



HOUSE BILL No. 5488

December 14, 1995, Introduced by Reps. Galloway, Freeman, McBryde, Jamian, Hammerstrom, Walberg, Byl, Jellema, Weeks, Voorhees, Price, Kukuk, Kaza, Horton, Ryan, Rhead, McManus, Green, Baade, Curtis, Munsell, Porreca, Hill, Gustafson, Yokich, Law, Middaugh, Llewellyn, Oxender and Olshove and referred to the Committee on Health Policy.

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. 200 of the Public Acts of 1994 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. 200 of
3 the Public Acts of 1994 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, and
3 information pertaining to partner notification under
4 section 5114a, THAT ARE associated with the serious communicable
5 diseases or infections of HIV infection and acquired immunodefi-
6 ciency syndrome are confidential. A person shall release
7 reports, records, ~~and~~ data, AND INFORMATION described in this
8 subsection only pursuant to this section.

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

15 (3) The disclosure of information pertaining to HIV infec-
16 tion or acquired immunodeficiency syndrome in response to a court
17 order and subpoena is limited to only the following cases and is
18 subject to all of the following restrictions:

19 (a) A court that is petitioned for an order to disclose the
20 information shall determine both of the following:

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

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

25 (b) If a court issues an order for the disclosure of the
26 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) A person who releases information pertaining to HIV
9 infection or acquired immunodeficiency syndrome to a legislative
10 body shall not identify in the information a specific individual
11 who was tested or is being treated for HIV infection or acquired
12 immunodeficiency syndrome.

13 (5) Subject to subsection (7), subsection (1) does not apply
14 to the following:

15 (a) Information pertaining to an individual who is HIV
16 infected or has been diagnosed as having acquired immunodeficiency
17 syndrome, if the information is disclosed to the department,
18 a local health department, or other health care provider
19 for 1 or more of the following purposes:

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

21 (ii) To prevent further transmission of HIV.

22 (iii) To diagnose and care for a patient.

23 (b) Information pertaining to an individual who is HIV
24 infected or has been diagnosed as having acquired immunodeficiency
25 syndrome, if the information is disclosed by a physician
26 or local health officer to an individual who is known by the
27 physician or local health officer to be a contact of the

1 individual who is HIV infected or has been diagnosed as having
2 acquired immunodeficiency syndrome, if the physician or local
3 health officer determines that the disclosure of the information
4 is necessary to prevent a reasonably foreseeable risk of further
5 transmission of HIV. This subdivision imposes an affirmative
6 duty upon a physician or local health officer to disclose infor-
7 mation pertaining to an individual who is HIV infected or has
8 been diagnosed as having acquired immunodeficiency syndrome to an
9 individual who is known by the physician or local health officer
10 to be a contact of the individual who is HIV infected or has been
11 diagnosed as having acquired immunodeficiency syndrome. A physi-
12 cian or local health officer may discharge the affirmative duty
13 imposed under this subdivision by referring the individual who is
14 HIV infected or has been diagnosed as having acquired immunodefi-
15 ciency syndrome to the appropriate local health department for
16 assistance with partner notification under section 5114a. The
17 physician or local health officer shall include as part of the
18 referral the name and, if available, address and telephone number
19 of each individual known by the physician or local health officer
20 to be a contact of the individual who is HIV infected or has been
21 diagnosed as having acquired immunodeficiency syndrome.

22 (c) Information pertaining to an individual who is HIV
23 infected or has been diagnosed as having acquired immunodefi-
24 ciency syndrome, if the information is disclosed by an authorized
25 representative of the department or by a local health officer to
26 an employee of a school district, and if the department
27 representative or local health officer determines that the

1 disclosure is necessary to prevent a reasonably foreseeable risk
2 of transmission of HIV to pupils in the school district. An
3 employee of a school district to whom information is disclosed
4 under this subdivision is subject to subsection (1).

5 (d) Information pertaining to an individual who is HIV
6 infected or has been diagnosed as having acquired immunodefi-
7 ciency syndrome, if the disclosure is expressly authorized in
8 writing by the individual. This subdivision applies only if the
9 written authorization is specific to HIV infection or acquired
10 immunodeficiency syndrome. If the individual is a minor or inca-
11 pacitated, the written authorization may be executed by the
12 parent or legal guardian of the individual.

13 (e) Information disclosed under section 5114, 5114a,
14 5119(3), 5129, 5212, or 20191 or information disclosed as
15 required by rule promulgated under section 5111(1)(b) or (i).

16 (f) Information pertaining to an individual who is HIV
17 infected or has been diagnosed as having acquired immunodefi-
18 ciency syndrome, if the information is part of a report required
19 under the child protection law, Act No. 238 of the Public Acts of
20 1975, being sections 722.621 to 722.636 of the Michigan Compiled
21 Laws.

22 (g) Information pertaining to an individual who is HIV
23 infected or has been diagnosed as having acquired immunodefi-
24 ciency syndrome, if the information is disclosed by the depart-
25 ment of social services, the department of mental health, the
26 probate court, or a child placing agency in order to care for a
27 minor and to place the minor with a child care organization

1 licensed under Act No. 116 of the Public Acts of 1973, being
2 sections 722.111 to 722.128 of the Michigan Compiled Laws. The
3 person disclosing the information shall disclose it only to the
4 director of the child care organization or, if the child care
5 organization is a private home, to the individual who holds the
6 license for the child care organization. An individual to whom
7 information is disclosed under this subdivision is subject to
8 subsection (1). As used in this subdivision, "child care
9 organization" and "child placing agency" mean those terms as
10 defined in section 1 of Act No. 116 of the Public Acts of 1973,
11 being section 722.111 of the Michigan Compiled Laws.

12 (6) A person who releases the results of an HIV test OR
13 OTHER INFORMATION DESCRIBED IN SUBSECTION (1) in compliance with
14 subsection (5) is immune from civil or criminal liability and
15 administrative penalties including, but not limited to, licensure
16 sanctions, for the release of that information.

17 (7) A person who discloses information under subsection (5)
18 shall not include in the disclosure information that identifies
19 the individual to whom the information pertains, unless the iden-
20 tifying information is determined by the person making the dis-
21 closure to be reasonably necessary to prevent a foreseeable risk
22 of transmission of HIV. This subsection does not apply to infor-
23 mation disclosed under subsection (5)(d), (f), or (g).

24 (8) A person who violates this section is guilty of a misde-
25 meanor, punishable by imprisonment for not more than 1 year or a
26 fine of not more than \$5,000.00, or both, and is liable in a
27 civil action for actual damages or \$1,000.00, whichever is

1 greater, and costs and reasonable attorney fees. This subsection
2 also applies to the employer of a person who violates this sec-
3 tion, unless the employer had in effect at the time of the viola-
4 tion reasonable precautions designed to prevent the violation.

5 Sec. 5203. (1) Upon a determination by a department repre-
6 sentative or a local health officer that an individual is a car-
7 rier and is a health threat to others OR UNDER THE CIRCUMSTANCES
8 DESCRIBED IN SECTION 5212(1), the department representative or
9 local health officer shall issue a warning notice to the individ-
10 ual requiring the individual to cooperate with the department or
11 local health department in efforts to prevent or control trans-
12 mission of serious communicable diseases or infections. The
13 warning notice may also require the individual to participate in
14 education, counseling, or treatment programs — and to undergo
15 medical tests to verify the person's status as a carrier.

16 (2) A warning notice issued under subsection (1) shall be in
17 writing, except that in urgent circumstances, the warning notice
18 may be an oral statement, followed by a written statement within
19 3 days. A warning notice shall be individual and specific and
20 shall not be issued to a class of persons. A written warning
21 notice shall be served either by registered mail, return receipt
22 requested, or personally by an individual who is employed by, or
23 under contract to, the department or a local health department.

24 (3) A warning notice issued under subsection (1) shall
25 include a statement that unless the individual takes the action
26 requested in the warning notice, the department representative or
27 local health officer shall seek an order from the probate court,

1 pursuant to this part. The warning notice shall also state that,
2 except in cases of emergency, the individual to whom the warning
3 notice is issued has the right to notice and a hearing and other
4 rights provided in this part before the probate court issues an
5 order.

6 SEC. 5212. (1) A POLICE OFFICER OR AN EMPLOYEE OF THE
7 DEPARTMENT OF CORRECTIONS OR OF A COUNTY OR A COURT IN THIS STATE
8 WHO, WHILE PERFORMING HIS OR HER DUTIES AS AN OFFICER OR EMPLOY-
9 EE, IS EXPOSED TO THE BLOOD OR BODY FLUID OF A PRISONER, JAIL
10 INMATE, PAROLEE, OR PROBATIONER MAY REQUEST THE LOCAL HEALTH
11 DEPARTMENT TO REVIEW THE CIRCUMSTANCES OF EXPOSURE TO DETERMINE
12 WHETHER THE EXPOSURE COULD HAVE TRANSMITTED A SERIOUS COMMUNICA-
13 BLE DISEASE AS DEFINED IN SECTION 5101 OR HEPATITIS B INFECTION
14 IF THE REQUEST IS MADE WITHIN 72 HOURS AFTER THE EXPOSURE. IF
15 THE LOCAL HEALTH DEPARTMENT DETERMINES THAT AN EXPOSURE HAS
16 OCCURRED THAT COULD REASONABLY HAVE TRANSMITTED A SERIOUS COMMU-
17 NICABLE DISEASE OR HEPATITIS B INFECTION, THE LOCAL HEALTH
18 DEPARTMENT SHALL ISSUE A WARNING NOTICE UNDER SECTION 5203. THE
19 WARNING NOTICE SHALL, AT A MINIMUM, REQUIRE THE INDIVIDUAL TO
20 UNDERGO A TEST FOR HEPATITIS B INFECTION AND FOR ANY OTHER SERI-
21 OUS COMMUNICABLE DISEASE THAT THE OFFICER OR EMPLOYEE REQUESTS
22 THAT THE INDIVIDUAL UNDERGO. THE LOCAL HEALTH DEPARTMENT OR A
23 LOCAL HEALTH CARE PROVIDER DESIGNATED BY THE LOCAL HEALTH DEPART-
24 MENT SHALL ADMINISTER THE TEST.

25 (2) THE DEPARTMENT OF CORRECTIONS IS RESPONSIBLE FOR ENSUR-
26 ING THAT A PRISONER OR PAROLEE WHO IS UNDER ITS JURISDICTION
27 UNDERGOES THE TESTS REQUIRED UNDER SUBSECTION (1).

1 (3) THE DISTRICT OR CIRCUIT COURT IS RESPONSIBLE FOR
2 ENSURING THAT A PROBATIONER WHO IS UNDER ITS JURISDICTION UNDER-
3 GOES THE TESTS REQUIRED UNDER SUBSECTION (1).

4 (4) THE COUNTY IN WHICH THE JAIL INMATE IS LOCATED IS
5 RESPONSIBLE FOR ENSURING THAT A JAIL INMATE UNDERGOES THE TESTS
6 REQUIRED UNDER SUBSECTION (1).

7 (5) THE RESULTS OF A TEST ADMINISTERED UNDER SUBSECTION (1)
8 SHALL BE DISCLOSED BY THE LOCAL HEALTH DEPARTMENT ONLY TO PERSONS
9 WHO DEMONSTRATE TO THE LOCAL HEALTH DEPARTMENT A NEED TO KNOW THE
10 TEST RESULTS, AND AS OTHERWISE PROVIDED IN SUBSECTION (8). FOR
11 PURPOSES OF THIS SUBSECTION, THE OFFICER OR EMPLOYEE WHO
12 REQUESTED THE REVIEW UNDER SUBSECTION (1) HAS A NEED TO KNOW THE
13 TEST RESULTS.

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

18 (7) IF AN OFFICER OR EMPLOYEE REQUESTS A REVIEW UNDER SUB-
19 SECTION (1), THE LOCAL HEALTH DEPARTMENT SHALL ADVISE THE OFFICER
20 OF HIS OR HER RIGHTS UNDER THIS SECTION, AND SHALL EXPLAIN TO THE
21 OFFICER THAT THE OFFICER IS SUBJECT TO THE CONFIDENTIALITY PROVI-
22 SIONS OF SECTION 5131 AND THE PENALTIES UNDER THAT SECTION.

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

1 (9) AS USED IN THIS SECTION, "POLICE OFFICER" MEANS A LAW
2 ENFORCEMENT OFFICER EMPLOYED BY THE STATE OR A UNIT OF LOCAL
3 GOVERNMENT.