

Act No. 490
Public Acts of 1988
Approved by the Governor
December 27, 1988
Filed with the Secretary of State
December 28, 1988

**STATE OF MICHIGAN
84TH LEGISLATURE
REGULAR SESSION OF 1988**

Introduced by Reps. Bennane, Hunter and Murphy
Rep. Rocca named co-sponsor

ENROLLED HOUSE BILL No. 5026

AN ACT to amend sections 5201 and 5203 of Act No. 368 of the Public Acts of 1978, entitled as amended "An act to protect and promote the public health; to codify, revise, consolidate, classify, and add to the laws relating to public health; to provide for the prevention and control of diseases and disabilities; to provide for the classification, administration, regulation, financing, and maintenance of personal, environmental, and other health services and activities; to create or continue, and prescribe the powers and duties of, departments, boards, commissions, councils, committees, task forces, and other agencies; to prescribe the powers and duties of governmental entities and officials; to regulate occupations, facilities, and agencies affecting the public health; to regulate health maintenance organizations and certain third party administrators and insurers; to promote the efficient and economical delivery of health care services, to provide for the appropriate utilization of health care facilities and services, and to provide for the closure of hospitals or consolidation of hospitals or services; to provide for the collection and use of data and information; to provide for the transfer of property; to provide certain immunity from liability; to regulate and prohibit the sale and offering for sale of drug paraphernalia under certain circumstances; to provide for penalties and remedies; to repeal certain acts and parts of acts; to repeal certain parts of this act; and to repeal certain parts of this act on specific dates," being sections 333.5201 and 333.5203 of the Michigan Compiled Laws; and to add sections 5205, 5207, 5209, 5210, and section 20191.

The People of the State of Michigan enact:

Section 1. Sections 5201 and 5203 of Act No. 368 of the Public Acts of 1978, being sections 333.5201 and 333.5203 of the Michigan Compiled Laws, are amended and sections 5205, 5207, 5209, 5210, and section 20191 are added to read as follows:

PART 52. HEALTH THREATS TO OTHERS

Sec. 5201. (1) As used in this part:

(a) "Carrier" means an individual who serves as a potential source of infection and who harbors or who the department reasonably believes to harbor a specific infectious agent or a serious communicable disease or infection, whether or not there is present discernible disease.

(b) "Health threat to others" means that an individual who is a carrier has demonstrated an inability or unwillingness to conduct himself or herself in such a manner as to not place others at risk of exposure to a serious communicable disease or infection. Health threat to others includes, but is not limited to, 1 or more of the following:

(i) Behavior by the carrier that has been demonstrated epidemiologically to transmit, or that evidences a careless disregard for transmission of, a serious communicable disease or infection to others.

(ii) A substantial likelihood that the carrier will transmit a serious communicable disease or infection to others, as evidenced by the carrier's past behavior or statements made by the carrier that are credible indicators of the carrier's intention to do so.

(iii) Affirmative misrepresentation by the carrier of his or her status as a carrier before engaging in behavior that has been demonstrated epidemiologically to transmit the serious communicable disease or infection.

(2) In addition, article 1 contains general definitions and principles of construction applicable to all articles in this code and part 51 contains definitions applicable to this part.

Sec. 5203. (1) Upon a determination by a department representative or a local health officer that an individual is a carrier and is a health threat to others, the department representative or local health officer shall issue a warning notice to the individual requiring the individual to cooperate with the department or local health department in efforts to prevent or control transmission of serious communicable diseases or infections. The warning notice may also require the individual to participate in education, counseling, or treatment programs, and to undergo medical tests to verify the person's status as a carrier.

(2) A warning notice issued under subsection (1) shall be in writing, except that in urgent circumstances, the warning notice may be an oral statement, followed by a written statement within 3 days. A warning notice shall be individual and specific and shall not be issued to a class of persons. A written warning notice shall be served either by registered mail, return receipt requested, or personally by an individual who is employed by, or under contract to, the department or a local health department.

(3) A warning notice issued under subsection (1) shall include a statement that unless the individual takes the action requested in the warning notice, the department representative or local health officer shall seek an order from the probate court, pursuant to this part. The warning notice shall also state that, except in cases of emergency, the individual to whom the warning notice is issued has the right to notice and a hearing and other rights provided in this part before the probate court issues an order.

Sec. 5205. (1) If a department representative or a local health officer knows or has reasonable grounds to believe that an individual has failed or refused to comply with a warning notice issued under section 5203, the department or local health department may petition the probate court for the county of Ingham or for the county served by the local health department for an order as described in subsection (3).

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

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

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

(c) The type of relief sought.

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

(3) Upon receipt of a petition filed under subsection (1), the probate court shall fix a date for hearing that shall be as soon as possible, but not later than 14 days after the date the petition is filed. Notice of the petition and the time and place of the hearing shall be served personally on the individual and the petitioner not less than 3 days before the date of the hearing. Notice of the hearing shall include notice of the individual's right to appear at the hearing, the right to present and cross-examine witnesses, and the right to counsel as provided in subsection (7). The individual and the petitioner may waive notice of hearing, and upon filing of the waiver in writing, the probate court may hear the petition immediately.

(4) Upon a finding by the probate court that the department or local health department has proven the allegations set forth in the petition by clear and convincing evidence, the probate court may issue 1 or more of the following orders:

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

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

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

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

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

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

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

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

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

(5) The probate court shall not issue an order authorized under subsection (4)(h) unless the probate court first considers the recommendation of a commitment review panel appointed by the probate court under this subsection to review the need for commitment of the individual to a health facility. The commitment review panel shall consist of 3 physicians appointed by the probate court from a list of physicians submitted by the department. Not less than 2 of the physicians shall have training and experience in the diagnosis and treatment of serious communicable diseases and infections. However, upon the motion of the individual who is the subject of the order, the probate court shall appoint as 1 member of the commitment review panel a physician who is selected by the individual. The commitment review panel shall do all of the following:

(a) Review the record of the proceeding.

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

(c) Recommend either commitment or an alternative or alternatives to commitment, and document the reasons for the recommendation.

(6) An individual committed to a facility under subsection (4)(h) may appeal to the probate court for a commitment review panel recommendation as to whether or not the patient's commitment should be terminated. Upon the filing of a claim of appeal under this subsection, the probate court shall reconvene the commitment review panel appointed under subsection (5) as soon as practicable, but not more than 14 days after the filing of the claim of appeal. Upon reconvening, the commitment review panel shall do all of the following:

(a) Review the appeal and any other information considered relevant by the commitment review panel.

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

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

(7) Upon receipt of the recommendation of the commitment review panel under subsection (6), the probate court may terminate or continue the commitment.

(8) The cost of implementing an order issued under subsection (4) shall be borne by the individual who is the subject of the order, unless the individual is unable to pay all or a part of the cost, as determined by the probate court. If the probate court determines that the individual is unable to pay all or a part of the cost of implementing the order, then the state shall pay all of the cost or that part of the cost that the individual is unable to pay, upon the certification of the department.

(9) An individual who is the subject of a petition filed under this section or an affidavit filed under section 5207 shall have the right to counsel at all stages of the proceedings. If the individual is unable to pay the cost of counsel, the probate court shall appoint counsel for the individual.

(10) An order issued by the probate court under this section may be appealed to the circuit court. The circuit court shall hear the appeal within 30 days after the date the claim of appeal is filed with the circuit court. However, an order issued by the probate court under this section shall not be stayed pending appeal, unless ordered by the circuit court on motion for good cause.

(11) An individual committed to a facility under this section who leaves the facility before the date designated in the commitment order without the permission of the probate court is guilty of contempt.

Sec. 5207. (1) To protect the public health in an emergency, upon the filing of an affidavit by a department representative or a local health officer, the probate court may order the department representative, local health officer, or a peace officer to take an individual whom the probate court has reasonable cause to believe is a carrier and is a health threat to others into custody and transport the individual to an appropriate emergency care or treatment facility for observation, examination, testing, diagnosis, or treatment and, if determined necessary by the probate court, temporary detention. If the individual is already institutionalized in a facility, the court may order the facility to temporarily detain the individual. An order issued under this subsection may be issued in an ex parte proceeding upon an affidavit of a department representative or a local health officer. The probate court shall issue an order under this subsection upon a determination that reasonable cause exists to believe that there is a substantial likelihood that the individual is a carrier and a health threat to others. An

order under this subsection may be executed on any day and at any time, and shall be served upon the individual who is the subject of the order immediately upon apprehension or detention.

(2) An affidavit filed by a department representative or a local health officer under subsection (1) shall set forth the specific facts upon which the order is sought including, but not limited to, the reasons why an emergency order is sought.

(3) An individual temporarily detained under subsection (1) shall not be detained longer than 72 hours, excluding Saturdays, Sundays, and legal holidays, without a court hearing to determine if the temporary detention should continue.

(4) Notice of a hearing under subsection (3) shall be served upon the individual not less than 24 hours before the hearing is held. The notice shall contain all of the following information:

(a) The time, date, and place of the hearing.

(b) The grounds and underlying facts upon which continued detention is sought.

(c) The individual's right to appear at the hearing.

(d) The individual's right to present and cross-examine witnesses.

(e) The individual's right to counsel, including the right to counsel designated by the probate court, as described in section 5205(9).

(5) The probate court may order that the individual continue to be temporarily detained if the court finds, by a preponderance of the evidence, that the individual would pose a health threat to others if released. An order under this subsection to continued temporary detention shall not continue longer than 5 days, unless a petition is filed under section 5205. If a petition is filed under section 5205, the temporary detention shall continue until a hearing on the petition is held under section 5205.

Sec. 5209. This part does not limit the power of the department, a local health department, or the probate court to deal with the prevention and control of communicable diseases and infections.

Sec. 5210. (1) A person who knows that he or she has or has been diagnosed as having acquired immunodeficiency syndrome or acquired immunodeficiency syndrome related complex, or who knows that he or she is HIV infected, and who engages in sexual penetration with another person without having first informed the other person that he or she has acquired immunodeficiency syndrome or acquired immunodeficiency syndrome related complex or is HIV infected, is guilty of a felony.

(2) As used in this section, "sexual penetration" means sexual intercourse, cunnilingus, fellatio, anal intercourse, or any other intrusion, however slight, of any part of a person's body or of any object into the genital or anal openings of another person's body, but emission of semen is not required.

Sec. 20191. (1) If an emergency patient is assisted or transported, or both, to a health facility by a police officer or fire fighter or by an ambulance attendant, emergency medical technician, emergency medical technician specialist, or advanced emergency medical technician licensed under part 207, and if the emergency patient, as part of the treatment rendered by the health facility, is tested for the presence in the individual of an infectious agent, and the test results are positive, the health facility shall do both of the following:

(a) Subject to subsection (2), on a form provided by the department, notify the police officer, fire fighter, or individual licensed under part 207 that he or she may have been exposed to an infectious agent. The health facility shall notify the police officer, fire fighter, or individual licensed under part 207 of test results that indicate that the emergency patient is HIV infected only upon receipt of written request by the police officer, fire fighter, or individual licensed under part 207.

(b) Subject to subsection (2), on a form provided by the department, notify the police officer, fire fighter, or individual licensed under part 207. at a minimum, of the appropriate infection control precautions to be taken.

(2) The notification required under subsection (1) shall occur within 2 days after the test results are obtained by the health facility or after receipt of a written request under subsection (1)(a). A health facility is in compliance with subsection (1) if the health facility notifies the chief elected official of the local governmental unit which employs or otherwise has jurisdiction over the police officer, fire fighter, or individual licensed under part 207.

(3) The notice required under subsection (1) shall not contain information which would identify the emergency patient who tested positive for an infectious agent. The information contained in the notice is confidential. A person who receives confidential information under this section shall disclose the information to others only to the extent consistent with the authorized purpose for which the information was obtained.

(4) The department may promulgate rules to administer this section.

(5) A person who discloses information regarding an infectious agent that is a serious communicable disease or infection or HIV in violation of subsection (3) is subject to the penalties set forth in section 5131(8) or (9).

(6) A person who discloses information regarding an infectious agent that is not a serious communicable disease or infection or HIV is guilty of a misdemeanor.

(7) As used in this section:

(a) "Emergency patient" means that term as defined in section 20704.

(b) "Health facility" means a health facility or agency as defined in section 20106.

(c) "HIV" means human immunodeficiency virus.

(d) "HIV infected" means that term as defined in section 5101.

(e) "Infectious agent" means that term as defined in R 325.9031 of the Michigan administrative code.

(f) "Serious communicable disease or infection" means that term as defined in section 5101.

Section 2. This amendatory act shall not take effect unless all of the following bills of the 84th Legislature are enacted into law:

(a) House Bill No. 4008.

(b) House Bill No. 4103.

(c) House Bill No. 5189.

(d) Senate Bill No. 1041.

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Clerk of the House of Representatives.

Secretary of the Senate.

Approved.....

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Governor.