under this subsection, the court shall reconvene the commitment

20 review panel appointed under subsection ~~(5)~~ (8) as soon as

21 practicable, but not more than 14 days after the filing of the

22 claim of appeal. Upon reconvening, the commitment review panel

23 shall do all of the following:

24 (a) Review the appeal and any other information considered

25 relevant by the commitment review panel.

26 (b) Interview the individual, or document the reasons why

27 the individual was not interviewed.

1 (c) Recommend to the court either termination or
2 continuation of the commitment, and document the reasons for the
3 recommendation.

4 (11) Upon receipt of the recommendation of the commitment
5 review panel under subsection (10), the circuit court may termi-
6 nate or continue the commitment.

7 (12) The cost of implementing an order issued under
8 subsection (6) shall be borne by the individual who is the
9 subject of the order, unless the individual is unable to pay all
10 or a part of the cost, as determined by the circuit court. If
11 the court determines that the individual is unable to pay all or
12 a part of the cost of implementing the order, then the state
13 shall pay all of the cost or that part of the cost that the indi-
14 vidual is unable to pay, upon the certification of the
15 department. The cost of implementing an order issued under sub-
16 section (7) shall be borne by the arrestee, correctional facility
17 inmate, parolee, ~~or~~ probationer, OR PARENT OR LEGAL GUARDIAN OF
18 THE PUPIL who is tested under the order.

19 (13) An individual who is the subject of a petition filed
20 under this section or an affidavit filed under section 5207 has
21 the right to counsel at all stages of the proceedings. If the
22 individual is unable to pay the cost of counsel, the circuit
23 court shall appoint counsel for the individual.

24 (14) An order issued by the circuit court under this section
25 may be appealed to the court of appeals. The court of appeals
26 shall hear the appeal within 30 days after the date the claim of
27 appeal is filed with the court of appeals. However, an order

1 issued by the circuit court under this section shall not be
2 stayed pending appeal, unless ordered by the court of appeals on
3 motion for good cause.

4 (15) An individual committed to a facility under this sec-
5 tion who leaves the facility before the date designated in the
6 commitment order without the permission of the circuit court or
7 who refuses to undergo a test for HIV infection, HBV infection,
8 HCV infection, or A COMBINATION OF OR all 3 infections is guilty
9 of contempt.