

HOUSE BILL No. 4230

February 5, 1997, Introduced by Reps. Galloway, Palamara, Lowe, Profit, McBryde, Gilmer, Geiger, Godchaux, Horton, Walberg, Baade, Olshove, Whyman, Crissman, Schauer, Jansen, Oxender, Rhead, Voorhees, Middleton, Dobb, Parks, Wojno, Tesanovich, Richner, Cropsey, DeVuyst, Birkholz, Gire, Wetters, Hale, Gernaat, Byl, Goschka, Law, DeHart, Nye, Kukuk, Raczkowski, Scranton, Green, Hammerstrom, Freeman, Rocca, Llewellyn, Curtis, Murphy, Leland, Jellema, Perricone, Thomas, Prusi, Anthony, Gustafson and Hanley and referred to the Committee on Health Policy.

A bill to amend 1978 PA 368, entitled "Public health code," by amending sections 5131, 5205, and 5207 (MCL 333.5131, 333.5205, and 333.5207), section 5131 as amended by 1994 PA 200 and sections 5205 and 5207 as added by 1988 PA 490, and by adding section 5204.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 5131. (1) All reports, records, and data pertaining to
2 testing, care, treatment, reporting, AND research, and informa-
3 tion pertaining to partner notification under section 5114a, THAT
4 ARE associated with the serious communicable diseases or infec-
5 tions of HIV infection and acquired immunodeficiency syndrome are
6 confidential. A person shall release reports, records, ~~and~~
7 data, AND INFORMATION described in this subsection only pursuant
8 to this section.

1 (2) Except as otherwise provided by law, the test results of
2 a test for HIV infection or acquired immunodeficiency syndrome
3 and the fact that such a test was ordered is information that is
4 subject to section 2157 of the revised judicature act of 1961,
5 ~~Act No. 236 of the Public Acts of 1961, being section 600.2157~~
6 ~~of the Michigan Compiled Laws~~ 1961 PA 236, MCL 600.2157.

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

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

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

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

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

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

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

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

26 (4) A person who releases information pertaining to HIV
27 infection or acquired immunodeficiency syndrome to a legislative

1 body shall not identify in the information a specific individual
2 who was tested or is being treated for HIV infection or acquired
3 immunodeficiency syndrome.

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

6 (a) Information pertaining to an individual who is HIV
7 infected or has been diagnosed as having acquired immunodefi-
8 ciency syndrome, if the information is disclosed to the depart-
9 ment, a local health department, or other health care provider
10 for 1 or more of the following purposes:

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

12 (ii) To prevent further transmission of HIV.

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

14 (b) Information pertaining to an individual who is HIV
15 infected or has been diagnosed as having acquired immunodefi-
16 ciency syndrome, if the information is disclosed by a physician
17 or local health officer to an individual who is known by the phy-
18 sician or local health officer to be a contact of the individual
19 who is HIV infected or has been diagnosed as having acquired
20 immunodeficiency syndrome, if the physician or local health offi-
21 cer determines that the disclosure of the information is neces-
22 sary to prevent a reasonably foreseeable risk of further trans-
23 mission of HIV. This subdivision imposes an affirmative duty
24 upon a physician or local health officer to disclose information
25 pertaining to an individual who is HIV infected or has been diag-
26 nosed as having acquired immunodeficiency syndrome to an
27 individual who is known by the physician or local health officer

1 to be a contact of the individual who is HIV infected or has been
2 diagnosed as having acquired immunodeficiency syndrome. A physi-
3 cian or local health officer may discharge the affirmative duty
4 imposed under this subdivision by referring the individual who is
5 HIV infected or has been diagnosed as having acquired immunodeficiency
6 syndrome to the appropriate local health department for
7 assistance with partner notification under section 5114a. The
8 physician or local health officer shall include as part of the
9 referral the name and, if available, address and telephone number
10 of each individual known by the physician or local health officer
11 to be a contact of the individual who is HIV infected or has been
12 diagnosed as having acquired immunodeficiency syndrome.

13 (c) Information pertaining to an individual who is HIV
14 infected or has been diagnosed as having acquired immunodeficiency
15 syndrome, if the information is disclosed by an authorized
16 representative of the department or by a local health officer to
17 an employee of a school district, and if the department representative
18 or local health officer determines that the disclosure is
19 necessary to prevent a reasonably foreseeable risk of transmission
20 of HIV to pupils in the school district. An employee of a
21 school district to whom information is disclosed under this subdivision
22 is subject to subsection (1).

23 (d) Information pertaining to an individual who is HIV
24 infected or has been diagnosed as having acquired immunodeficiency
25 syndrome, if the disclosure is expressly authorized in
26 writing by the individual. This subdivision applies only if the
27 written authorization is specific to HIV infection or acquired

1 immunodeficiency syndrome. If the individual is a minor or
2 incapacitated, the written authorization may be executed by the
3 parent or legal guardian of the individual.

4 (e) Information disclosed under section 5114, 5114a,
5 5119(3), 5129, 5204, or 20191 or information disclosed as
6 required by rule promulgated under section 5111(1)(b) or (i).

7 (f) Information pertaining to an individual who is HIV
8 infected or has been diagnosed as having acquired immunodeficiency
9 syndrome, if the information is part of a report required
10 under the child protection law, ~~Act No. 238 of the Public Acts~~
11 ~~of 1975, being sections 722.621 to 722.636 of the Michigan~~
12 ~~Compiled Laws~~ 1975 PA 238, MCL 722.621 TO 722.636.

13 (g) Information pertaining to an individual who is HIV
14 infected or has been diagnosed as having acquired immunodeficiency
15 syndrome, if the information is disclosed by the department
16 of social services, the department of mental health, the
17 probate court, or a child placing agency in order to care for a
18 minor and to place the minor with a child care organization
19 licensed under ~~Act No. 116 of the Public Acts of 1973, being~~
20 ~~sections 722.111 to 722.128 of the Michigan Compiled Laws~~ 1973
21 PA 116, MCL 722.111 TO 722.128. The person disclosing the information
22 shall disclose it only to the director of the child care
23 organization or, if the child care organization is a private
24 home, to the individual who holds the license for the child care
25 organization. An individual to whom information is disclosed
26 under this subdivision is subject to subsection (1). As used in
27 this subdivision, "child care organization" and "child placing

1 agency" mean those terms as defined in section 1 of ~~Act No. 116~~
2 ~~of the Public Acts of 1973, being section 722.111 of the Michigan~~
3 ~~Compiled Laws~~ 1973 PA 116, MCL 722.111.

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

9 (7) A person who discloses information under subsection (5)
10 shall not include in the disclosure information that identifies
11 the individual to whom the information pertains, unless the iden-
12 tifying information is determined by the person making the dis-
13 closure to be reasonably necessary to prevent a foreseeable risk
14 of transmission of HIV. This subsection does not apply to infor-
15 mation disclosed under subsection (5)(d), (f), or (g).

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

24 SEC. 5204. (1) A POLICE OFFICER, A FIRE FIGHTER, A LOCAL
25 CORRECTIONAL OFFICER OR OTHER COUNTY EMPLOYEE, OR A COURT
26 EMPLOYEE MAY PROCEED UNDER THIS SECTION IF HE OR SHE HAS RECEIVED
27 TRAINING IN THE TRANSMISSION OF BLOODBORNE DISEASES UNDER THE

1 RULES GOVERNING EXPOSURE TO BLOODBORNE DISEASES IN THE WORKPLACE
2 PROMULGATED BY THE OCCUPATIONAL HEALTH STANDARDS COMMISSION OR
3 INCORPORATED BY REFERENCE UNDER THE MICHIGAN OCCUPATIONAL SAFETY
4 AND HEALTH ACT, 1974 PA 154, MCL 408.1001 TO 408.1094.

5 (2) A POLICE OFFICER, A FIRE FIGHTER, A LOCAL CORRECTIONAL
6 OFFICER OR OTHER COUNTY EMPLOYEE, OR A COURT EMPLOYEE DESCRIBED
7 IN SUBSECTION (1) WHO, WHILE PERFORMING HIS OR HER OFFICIAL
8 DUTIES, DETERMINES THAT HE OR SHE HAS SUSTAINED A PERCUTANEOUS,
9 MUCOUS MEMBRANE, OR OPEN WOUND EXPOSURE TO THE BLOOD OR BODY
10 FLUIDS OF AN ARRESTEE, CORRECTIONAL FACILITY INMATE, PAROLEE, OR
11 PROBATIONER MAY REQUEST THAT THE ARRESTEE, CORRECTIONAL FACILITY
12 INMATE, PAROLEE, OR PROBATIONER BE TESTED FOR HIV INFECTION OR
13 HBV INFECTION, OR BOTH, PURSUANT TO THIS SECTION.

14 (3) AN OFFICER OR EMPLOYEE WHO DESIRES TO MAKE A REQUEST
15 DESCRIBED IN SUBSECTION (2) SHALL MAKE THE REQUEST TO HIS OR HER
16 EMPLOYER IN WRITING ON A FORM PROVIDED BY THE DEPARTMENT AS SOON
17 AS POSSIBLE, BUT NOT LATER THAN 72 HOURS, AFTER THE EXPOSURE
18 OCCURS. THE REQUEST FORM SHALL BE DATED AND SHALL CONTAIN, AT A
19 MINIMUM, THE NAME AND ADDRESS OF THE OFFICER OR EMPLOYEE MAKING
20 THE REQUEST AND A DESCRIPTION OF HIS OR HER EXPOSURE TO THE BLOOD
21 OR OTHER BODY FLUIDS OF THE ARRESTEE, CORRECTIONAL FACILITY
22 INMATE, PAROLEE, OR PROBATIONER. THE REQUEST FORM SHALL ALSO
23 CONTAIN A STATEMENT THAT THE REQUESTER IS SUBJECT TO THE CONFIDENTIALITY
24 REQUIREMENTS OF SUBSECTION (7) AND SECTION 5131. THE
25 REQUEST FORM SHALL NOT CONTAIN INFORMATION THAT WOULD IDENTIFY
26 THE ARRESTEE, CORRECTIONAL FACILITY INMATE, PAROLEE, OR
27 PROBATIONER BY NAME.

01129'97

1 (4) AN OFFICER'S OR EMPLOYEE'S EMPLOYER THAT RECEIVES A
2 REQUEST UNDER SUBSECTION (3) SHALL ACCEPT AS FACT THE REQUESTER'S
3 DESCRIPTION OF HIS OR HER EXPOSURE TO BLOOD OR OTHER BODY FLUIDS
4 AS DESCRIBED IN SUBSECTION (2). THE TEST FOR HIV INFECTION OR
5 HBV INFECTION, OR BOTH, SHALL BE PERFORMED BY THE LOCAL HEALTH
6 DEPARTMENT OR BY A HEALTH CARE PROVIDER DESIGNATED BY THE LOCAL
7 HEALTH DEPARTMENT. IF THE TEST SUBJECT CONSENTS TO THE PER-
8 FORMANCE OF THE TESTS NAMED IN THE REQUEST, THE REQUESTER'S
9 EMPLOYER SHALL TRANSPORT THE TEST SUBJECT TO THE LOCAL HEALTH
10 DEPARTMENT OR DESIGNATED HEALTH CARE PROVIDER FOR TESTING, OR A
11 REPRESENTATIVE OF THE LOCAL HEALTH DEPARTMENT OR DESIGNATED
12 HEALTH CARE PROVIDER SHALL COME TO WHERE THE TEST SUBJECT IS
13 HOUSED TO TAKE A BLOOD OR OTHER BODY FLUID SAMPLE FOR TESTING, AS
14 SOON AS PRACTICABLE AFTER THE LOCAL HEALTH DEPARTMENT RECEIVES
15 THE REQUEST FOR TESTING FROM THE OFFICER'S OR EMPLOYEE'S
16 EMPLOYER. IF THE TEST SUBJECT REFUSES TO UNDERGO A TEST SPECI-
17 FIED IN THE REQUEST, THE REQUESTER'S EMPLOYER MAY PROCEED WITH A
18 PETITION TO THE PROBATE COURT IN THE MANNER PROVIDED IN SECTION
19 5205 OR 5207, AS APPROPRIATE.

20 (5) A LOCAL HEALTH DEPARTMENT OR A HEALTH CARE PROVIDER DES-
21 IGNATED BY THE LOCAL HEALTH DEPARTMENT THAT PERFORMS A TEST UNDER
22 THIS SECTION MAY CHARGE THE OFFICER OR EMPLOYEE REQUESTING THE
23 TEST FOR THE REASONABLE AND CUSTOMARY CHARGES OF THE TEST. THE
24 OFFICER OR EMPLOYEE REQUESTING THE TEST IS RESPONSIBLE FOR THE
25 PAYMENT OF THE CHARGES IF THE CHARGES ARE NOT PAYABLE BY THE
26 OFFICER'S OR EMPLOYEE'S EMPLOYER, PURSUANT TO AN AGREEMENT
27 BETWEEN THE OFFICER OR EMPLOYEE AND THE EMPLOYER, OR BY THE

1 OFFICER'S OR EMPLOYEE'S HEALTH CARE PAYMENT OR BENEFITS PLAN. A
2 LOCAL HEALTH DEPARTMENT OR A HEALTH CARE PROVIDER DESIGNATED BY
3 THE LOCAL HEALTH DEPARTMENT TO PERFORM A TEST UNDER THIS SUBSEC-
4 TION IS NOT REQUIRED TO PROVIDE HIV COUNSELING PURSUANT TO
5 SECTION 5133(1) TO AN OFFICER OR EMPLOYEE WHO REQUESTS THAT AN
6 ARRESTEE, CORRECTIONAL FACILITY INMATE, PAROLEE, OR PROBATIONER
7 BE TESTED FOR HIV UNDER THIS SECTION, UNLESS THE LOCAL HEALTH
8 DEPARTMENT OR HEALTH CARE PROVIDER TESTS THE OFFICER OR EMPLOYEE
9 INDIVIDUAL FOR HIV.

10 (6) A LOCAL HEALTH DEPARTMENT OR A HEALTH CARE PROVIDER DES-
11 IGNATED BY THE LOCAL HEALTH DEPARTMENT TO PERFORM A TEST UNDER
12 THIS SECTION SHALL, ON A FORM PROVIDED BY THE DEPARTMENT, NOTIFY
13 THE REQUESTING OFFICER OR EMPLOYEE OF THE HIV OR HBV TEST
14 RESULTS, AS APPLICABLE, WHETHER POSITIVE OR NEGATIVE, WITHIN 2
15 DAYS AFTER THE TEST RESULTS ARE OBTAINED BY THE LOCAL HEALTH
16 DEPARTMENT OR DESIGNATED HEALTH CARE PROVIDER. THE NOTIFICATION
17 SHALL BE TRANSMITTED DIRECTLY TO THE REQUESTING OFFICER OR
18 EMPLOYEE OR, UPON REQUEST OF THE REQUESTING OFFICER OR EMPLOYEE,
19 TO HIS OR HER PRIMARY CARE PHYSICIAN OR TO ANOTHER HEALTH PROFES-
20 SIONAL DESIGNATED BY THE OFFICER OR EMPLOYEE. THE NOTIFICATION
21 REQUIRED UNDER THIS SUBSECTION SHALL INCLUDE AN EXPLANATION OF
22 THE CONFIDENTIALITY REQUIREMENTS OF SUBSECTION (7).

23 (7) THE NOTICE REQUIRED UNDER SUBSECTION (6) SHALL NOT CON-
24 TAIN INFORMATION THAT WOULD IDENTIFY THE ARRESTEE, CORRECTIONAL
25 FACILITY INMATE, PAROLEE, OR PROBATIONER WHO TESTED POSITIVE OR
26 NEGATIVE FOR HIV OR HBV. THE INFORMATION CONTAINED IN THE NOTICE
27 IS CONFIDENTIAL AND IS SUBJECT TO THIS SECTION, THE RULES

1 PROMULGATED UNDER SECTION 5111(2), AND SECTION 5131. A PERSON
2 WHO RECEIVES CONFIDENTIAL INFORMATION UNDER THIS SECTION SHALL
3 DISCLOSE THE INFORMATION TO OTHERS ONLY TO THE EXTENT CONSISTENT
4 WITH THE AUTHORIZED PURPOSE FOR WHICH THE INFORMATION WAS
5 OBTAINED.

6 (8) THE DEPARTMENT MAY PROMULGATE RULES TO ADMINISTER THIS
7 SECTION. THE DEPARTMENT SHALL DEVELOP AND DISTRIBUTE THE FORMS
8 REQUIRED UNDER THIS SECTION.

9 (9) IN ADDITION TO THE PENALTIES PRESCRIBED IN THE RULES
10 PROMULGATED UNDER SECTION 5111(2) AND IN SECTION 5131, A PERSON
11 WHO DISCLOSES INFORMATION IN VIOLATION OF SUBSECTION (7) IS
12 GUILTY OF A MISDEMEANOR.

13 (10) A LOCAL HEALTH DEPARTMENT OR DESIGNATED HEALTH CARE
14 PROVIDER SHALL REPORT TO THE DEPARTMENT EACH TEST RESULT OBTAINED
15 UNDER THIS SECTION THAT INDICATES THAT AN INDIVIDUAL IS HIV
16 INFECTED, IN COMPLIANCE WITH SECTION 5114.

17 (11) A PERSON OR GOVERNMENTAL ENTITY THAT MAKES A GOOD FAITH
18 EFFORT TO COMPLY WITH SUBSECTIONS (1) TO (6) IS IMMUNE FROM CIVIL
19 LIABILITY OR CRIMINAL PENALTY BASED ON COMPLIANCE WITH THOSE SUB-
20 SECTIONS OR THE FAILURE TO COMPLY.

21 (12) AS USED IN THIS SECTION AND SECTION 5205:

22 (A) "CORRECTIONAL FACILITY" MEANS A MUNICIPAL OR COUNTY
23 JAIL, WORK CAMP, LOCKUP, HOLDING CENTER, HALFWAY HOUSE, COMMUNITY
24 CORRECTIONS CENTER, OR ANY OTHER FACILITY MAINTAINED BY A MUNICI-
25 PALITY OR COUNTY THAT HOUSES ADULT PRISONERS.

26 (B) "EMPLOYEE" MEANS A COUNTY EMPLOYEE OR A COURT EMPLOYEE.

1 (C) "HBV" MEANS HEPATITIS B VIRUS.

2 (D) "HBV INFECTED" OR "HBV INFECTION" MEANS THE STATUS OF AN
3 INDIVIDUAL WHO IS TESTED AS HBSAG-POSITIVE.

4 (E) "HIV" MEANS HUMAN IMMUNODEFICIENCY VIRUS.

5 (F) "HIV INFECTED" MEANS THAT TERM AS DEFINED IN
6 SECTION 5101.

7 (G) "LOCAL CORRECTIONAL OFFICER" MEANS AN INDIVIDUAL
8 EMPLOYED BY A LOCAL GOVERNMENTAL UNIT IN A CORRECTIONAL FACILITY
9 AS A CORRECTIONS OFFICER.

10 (H) "OFFICER" MEANS A LAW ENFORCEMENT OFFICER, MOTOR CARRIER
11 OFFICER, OR PROPERTY SECURITY OFFICER EMPLOYED BY THE STATE, A
12 LAW ENFORCEMENT OFFICER EMPLOYED BY A LOCAL GOVERNMENTAL UNIT, A
13 FIRE FIGHTER EMPLOYED BY OR VOLUNTEERING FOR A LOCAL GOVERNMENTAL
14 UNIT, OR A LOCAL CORRECTIONAL OFFICER.

15 Sec. 5205. (1) If a department representative or a local
16 health officer knows or has reasonable grounds to believe that an
17 individual has failed or refused to comply with a warning notice
18 issued under section 5203, the department or local health depart-
19 ment may petition the probate court for the county of Ingham or
20 for the county served by the local health department for an order
21 as described in subsection ~~(3)~~ (6).

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

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

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

4 (c) The type of relief sought.

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

7 (3) IF A TEST SUBJECT REFUSES TO UNDERGO A TEST REQUESTED BY
8 AN OFFICER OR EMPLOYEE UNDER SECTION 5204, THE OFFICER'S OR
9 EMPLOYEE'S EMPLOYER MAY PETITION THE PROBATE COURT FOR THE COUNTY
10 IN WHICH THE EMPLOYER IS LOCATED FOR AN ORDER AS DESCRIBED IN
11 SUBSECTION (7).

12 (4) A PETITION FILED UNDER SUBSECTION (3) SHALL STATE ALL OF
13 THE FOLLOWING:

14 (A) SUBSTANTIALLY THE SAME INFORMATION CONTAINED IN THE
15 REQUEST MADE TO AN OFFICER'S OR EMPLOYEE'S EMPLOYER UNDER SECTION
16 5204(3), EXCEPT THAT THE PETITION SHALL CONTAIN THE NAME OF THE
17 ARRESTEE, CORRECTIONAL FACILITY INMATE, PAROLEE, OR PROBATIONER
18 WHO IS THE PROPOSED TEST SUBJECT.

19 (B) THE REASONS FOR THE OFFICER'S OR EMPLOYEE'S DETERMINA-
20 TION THAT THE EXPOSURE DESCRIBED IN THE REQUEST MADE UNDER SEC-
21 TION 5204(3) COULD HAVE TRANSMITTED HIV OR HBV, ALONG WITH THE
22 DATE AND PLACE THE OFFICER OR EMPLOYEE RECEIVED THE TRAINING IN
23 THE TRANSMISSION OF BLOODBORNE DISEASES DESCRIBED IN SECTION
24 5204(1).

25 (C) THE FACT THAT THE ARRESTEE, CORRECTIONAL FACILITY
26 INMATE, PAROLEE, OR PROBATIONER HAS REFUSED TO UNDERGO THE TEST
27 REQUESTED UNDER SECTION 5204(3).

1 (D) THE TYPE OF RELIEF SOUGHT.

2 (E) A REQUEST FOR A COURT HEARING ON THE ALLEGATIONS SET
3 FORTH IN THE PETITION.

4 (5) ~~(3)~~ Upon receipt of a petition filed under subsection
5 (1) OR (3), the probate court shall fix a date for hearing that
6 shall be as soon as possible, but not later than 14 days after
7 the date the petition is filed. Notice of the petition and the
8 time and place of the hearing shall be served personally on the
9 individual OR THE PROPOSED TEST SUBJECT UNDER SECTION 5204 and ON
10 the petitioner not less than 3 days before the date of the
11 hearing. Notice of the hearing shall include notice of the
12 individual's OR PROPOSED TEST SUBJECT'S right to appear at the
13 hearing, the right to present and cross-examine witnesses, and
14 the right to counsel as provided in subsection ~~(7)~~ (13). The
15 individual OR THE PROPOSED TEST SUBJECT and the petitioner may
16 waive notice of hearing, and upon filing of the waiver in writ-
17 ing, the probate court may hear the petition immediately.

18 (6) ~~(4)~~ Upon a finding by the probate court that the
19 department or local health department has proven the allegations
20 set forth in ~~the~~ A petition FILED UNDER SUBSECTION (1) by clear
21 and convincing evidence, the probate court may issue 1 or more of
22 the following orders:

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

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

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

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

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

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

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

14 (h) Subject to subsection ~~(5)~~ (8), an order that the indi-
15 vidual be committed to an appropriate facility for the period and
16 under the conditions set by the probate court. A commitment
17 ordered under this subdivision shall not be for more than 6
18 months, unless the director of the facility, upon motion, shows
19 good cause for continued commitment.

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

21 (7) UPON A FINDING BY THE PROBATE COURT THAT THE OFFICER'S
22 OR EMPLOYEE'S EMPLOYER HAS PROVEN THE ALLEGATIONS SET FORTH IN A
23 PETITION FILED UNDER SUBSECTION (3), INCLUDING, BUT NOT LIMITED
24 TO, THE REQUESTING OFFICER'S OR EMPLOYEE'S DESCRIPTION OF HIS OR
25 HER EXPOSURE TO THE BLOOD OR BODY FLUIDS OF THE PROPOSED TEST
26 SUBJECT, THE PROBATE COURT MAY ISSUE AN ORDER REQUIRING THE

1 PROPOSED TEST SUBJECT TO UNDERGO A TEST FOR HIV INFECTION OR HBV
2 INFECTION, OR BOTH, SUBJECT TO SUBSECTION (9).

3 (8) ~~—(5)—~~ The probate court shall not issue an order autho-
4 rized under subsection ~~—(4)(h)—~~ (6)(H) unless the probate court
5 first considers the recommendation of a commitment review panel
6 appointed by the probate court under this subsection to review
7 the need for commitment of the individual to a health facility.
8 The commitment review panel shall consist of 3 physicians
9 appointed by the probate court from a list of physicians submit-
10 ted by the department. Not less than 2 of the physicians shall
11 have training and experience in the diagnosis and treatment of
12 serious communicable diseases and infections. However, upon the
13 motion of the individual who is the subject of the order, the
14 probate court shall appoint as 1 member of the commitment review
15 panel a physician who is selected by the individual. The commit-
16 ment review panel shall do all of the following:

17 (a) Review the record of the proceeding.

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

20 (c) Recommend either commitment or an alternative or alter-
21 natives to commitment, and document the reasons for the
22 recommendation.

23 (9) THE PROBATE COURT SHALL NOT ISSUE AN ORDER AUTHORIZED
24 UNDER SUBSECTION (7) UNLESS THE PROBATE COURT FIRST CONSIDERS THE
25 RECOMMENDATION OF A REVIEW PANEL APPOINTED BY THE PROBATE COURT
26 UNDER THIS SUBSECTION TO REVIEW THE NEED FOR TESTING THE PROPOSED
27 TEST SUBJECT FOR HIV INFECTION OR HBV INFECTION, OR BOTH. THE

1 REVIEW PANEL SHALL CONSIST OF 3 PHYSICIANS APPOINTED BY THE
2 PROBATE COURT FROM A LIST OF PHYSICIANS SUBMITTED BY THE
3 DEPARTMENT. NOT LESS THAN 2 OF THE PHYSICIANS SHALL HAVE TRAIN-
4 ING AND EXPERIENCE IN THE DIAGNOSIS AND TREATMENT OF SERIOUS COM-
5 MUNICABLE DISEASES AND INFECTIONS. HOWEVER, UPON THE MOTION OF
6 THE INDIVIDUAL WHO IS THE SUBJECT OF THE ORDER, THE PROBATE COURT
7 SHALL APPOINT AS 1 MEMBER OF THE REVIEW PANEL A PHYSICIAN WHO IS
8 SELECTED BY THAT INDIVIDUAL. THE REVIEW PANEL SHALL DO ALL OF
9 THE FOLLOWING:

10 (A) REVIEW THE RECORD OF THE PROCEEDING.

11 (B) INTERVIEW THE INDIVIDUAL WHO IS THE SUBJECT OF THE
12 ORDER, OR DOCUMENT THE REASONS WHY THE INDIVIDUAL WAS NOT
13 INTERVIEWED.

14 (C) RECOMMEND EITHER THAT THE INDIVIDUAL WHO IS THE SUBJECT
15 OF THE ORDER BE TESTED FOR HIV INFECTION OR HBV INFECTION, OR
16 BOTH, OR THAT THE INDIVIDUAL NOT BE TESTED FOR EITHER INFECTION,
17 AND DOCUMENT THE REASONS FOR THE RECOMMENDATION.

18 (10) ~~(6)~~ An individual committed to a facility under
19 subsection ~~(4)(h)~~ (6)(H) may appeal to the probate court for a
20 commitment review panel recommendation as to whether or not the
21 patient's commitment should be terminated. Upon the filing of a
22 claim of appeal under this subsection, the probate court shall
23 reconvene the commitment review panel appointed under
24 subsection (5) as soon as practicable, but not more than 14 days
25 after the filing of the claim of appeal. Upon reconvening, the
26 commitment review panel shall do all of the following:

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

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

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

8 (11) ~~-(7)-~~ Upon receipt of the recommendation of the commit-
9 ment review panel under subsection ~~-(6)-~~ (10), the probate court
10 may terminate or continue the commitment.

11 (12) ~~-(8)-~~ The cost of implementing an order issued under
12 subsection ~~-(4)-~~ (6) shall be borne by the individual who is the
13 subject of the order, unless the individual is unable to pay all
14 or a part of the cost, as determined by the probate court. If
15 the probate court determines that the individual is unable to pay
16 all or a part of the cost of implementing the order, then the
17 state shall pay all of the cost or that part of the cost that the
18 individual is unable to pay, upon the certification of the
19 department. THE COST OF IMPLEMENTING AN ORDER ISSUED UNDER SUB-
20 SECTION (7) SHALL BE BORNE BY THE ARRESTEE, CORRECTIONAL FACILITY
21 INMATE, PAROLEE, OR PROBATIONER WHO IS TESTED UNDER THE ORDER.

22 (13) ~~-(9)-~~ An individual who is the subject of a petition
23 filed under this section or an affidavit filed under section 5207
24 ~~shall have~~ HAS the right to counsel at all stages of the
25 proceedings. If the individual is unable to pay the cost of
26 counsel, the probate court shall appoint counsel for the
27 individual.

1 (14) ~~(10)~~ An order issued by the probate court under this
2 section may be appealed to the circuit court. The circuit court
3 shall hear the appeal within 30 days after the date the claim of
4 appeal is filed with the circuit court. However, an order issued
5 by the probate court under this section shall not be stayed pend-
6 ing appeal, unless ordered by the circuit court on motion for
7 good cause.

8 (15) ~~(11)~~ An individual committed to a facility under this
9 section who leaves the facility before the date designated in the
10 commitment order without the permission of the probate court OR
11 WHO REFUSES TO UNDERGO A TEST FOR HIV INFECTION OR HBV INFECTION,
12 OR BOTH, is guilty of contempt.

13 Sec. 5207. (1) To protect the public health in an emergency,
14 upon the filing of an affidavit by a department representative or
15 a local health officer, the probate court may order the depart-
16 ment representative, local health officer, or a peace officer to
17 take an individual whom the probate court has reasonable cause to
18 believe is a carrier and is a health threat to others into cus-
19 tody and transport the individual to an appropriate emergency
20 care or treatment facility for observation, examination, testing,
21 diagnosis, or treatment and, if determined necessary by the pro-
22 bate court, temporary detention. If the individual is already
23 institutionalized in a facility, the court may order the facility
24 to temporarily detain the individual. An order issued under this
25 subsection may be issued in an ex parte proceeding upon an affi-
26 davit of a department representative or a local health officer.
27 The probate court shall issue an order under this subsection upon

1 a determination that reasonable cause exists to believe that
2 there is a substantial likelihood that the individual is a car-
3 rier and a health threat to others. An order under this subsec-
4 tion may be executed on any day and at any time, and shall be
5 served upon the individual who is the subject of the order imme-
6 diately upon apprehension or detention.

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

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

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

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

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

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

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

25 (e) The individual's right to counsel, including the right
26 to counsel designated by the probate court, as described in
27 section ~~5205(9)~~ 5205(13).

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

9 Enacting section 1. This amendatory act takes effect
10 January 1, 1998.