

HOUSE BILL No. 5026

October 5, 1987, Introduced by Reps. Bennane, Hunter and Murphy and referred to the Committee on Public Health.

A bill to amend Act No. 368 of the Public Acts of 1978, entitled as amended "Public health code," as amended, being sections 333.1101 to 333.25211 of the Michigan Compiled Laws, by adding sections 2452, 2452a, and 2452b.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Act No. 368 of the Public Acts of 1978, as
2 amended, being sections 333.1101 to 333.25211 of the Michigan
3 Compiled Laws, is amended by adding sections 2452, 2452a, and
4 2452b to read as follows:

5 SEC. 2452. (1) UPON A DETERMINATION BY A LOCAL HEALTH OFFI-
6 CER THAT AN INDIVIDUAL WHO IS HIV INFECTED IS AN IMMINENT HEALTH
7 THREAT TO OTHERS, THE LOCAL HEALTH OFFICER MAY ISSUE A HEALTH
8 DIRECTIVE TO THE INDIVIDUAL REQUIRING THE INDIVIDUAL TO COOPERATE
9 WITH THE LOCAL HEALTH DEPARTMENT IN EFFORTS TO PREVENT OR CONTROL

1 TRANSMISSION OF HIV. THE HEALTH DIRECTIVE MAY ALSO REQUIRE THE
2 INDIVIDUAL TO PARTICIPATE IN EDUCATION, COUNSELING, OR TREATMENT
3 PROGRAMS, OR TO UNDERGO MEDICAL TESTS TO VERIFY THE PERSON'S
4 STATUS AS HIV INFECTED.

5 (2) A HEALTH DIRECTIVE ISSUED UNDER SUBSECTION (1) SHALL BE
6 IN WRITING, EXCEPT THAT IN URGENT CIRCUMSTANCES, THE HEALTH
7 DIRECTIVE MAY BE AN ORAL STATEMENT, FOLLOWED BY A WRITTEN STATE-
8 MENT WITHIN 3 DAYS. A HEALTH DIRECTIVE SHALL BE INDIVIDUAL AND
9 SPECIFIC AND SHALL NOT BE ISSUED TO A CLASS OF PERSONS. A WRIT-
10 TEN HEALTH DIRECTIVE SHALL BE SERVED IN THE SAME MANNER AS PRO-
11 VIDED FOR A SUMMONS UNDER SUBCHAPTER 2.100 OF THE MICHIGAN COURT
12 RULES, MCR 2.100.

13 (3) AS USED IN THIS SECTION AND SECTIONS 2452A AND 2452B:

14 (A) "HEALTH THREAT TO OTHERS" MEANS THAT AN INDIVIDUAL WHO
15 IS HIV INFECTED HAS DEMONSTRATED AN INABILITY OR UNWILLINGNESS TO
16 CONDUCT HIMSELF OR HERSELF IN SUCH A MANNER AS TO NOT PLACE
17 OTHERS AT RISK OF EXPOSURE TO HIV INFECTION. HEALTH THREAT TO
18 OTHERS INCLUDES 1 OR MORE OF THE FOLLOWING:

19 (i) REPEATED BEHAVIOR BY THE INDIVIDUAL WHICH HAS BEEN
20 DEMONSTRATED EPIDEMIOLOGICALLY TO TRANSMIT HIV INFECTION OR WHICH
21 EVIDENCES A CARELESS DISREGARD FOR TRANSMISSION OF HIV INFECTION
22 TO OTHERS.

23 (ii) A SUBSTANTIAL LIKELIHOOD THAT THE INDIVIDUAL WILL
24 REPEATEDLY TRANSMIT HIV INFECTION TO OTHERS AS EVIDENCED BY THE
25 INDIVIDUAL'S PAST BEHAVIOR OR STATEMENTS MADE BY THE INDIVIDUAL
26 THAT ARE CREDIBLE INDICATORS OF THE INDIVIDUAL'S INTENTION TO DO
27 SO.

1 (iii) AFFIRMATIVE MISREPRESENTATION BY THE INDIVIDUAL OF HIS
2 OR HER STATUS AS AN INDIVIDUAL WHO HAS BEEN DIAGNOSED AS HAVING
3 ACQUIRED IMMUNODEFICIENCY SYNDROME OR ACQUIRED IMMUNODEFICIENCY
4 SYNDROME RELATED COMPLEX OR HAS TESTED POSITIVE FOR THE PRESENCE
5 IN THE INDIVIDUAL OF HIV OR THE ANTIBODY TO HIV BEFORE ENGAGING
6 IN BEHAVIOR WHICH HAS BEEN DEMONSTRATED EPIDEMIOLOGICALLY TO
7 TRANSMIT HIV INFECTION.

8 (iv) IF THE PERSON WHO THE INDIVIDUAL PLACES AT RISK IS 1 OR
9 MORE OF THE FOLLOWING, BEHAVIOR, WHETHER REPEATED OR NOT, WHICH
10 HAS BEEN DEMONSTRATED EPIDEMIOLOGICALLY TO TRANSMIT HIV
11 INFECTION:

12 (A) A MINOR.

13 (B) OF DIMINISHED CAPACITY BY REASON OF MOOD ALTERING CHEMI-
14 CALS, INCLUDING ALCOHOL.

15 (C) HAS BEEN DIAGNOSED AS HAVING SUBAVERAGE INTELLECTUAL
16 FUNCTIONING.

17 (D) HAS AN ORGANIC DISORDER OF THE BRAIN OR A PSYCHIATRIC
18 DISORDER OF THOUGHT, MOOD, PERCEPTION, ORIENTATION, OR MEMORY
19 WHICH SUBSTANTIALLY IMPAIRS JUDGMENT, BEHAVIOR, REASONING, OR
20 UNDERSTANDING.

21 (B) "HIV" MEANS HUMAN IMMUNODEFICIENCY VIRUS.

22 SEC. 2452A. (1) IF A LOCAL HEALTH OFFICER KNOWS OR HAS REA-
23 SONABLE GROUNDS TO BELIEVE THAT AN INDIVIDUAL HAS FAILED OR
24 REFUSED TO COMPLY WITH A HEALTH DIRECTIVE ISSUED UNDER SECTION
25 2452, THE LOCAL HEALTH DEPARTMENT MAY PETITION THE PROBATE COURT
26 OF THE COUNTY SERVED BY THE LOCAL HEALTH DEPARTMENT FOR AN ORDER
27 AS DESCRIBED IN SUBSECTION (3).

1 (2) A PETITION FILED UNDER SUBSECTION (1) SHALL STATE ALL OF
2 THE FOLLOWING:

3 (A) THE GROUNDS AND UNDERLYING FACTS THAT DEMONSTRATE THAT
4 THE INDIVIDUAL IS AN IMMINENT HEALTH THREAT TO OTHERS AND, UNLESS
5 AN EMERGENCY ORDER IS SOUGHT UNDER SECTION 2452B, HAS FAILED OR
6 REFUSED TO COMPLY WITH A HEALTH DIRECTIVE ISSUED UNDER SECTION
7 2452.

8 (B) THE PETITIONER'S EFFORT TO ALLEVIATE THE HEALTH THREAT
9 TO OTHERS BEFORE THE ISSUANCE OF THE HEALTH DIRECTIVE, UNLESS AN
10 EMERGENCY ORDER IS SOUGHT UNDER SECTION 2452B.

11 (C) THE TYPE OF RELIEF SOUGHT.

12 (D) A REQUEST FOR A COURT HEARING ON THE ALLEGATIONS SET
13 FORTH IN THE PETITION.

14 (3) UPON RECEIPT OF A PETITION FILED UNDER SUBSECTION (1),
15 THE PROBATE COURT SHALL FIX A DATE FOR HEARING WHICH SHALL BE AS
16 SOON AS POSSIBLE, BUT NOT LATER THAN 14 DAYS AFTER THE DATE THE
17 PETITION IS FILED. NOTICE OF THE PETITION AND THE TIME AND PLACE
18 OF THE HEARING SHALL BE SERVED PERSONALLY ON THE INDIVIDUAL AND
19 THE PETITIONER NOT LESS THAN 3 DAYS BEFORE THE DATE OF THE
20 HEARING. NOTICE OF THE HEARING SHALL INCLUDE NOTICE OF THE
21 INDIVIDUAL'S RIGHT TO APPEAR AT THE HEARING, THE RIGHT TO PRESENT
22 AND CROSS-EXAMINE WITNESSES, AND THE RIGHT TO COUNSEL AS PROVIDED
23 IN SUBSECTION (7). THE INDIVIDUAL AND THE PETITIONER MAY WAIVE
24 NOTICE OF HEARING, AND UPON FILING OF THE WAIVER IN WRITING, THE
25 PROBATE COURT MAY HEAR THE PETITION IMMEDIATELY.

26 (4) UPON A FINDING BY THE PROBATE COURT THAT THE LOCAL
27 HEALTH OFFICER HAS PROVEN THE ALLEGATIONS SET FORTH IN THE

1 PETITION BY CLEAR AND CONVINCING EVIDENCE, THE PROBATE COURT MAY
2 ISSUE 1 OR MORE OF THE FOLLOWING ORDERS:

3 (A) AN ORDER THAT THE INDIVIDUAL PARTICIPATE IN A DESIGNATED
4 EDUCATION PROGRAM.

5 (B) AN ORDER THAT THE INDIVIDUAL PARTICIPATE IN A DESIGNATED
6 COUNSELING PROGRAM.

7 (C) AN ORDER THAT THE INDIVIDUAL PARTICIPATE IN A DESIGNATED
8 TREATMENT PROGRAM.

9 (D) AN ORDER THAT THE INDIVIDUAL UNDERGO MEDICALLY ACCEPTED
10 TESTS TO VERIFY THE INDIVIDUAL'S STATUS AS A CARRIER OF THE HIV
11 VIRUS OR FOR DIAGNOSIS.

12 (E) AN ORDER THAT THE INDIVIDUAL NOTIFY OR APPEAR BEFORE
13 DESIGNATED HEALTH OFFICIALS FOR VERIFICATION OF STATUS, TESTING,
14 OR OTHER PURPOSES CONSISTENT WITH MONITORING.

15 (F) AN ORDER THAT THE INDIVIDUAL CEASE AND DESIST CONDUCT
16 WHICH CONSTITUTES A HEALTH THREAT TO OTHERS.

17 (G) AN ORDER THAT THE INDIVIDUAL LIVE PART-TIME OR FULL-TIME
18 IN A SUPERVISED SETTING FOR THE PERIOD AND UNDER THE CONDITIONS
19 SET BY THE PROBATE COURT.

20 (H) SUBJECT TO SUBSECTION (5), AN ORDER THAT THE INDIVIDUAL
21 BE COMMITTED TO AN APPROPRIATE FACILITY FOR THE PERIOD AND UNDER
22 THE CONDITIONS SET BY THE PROBATE COURT. A COMMITMENT ORDERED
23 UNDER THIS SUBDIVISION SHALL NOT BE FOR MORE THAN 6 MONTHS,
24 UNLESS THE LOCAL HEALTH OFFICER SHOWS GOOD CAUSE FOR CONTINUED
25 COMMITMENT.

26 (I) ANY OTHER ORDER CONSIDERED JUST BY THE PROBATE COURT.

1 (5) THE PROBATE COURT SHALL NOT ISSUE AN ORDER AUTHORIZED
2 UNDER SUBSECTION (4)(H) UNLESS THE COURT FIRST CONSIDERS THE
3 RECOMMENDATION OF A COMMITMENT REVIEW PANEL APPOINTED BY THE
4 COURT UNDER THIS SUBSECTION TO REVIEW THE NEED FOR COMMITMENT OF
5 THE INDIVIDUAL TO A HEALTH FACILITY. THE COMMITMENT REVIEW PANEL
6 SHALL CONSIST OF 3 PHYSICIANS APPOINTED BY THE COURT FROM A LIST
7 OF PHYSICIANS SUBMITTED BY THE DEPARTMENT. THE PHYSICIANS SHALL
8 HAVE TRAINING AND EXPERIENCE IN THE DIAGNOSIS AND TREATMENT OF
9 HIV INFECTION. HOWEVER, UPON THE MOTION OF THE INDIVIDUAL WHO IS
10 THE SUBJECT OF THE ORDER, THE COURT SHALL APPOINT AS 1 MEMBER OF
11 THE COMMITMENT REVIEW PANEL A PHYSICIAN WHO HAS TRAINING IN THE
12 DIAGNOSIS AND TREATMENT OF HIV INFECTION AND IS SELECTED BY THE
13 INDIVIDUAL. THE COMMITMENT REVIEW PANEL SHALL DO ALL OF THE
14 FOLLOWING:

15 (A) REVIEW THE RECORD OF THE PROCEEDING.

16 (B) INTERVIEW THE INDIVIDUAL, OR DOCUMENT THE REASONS WHY
17 THE INDIVIDUAL WAS NOT INTERVIEWED.

18 (C) RECOMMEND EITHER COMMITMENT OR AN ALTERNATIVE OR ALTER-
19 NATIVES TO COMMITMENT, AND DOCUMENT THE REASONS FOR THE
20 RECOMMENDATION.

21 (6) THE COST OF IMPLEMENTING AN ORDER ISSUED UNDER
22 SUBSECTION (4) SHALL BE BORNE BY THE INDIVIDUAL WHO IS THE
23 SUBJECT OF THE ORDER, UNLESS THE INDIVIDUAL IS UNABLE TO PAY ALL
24 OR A PART OF THE COST, AS DETERMINED BY THE PROBATE COURT. IF
25 THE PROBATE COURT DETERMINES THAT THE INDIVIDUAL IS UNABLE TO PAY
26 ALL OR A PART OF THE COST OF IMPLEMENTING THE ORDER, THEN THE
27 STATE SHALL PAY ALL OF THE COST OR THAT PART OF THE COST THAT THE

1 INDIVIDUAL IS UNABLE TO PAY, UPON THE CERTIFICATION OF THE
2 DEPARTMENT.

3 (7) AN INDIVIDUAL WHO IS THE SUBJECT OF A PETITION FILED
4 UNDER THIS SECTION OR AN AFFIDAVIT FILED UNDER SECTION 2452B
5 SHALL HAVE THE RIGHT TO COUNSEL AT ALL STAGES OF THE
6 PROCEEDINGS. IF THE INDIVIDUAL IS UNABLE TO PAY THE COST OF
7 COUNSEL, THE PROBATE COURT SHALL APPOINT COUNSEL FOR THE
8 INDIVIDUAL.

9 SEC. 2452B. (1) TO PROTECT THE PUBLIC HEALTH IN AN EMERGEN-
10 CY, UPON THE FILING OF AN AFFIDAVIT BY A LOCAL HEALTH OFFICER,
11 THE PROBATE COURT MAY ORDER THE LOCAL HEALTH OFFICER OR PEACE
12 OFFICER TO TAKE AN INDIVIDUAL WHOM THE PROBATE COURT HAS REASON-
13 ABLE CAUSE TO BELIEVE IS HIV INFECTED INTO CUSTODY AND TRANSPORT
14 THE INDIVIDUAL TO AN APPROPRIATE EMERGENCY CARE OR TREATMENT
15 FACILITY FOR OBSERVATION, EXAMINATION, TESTING, DIAGNOSIS, OR
16 TREATMENT AND, IF DETERMINED NECESSARY BY THE PROBATE COURT, TEM-
17 PORARY DETENTION. IF THE INDIVIDUAL IS ALREADY INSTITUTIONALIZED
18 IN A FACILITY, THE COURT MAY ORDER THE FACILITY TO TEMPORARILY
19 DETAIN THE INDIVIDUAL. AN ORDER ISSUED UNDER THIS SUBSECTION MAY
20 BE ISSUED IN AN EX PARTE PROCEEDING UPON AN AFFIDAVIT OF A LOCAL
21 HEALTH OFFICER. THE PROBATE COURT SHALL ISSUE AN ORDER UNDER
22 THIS SUBSECTION UPON A DETERMINATION THAT REASONABLE CAUSE EXISTS
23 TO BELIEVE THAT THERE IS A SUBSTANTIAL LIKELIHOOD THAT THE INDI-
24 VIDUAL IS AN IMMINENT HEALTH THREAT TO OTHERS. AN ORDER UNDER
25 THIS SUBSECTION MAY BE EXECUTED ON ANY DAY AND AT ANY TIME, AND
26 SHALL BE SERVED UPON THE INDIVIDUAL WHO IS THE SUBJECT OF THE
27 ORDER IMMEDIATELY UPON APPREHENSION OR DETENTION.

1 (2) AN AFFIDAVIT FILED BY A LOCAL HEALTH OFFICER UNDER
2 SUBSECTION (1) SHALL SET FORTH THE SPECIFIC FACTS UPON WHICH THE
3 ORDER IS SOUGHT INCLUDING, BUT NOT LIMITED TO, THE REASONS WHY AN
4 EMERGENCY ORDER IS SOUGHT.

5 (3) AN INDIVIDUAL TEMPORARILY DETAINED UNDER SUBSECTION (1)
6 SHALL NOT BE DETAINED LONGER THAN 72 HOURS, EXCLUDING SATURDAYS,
7 SUNDAYS, AND LEGAL HOLIDAYS, WITHOUT A COURT HEARING TO DETERMINE
8 IF THE TEMPORARY DETENTION SHOULD CONTINUE.

9 (4) NOTICE OF A HEARING UNDER SUBSECTION (3) SHALL BE SERVED
10 UPON THE INDIVIDUAL NOT LESS THAN 24 HOURS BEFORE THE HEARING IS
11 HELD. THE NOTICE SHALL CONTAIN ALL OF THE FOLLOWING
12 INFORMATION:

13 (A) THE TIME, DATE, AND PLACE OF THE HEARING.

14 (B) THE GROUNDS AND UNDERLYING FACTS UPON WHICH CONTINUED
15 DETENTION IS SOUGHT.

16 (C) THE INDIVIDUAL'S RIGHT TO APPEAR AT THE HEARING.

17 (D) THE INDIVIDUAL'S RIGHT TO PRESENT AND CROSS-EXAMINE
18 WITNESSES.

19 (E) THE INDIVIDUAL'S RIGHT TO COUNSEL, INCLUDING THE RIGHT
20 TO COUNSEL DESIGNATED BY THE PROBATE COURT, AS DESCRIBED IN SEC-
21 TION 2452A(7).

22 (5) THE PROBATE COURT MAY ORDER THAT THE INDIVIDUAL CONTINUE
23 TO BE TEMPORARILY DETAINED IF THE COURT FINDS, BY A PREPONDERANCE
24 OF THE EVIDENCE, THAT THE INDIVIDUAL WOULD POSE AN IMMINENT
25 HEALTH THREAT TO OTHERS IF RELEASED. AN ORDER UNDER THIS SUBSEC-
26 TION TO CONTINUED TEMPORARY DETENTION SHALL NOT CONTINUE LONGER
27 THAN 5 DAYS, UNLESS A PETITION IS FILED UNDER SECTION 2452A. IF

1 A PETITION IS FILED UNDER SECTION 2452A, THE TEMPORARY DETENTION
2 SHALL CONTINUE UNTIL A HEARING ON THE PETITION IS HELD UNDER SEC-
3 TION 2452A.