

HOUSE BILL No. 4754

April 29, 1991, Introduced by Reps. Profit, Weeks and McNutt and referred to the Committee on Public Health.

A bill to amend sections 5131 and 5203 of Act No. 368 of the Public Acts of 1978, entitled as amended

"Public health code,"

section 5131 as amended by Act No. 271 of the Public Acts of 1989 and section 5203 as amended by Act No. 490 of the Public Acts of 1988, being sections 333.5131 and 333.5203 of the Michigan Compiled Laws; and to add section 5212.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 5131 and 5203 of Act No. 368 of the
2 Public Acts of 1978, section 5131 as amended by Act No. 271 of
3 the Public Acts of 1989 and section 5203 as amended by Act
4 No. 490 of the Public Acts of 1988, being sections 333.5131 and
5 333.5203 of the Michigan Compiled Laws, are amended and section
6 5212 is added to read as follows:

1 Sec. 5131. (1) All reports, records, and data pertaining to
2 testing, care, treatment, reporting, and research associated with
3 the serious communicable diseases or infections of HIV infection,
4 acquired immunodeficiency syndrome, and acquired immunodeficiency
5 syndrome-related complex are confidential. ~~and~~ A PERSON shall
6 ~~be released~~ RELEASE REPORTS, RECORDS, AND DATA DESCRIBED IN
7 THIS SUBSECTION only pursuant to this section.

8 (2) Except as otherwise provided by law, the test results of
9 a test for HIV infection, acquired immunodeficiency syndrome, or
10 acquired immunodeficiency syndrome-related complex and the fact
11 that such a test was ordered is information that is subject to
12 section 2157 of the revised judicature act of 1961, Act No. 236
13 of the Public Acts of 1961, being section 600.2157 of the
14 Michigan Compiled Laws.

15 (3) The disclosure of information pertaining to HIV infec-
16 tion, acquired immunodeficiency syndrome, or acquired immunodefi-
17 ciency syndrome-related complex in response to a court order and
18 subpoena ~~shall be~~ IS limited to only the following cases and IS
19 subject to all of the following restrictions:

20 (a) ~~The~~ A court that is petitioned for an order to dis-
21 close the information shall determine both of the following:

22 (i) That other ways of obtaining the information are not
23 available or would not be effective.

24 (ii) That the public interest and need for the disclosure
25 outweigh the potential for injury to the patient.

26 (b) If a court issues an order for the disclosure of the
27 information, the order shall do all of the following:

1 (i) Limit disclosure to those parts of the patient's record
2 that are determined by the court to be essential to fulfill the
3 objective of the order.

4 (ii) Limit disclosure to those persons whose need for the
5 information is the basis for the order.

6 (iii) Include such other measures as considered necessary by
7 the court to limit disclosure for the protection of the patient.

8 (4) ~~Information~~ A PERSON WHO RELEASES INFORMATION pertain-
9 ing to HIV infection, acquired immunodeficiency syndrome, or
10 acquired immunodeficiency syndrome-related complex ~~that is~~
11 ~~released~~ to a legislative body shall not ~~contain information~~
12 ~~that identifies~~ IDENTIFY IN THE INFORMATION a specific individ-
13 ual who was tested or is being treated for HIV infection,
14 acquired immunodeficiency syndrome, or acquired immunodeficiency
15 syndrome-related complex.

16 (5) Subject to subsection (7), subsection (1) does not apply
17 to the following:

18 (a) ~~Information~~ A PERSON WHO DISCLOSES INFORMATION per-
19 taining to an individual who is HIV infected or has been diag-
20 nosed as having acquired immunodeficiency syndrome or acquired
21 immunodeficiency syndrome-related complex ~~, if the information~~
22 ~~is disclosed~~ to the department, a local health department, or
23 other health care provider for 1 or more of the following
24 purposes:

25 (i) To protect the health of an individual.

26 (ii) To prevent further transmission of HIV.

(iii) To diagnose and care for a patient.

(b) ~~Information~~ A PHYSICIAN OR A LOCAL HEALTH OFFICER WHO DISCLOSES INFORMATION pertaining to an individual who is HIV infected or has been diagnosed as having acquired immunodeficiency syndrome or acquired immunodeficiency syndrome-related complex ~~, if the information is disclosed by a physician or local health officer~~ to an individual who is known by the physician or local health officer to be a contact of the individual who is HIV infected or has been diagnosed as having acquired immunodeficiency syndrome or acquired immunodeficiency syndrome-related complex, if the physician or local health officer determines that the disclosure of the information is necessary to prevent a reasonably foreseeable risk of further transmission of HIV. This subdivision does not impose an affirmative duty upon a physician or local health officer to disclose information pertaining to an individual who is HIV infected or has been diagnosed as having acquired immunodeficiency syndrome or acquired immunodeficiency syndrome-related complex to an individual who is known by the physician or local health officer to be a contact of the individual who is HIV infected or has been diagnosed as having acquired immunodeficiency syndrome or acquired immunodeficiency syndrome-related complex.

(c) ~~Information~~ AN AUTHORIZED REPRESENTATIVE OF THE DEPARTMENT OR A LOCAL HEALTH OFFICER WHO DISCLOSES INFORMATION pertaining to an individual who is HIV infected or has been diagnosed as having acquired immunodeficiency syndrome or acquired immunodeficiency syndrome-related complex ~~, if the information~~

1 ~~is disclosed by an authorized representative of the department or~~
 2 ~~a local health officer~~ to an employee of a school district,
 3 ~~and~~ if the department representative or local health officer
 4 determines that the disclosure is necessary to prevent a reason-
 5 ably foreseeable risk of transmission of HIV to pupils in the
 6 school district. An employee of a school district to whom infor-
 7 mation is disclosed under this subdivision is subject to subsec-
 8 tion (1).

9 (d) ~~Information~~ A PERSON WHO DISCLOSES INFORMATION per-
 10 taining to an individual who is HIV infected or has been diag-
 11 nosed as having acquired immunodeficiency syndrome or acquired
 12 immunodeficiency syndrome-related complex, if the disclosure is
 13 expressly authorized in writing by the individual. ~~, but~~ THIS
 14 SUBDIVISION APPLIES only if the written authorization is specific
 15 to HIV infection, acquired immunodeficiency syndrome, or acquired
 16 immunodeficiency syndrome-related complex. If the individual is
 17 a minor or incapacitated, the written authorization may be exe-
 18 cuted by the parent or legal guardian of the individual.

19 (e) ~~Information disclosed~~ A PERSON WHO DISCLOSES
 20 INFORMATION under section 5114, 5114a, 5119(3), 5129, {5212,} or
 21 ~~20191(1)}~~ {20191}.

22 (f) ~~Information~~ A PERSON WHO DISCLOSES INFORMATION per-
 23 taining to an individual who is HIV infected or has been diag-
 24 nosed as having acquired immunodeficiency syndrome or acquired
 25 immunodeficiency syndrome-related complex, if the information is
 26 part of a report required under the child protection law, Act

1 No. 238 of the Public Acts of 1975, being sections 722.621 to
2 722.636 of the Michigan Compiled Laws.

3 (g) ~~Information~~ A PERSON WHO DISCLOSES INFORMATION per-
4 taining to an individual who is HIV infected or has been diag-
5 nosed as having acquired immunodeficiency syndrome or acquired
6 immunodeficiency syndrome-related complex ~~, if the information~~
7 ~~is disclosed by~~ ON BEHALF OF the department of social services,
8 the department of mental health, the probate court, or a child
9 placing agency in order to care for a minor and to place the
10 minor with a child care organization licensed under Act No. 116
11 of the Public Acts of 1973, being sections 722.111 to 722.128 of
12 the Michigan Compiled Laws. The PERSON DISCLOSING THE informa-
13 tion shall ~~be disclosed~~ DISCLOSE IT only to the director of the
14 child care organization or, if the child care organization is a
15 private home, to the individual who holds the license for the
16 child care organization. An individual to whom information is
17 disclosed under this subdivision is subject to subsection (1).
18 As used in this subdivision, "child care organization" and "child
19 placing agency" mean those terms as defined in section 1 of Act
20 No. 116 of the Public Acts of 1973, being section 722.111 of the
21 Michigan Compiled Laws.

22 (6) A person who releases the results of an HIV test in com-
23 pliance with subsection (5) is immune from civil or criminal
24 liability and administrative penalties including, but not limited
25 to, licensure sanctions, for the release of that information.

26 (7) ~~Information disclosed~~ A PERSON WHO DISCLOSES
27 INFORMATION under subsection (5) shall not ~~contain~~ INCLUDE IN

1 THE DISCLOSURE information that identifies the individual to whom
2 the information pertains, unless the identifying information is
3 determined by the person making the disclosure to be reasonably
4 necessary to prevent a foreseeable risk of transmission of HIV.
5 This subsection does not apply to information disclosed under
6 subsection (5)(d), (f), or (g).

7 (8) A person who violates this section is guilty of a misde-
8 meanor, punishable by imprisonment for not more than 1 year or a
9 fine of not more than \$5,000.00, or both, and is liable in a
10 civil action for actual damages or \$1,000.00, whichever is great-
11 er, and costs and reasonable attorney fees. This subsection also
12 applies to the employer of a person who violates this section,
13 unless the employer had in effect at the time of the violation
14 reasonable precautions designed to prevent the violation.

15 Sec. 5203. (1) Upon a determination by a department repre-
16 sentative or a local health officer that an individual is a car-
17 rier and is a health threat to others OR UNDER THE CIRCUMSTANCES
18 DESCRIBED IN SECTION 5212(1), the department representative or
19 local health officer shall issue a warning notice to the individ-
20 ual requiring the individual to cooperate with the department or
21 local health department in efforts to prevent or control trans-
22 mission of serious communicable diseases or infections. The
23 warning notice may also require the individual to participate in
24 education, counseling, or treatment programs, and to undergo med-
25 ical tests to verify the person's status as a carrier.

26 (2) A warning notice issued under subsection (1) shall be in
27 writing, except that in urgent circumstances, the warning notice

1 may be an oral statement, followed by a written statement within
2 3 days. A warning notice shall be individual and specific and
3 shall not be issued to a class of persons. A written warning
4 notice shall be served either by registered mail, return receipt
5 requested, or personally by an individual who is employed by, or
6 under contract to, the department or a local health department.

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

16 SEC. 5212. (1) IF AN OFFICER IS EXPOSED TO THE BLOOD OR
17 OTHER BODY FLUID OF AN INDIVIDUAL DURING THE COURSE OF THE
18 OFFICER'S OFFICIAL DUTIES, THE OFFICER MAY WITHIN 72 HOURS AFTER
19 THE EXPOSURE REQUEST THE LOCAL HEALTH DEPARTMENT TO REVIEW THE
20 CIRCUMSTANCES OF THE EXPOSURE TO DETERMINE IF THE EXPOSURE COULD
21 HAVE TRANSMITTED HIV. PURSUANT TO A REQUEST MADE UNDER THIS SUB-
22 SECTION, IF THE LOCAL HEALTH DEPARTMENT DETERMINES THAT AN EXPO-
23 SURE HAS OCCURRED THAT COULD REASONABLY HAVE TRANSMITTED HIV, THE
24 LOCAL HEALTH DEPARTMENT SHALL ISSUE A WARNING NOTICE UNDER SEC-
25 TION 5203. THE WARNING NOTICE SHALL, AT A MINIMUM, REQUIRE THE
26 INDIVIDUAL TO UNDERGO A TEST FOR HIV OR AN ANTIBODY TO HIV. THE
27 LOCAL HEALTH DEPARTMENT OR A HEALTH CARE PROVIDER DESIGNATED BY

1 THE LOCAL HEALTH DEPARTMENT SHALL ADMINISTER THE TEST. THE LOCAL
2 HEALTH DEPARTMENT SHALL PROVIDE APPROPRIATE COUNSELING AND REFER-
3 RAL SERVICES TO AN OFFICER WHO REQUESTS A REVIEW, WHETHER OR NOT
4 THE INDIVIDUAL TO WHOM THE OFFICER WAS EXPOSED IS TESTED, AND TO
5 AN INDIVIDUAL WHO IS TESTED UNDER THIS SECTION.

6 (2) THE RESULTS OF A TEST FOR HIV OR AN ANTIBODY TO HIV
7 UNDER SUBSECTION (1) SHALL BE DISCLOSED BY THE LOCAL HEALTH
8 DEPARTMENT ONLY TO PERSONS WHO DEMONSTRATE TO THE LOCAL HEALTH
9 DEPARTMENT A NEED TO KNOW THE TEST RESULTS, AND AS OTHERWISE PRO-
10 VIDED IN SUBSECTION (5). THE OFFICER WHO REQUESTED THE REVIEW
11 UNDER SUBSECTION (1) HAS A NEED TO KNOW THE RESULTS OF A TEST FOR
12 HIV OR AN ANTIBODY TO HIV PERFORMED ON THE INDIVIDUAL INVOLVED IN
13 THE EXPOSURE.

14 (3) UPON THE REQUEST OF AN OFFICER REQUESTING A REVIEW UNDER
15 SUBSECTION (1), THE LOCAL HEALTH DEPARTMENT SHALL PERFORM A TEST
16 FOR HIV OR AN ANTIBODY TO HIV FOR THE OFFICER, FREE OF CHARGE.

17 (4) IF AN OFFICER REQUESTS A REVIEW UNDER SUBSECTION (1),
18 THE LOCAL HEALTH DEPARTMENT SHALL ADVISE THE OFFICER OF HIS OR
19 HER RIGHTS UNDER THIS SECTION, AND SHALL EXPLAIN TO THE OFFICER
20 THAT THE OFFICER IS SUBJECT TO THE CONFIDENTIALITY PROVISIONS OF
21 SECTION 5131 AND THE PENALTIES UNDER THAT SECTION.

22 (5) THE LOCAL HEALTH DEPARTMENT SHALL REPORT EACH TEST
23 RESULT UNDER THIS SECTION THAT INDICATES THAT AN INDIVIDUAL IS
24 HIV INFECTED TO THE DEPARTMENT, IN COMPLIANCE WITH SECTION 5114.

25 (6) THE DEPARTMENT, THE LOCAL HEALTH DEPARTMENT PROVIDING
26 THE TESTING, THE AGENCY EMPLOYING THE OFFICER, AND THE OFFICER
27 ARE NOT FINANCIALLY RESPONSIBLE FOR MEDICAL CARE RECEIVED BY THE

1 INDIVIDUAL TO WHOM THE OFFICER WAS EXPOSED AS A RESULT OF A
2 REFERRAL MADE UNDER SUBSECTION (1).

3 (7) UPON REQUEST, THE DEPARTMENT SHALL WORK WITH A STATE,
4 COUNTY, OR LOCAL LAW ENFORCEMENT AGENCY TO DEVELOP AND IMPLEMENT
5 A COMPREHENSIVE HIV EDUCATION PROGRAM FOR ALL OFFICERS THAT
6 INCLUDES, AT A MINIMUM, EDUCATION CONCERNING HIV TRANSMISSION,
7 TREATMENT, AND PROTECTIVE MEASURES SPECIFIC TO LAW ENFORCEMENT
8 AND CORRECTIONS.

9 (8) THE DEPARTMENT SHALL DEVELOP GUIDELINES TO ASSIST LOCAL
10 HEALTH DEPARTMENTS IN DETERMINING IF AN EXPOSURE COULD HAVE
11 TRANSMITTED HIV.

12 (9) AS USED IN THIS SECTION, "OFFICER" MEANS A LAW ENFORCE-
13 MENT OFFICER EMPLOYED BY THE STATE OR A UNIT OF LOCAL GOVERNMENT,
14 OR A LOCAL CORRECTIONAL OFFICER AS DEFINED IN SECTION 2 OF THE
15 CORRECTIONAL OFFICERS' TRAINING ACT OF 1982, ACT NO. 415 OF THE
16 PUBLIC ACTS OF 1982, BEING SECTION 791.502 OF THE MICHIGAN
17 COMPILED LAWS.