

HOUSE BILL No. 4245

February 14, 2001, Introduced by Reps. Kowall, Bishop, Allen, Shackleton, Hager, Richardville, Vear, Bernero, Ruth Johnson, Stewart, Julian, Bovin and DeVuyst 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 by 1997 PA 57 and section 5205 as amended by 2000 PA 37.

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

1 contain a statement that the requester is subject to the
2 confidentiality requirements of subsection (7) and section 5131.
3 The request form shall not contain information that would iden-
4 tify the 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 OR, IF THE TEST
15 SUBJECT IS A MINOR, THE TEST SUBJECT'S PARENT OR LEGAL GUARDIAN
16 consents to the performance of the test or tests named in the
17 request, the requester's employer shall transport the test
18 subject to the local health department or designated health care
19 provider for testing, or a representative of the local health
20 department or designated health care provider shall come to where
21 the test subject is held or housed OR ATTENDING SCHOOL to take a
22 blood or other body fluid sample for testing, as soon as practi-
23 cable after the local health department receives the request for
24 testing from the requester's employer. If the test subject
25 REFUSES TO UNDERGO OR, IF THE TEST SUBJECT IS A MINOR, THE TEST
26 SUBJECT'S PARENT OR LEGAL GUARDIAN refuses to ALLOW THE MINOR TO
27 undergo, 1 or more tests specified in the request, the

1 requester's employer may proceed with a petition to the family
2 division of ~~the~~ circuit court in the manner provided in section
3 5205 or 5207, as appropriate.

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

26 (6) A local health department or a health care provider
27 designated by the local health department to perform a test under

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

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

1 to the extent consistent with the authorized purpose for which
2 the information was obtained.

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

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

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

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

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

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

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

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

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

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

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

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

8 (h) "HIV infected" means that term as defined in
9 section 5101.

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

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

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

1 (j) "Local correctional officer" means an individual
2 employed by a local governmental unit in a correctional facility
3 as a corrections officer.

4 (k) "Officer" means a law enforcement officer, motor carrier
5 officer, or property security officer employed by the state, a
6 law enforcement officer employed by a local governmental unit, a
7 ~~fire fighter~~ FIREFIGHTER employed by or volunteering for a
8 local governmental unit, or a local correctional officer.

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

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

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

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

25 (c) The type of relief sought.

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

1 (3) If a test subject refuses to undergo OR, IF THE TEST
2 SUBJECT IS A MINOR, THE TEST SUBJECT'S PARENT OR LEGAL GUARDIAN
3 REFUSES TO ALLOW THE MINOR TO UNDERGO, a test requested by an
4 officer, ~~or~~ employee, ~~or~~ an arresting individual, OR AN ELE-
5 MENTARY OR SECONDARY SCHOOL TEACHER OR OTHER ELEMENTARY OR SEC-
6 ONDARY SCHOOL EMPLOYEE under section 5204, the ~~officer's or~~
7 ~~employee's or arresting individual's~~ REQUESTER'S employer may
8 petition the circuit court for the county in which the employer
9 is located or the appropriate district court for an order as
10 described in subsection (7).

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

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

19 (b) The reasons for the ~~officer's or employee's or arrest-~~
20 ~~ing individual's~~ REQUESTER'S determination that the exposure
21 described in the request made under section 5204(2) and (3) could
22 have transmitted HIV, HBV, or HCV, or all or a combination of
23 those viruses, along with the date and place the ~~officer or~~
24 ~~employee or arresting individual~~ REQUESTER received the training
25 in the transmission of bloodborne diseases required under section
26 5204(1).

1 (c) The fact that the arrestee, correctional facility
2 inmate, parolee, ~~or~~ probationer, OR PUPIL has refused to
3 undergo OR, IF THE PUPIL IS A MINOR, THE PUPIL'S PARENT OR LEGAL
4 GUARDIAN HAS REFUSED TO ALLOW THE PUPIL TO UNDERGO, the test or
5 tests requested under section 5204(2) and (3).

6 (d) The type of relief sought.

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

9 (5) Upon receipt of a petition filed under subsection (1),
10 the circuit court shall fix a date for hearing that shall be as
11 soon as possible, but not later than 14 days after the date the
12 petition is filed. Notice of the petition and the time and place
13 of the hearing shall be served personally on the individual and
14 on the petitioner not less than 3 days before the date of the
15 hearing. Notice of the hearing shall include notice of the
16 individual's right to appear at the hearing, the right to present
17 and cross-examine witnesses, and the right to counsel as provided
18 in subsection (12). The individual and the petitioner may waive
19 notice of hearing, and upon filing of the waiver in writing, the
20 circuit court may hear the petition immediately. Upon receipt of
21 a petition filed under subsection (3), the circuit court or the
22 district court shall fix a date for hearing that shall be as soon
23 as possible, but not later than 24 hours after the time and date
24 the petition is filed. Notice of the petition and the time and
25 place of the hearing shall be served personally on both the pro-
26 posed test subject under section 5204 and the petitioner within a
27 time period that is reasonable under the circumstances. Notice

1 of the hearing shall include notice of the proposed test
2 subject's right to appear at the hearing, the right to present
3 and cross-examine witnesses, and the right to counsel as provided
4 in subsection (12). The proposed test subject and the petitioner
5 may waive notice of the hearing, and upon filing of the waiver in
6 writing, the circuit court or the district court may hear the
7 petition filed under subsection (3) immediately.

8 (6) Upon a finding by the circuit court that the department
9 or local health department has proven the allegations set forth
10 in a petition filed under subsection (1) by clear and convincing
11 evidence, the circuit court may issue 1 or more of the following
12 orders:

13 (a) An order that the individual participate in a designated
14 education program.

15 (b) An order that the individual participate in a designated
16 counseling program.

17 (c) An order that the individual participate in a designated
18 treatment program.

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

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

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

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

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

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

11 (7) Upon a finding by the circuit court or the district
12 court that the ~~officer's or employee's or arresting~~
13 ~~individual's~~ REQUESTER'S employer has proven the allegations set
14 forth in a petition filed under subsection (3), including, but
15 not limited to, the ~~requesting officer's or employee's or~~
16 ~~arresting individual's~~ REQUESTER'S description of his or her
17 exposure to the blood or body fluids of the proposed test
18 subject, the circuit court or the district court may issue an
19 order requiring the proposed test subject to undergo a test for
20 HIV infection, HBV infection, or HCV infection, or all or a com-
21 bination of the 3 infections.

22 (8) The circuit court shall not issue an order authorized
23 under subsection (6)(h) unless the court first considers the rec-
24 ommendation of a commitment review panel appointed by the court
25 under this subsection to review the need for commitment of the
26 individual to a health facility. The commitment review panel
27 shall consist of 3 physicians appointed by the court from a list

1 of physicians submitted by the department. Not less than 2 of
2 the physicians shall have training and experience in the diagno-
3 sis and treatment of serious communicable diseases and
4 infections. However, upon the motion of the individual who is
5 the subject of the order, the court shall appoint as 1 member of
6 the commitment review panel a physician who is selected by the
7 individual. The commitment review panel shall do all of the
8 following:

9 (a) Review the record of the proceeding.

10 (b) Interview the individual, or document the reasons why
11 the individual was not interviewed.

12 (c) Recommend either commitment or an alternative or alter-
13 natives to commitment, and document the reasons for the
14 recommendation.

15 (9) 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 (10) Upon receipt of the recommendation of the commitment
5 review panel under subsection (9), the circuit court may termi-
6 nate or continue the commitment.

7 (11) 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 (12) 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 (13) An order issued by the circuit court under subsection
25 (6) may be appealed to the court of appeals. The court of
26 appeals shall hear the appeal within 30 days after the date the
27 claim of appeal is filed with the court of appeals. However, an

1 order issued by the circuit court under subsection (6) shall not
2 be stayed pending appeal, unless ordered by the court of appeals
3 on motion for good cause. An order issued by the circuit court
4 under subsection (7) may be appealed to the court of appeals.
5 The court of appeals shall hear the appeal within 15 days after
6 the date the claim of appeal is filed with the court of appeals.
7 However, an order issued by the circuit court under subsection
8 (7) shall not be stayed pending appeal, unless ordered by the
9 court of appeals on motion for good cause. An order issued by a
10 district court under subsection (7) may be appealed to the cir-
11 cuit court for the county in which the district court is
12 located. The circuit court shall hear the appeal within 15 days
13 after the date the claim of appeal is filed with the circuit
14 court. However, an order issued by a district court under sub-
15 section (7) shall not be stayed pending appeal, unless ordered by
16 the circuit court on motion for good cause.

17 (14) An individual committed to a facility under this sec-
18 tion who leaves the facility before the date designated in the
19 commitment order without the permission of the circuit court or
20 who refuses to undergo a test for HIV infection, HBV infection,
21 HCV infection, or all or a combination of the 3 infections is
22 guilty of contempt.