

HOUSE BILL NO. 4742

A bill to amend 1978 PA 368, entitled
"Public health code,"
by amending section 5205 (MCL 333.5205), as amended by 1997 PA
57.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 5205. (1) If a department representative or a local
2 health officer knows or has reasonable grounds to believe that an
3 individual has failed or refused to comply with a warning notice
4 issued under section 5203, the department or local health depart-
5 ment may petition the circuit court for the county of Ingham or
6 for the county served by the local health department for an order
7 as described in subsection (6).

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

1 (a) The grounds and underlying facts that demonstrate that
2 the individual is a health threat to others and, unless an
3 emergency order is sought under section 5207, has failed or
4 refused to comply with a warning notice issued under section
5 5203.

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

9 (c) The type of relief sought.

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

12 (3) If a test subject refuses to undergo a test requested by
13 an officer or employee or an arresting individual under section
14 5204, the officer's or employee's or arresting individual's
15 employer may petition the circuit court for the county in which
16 the employer is located OR THE APPROPRIATE DISTRICT COURT for an
17 order as described in subsection (7).

18 (4) A petition filed under subsection (3) shall state all of
19 the following:

20 (a) Substantially the same information contained in the
21 request made to an officer's or employee's or arresting
22 individual's employer under section 5204(2) and (3), except that
23 the petition shall contain the name of the arrestee, correctional
24 facility inmate, parolee, or probationer who is the proposed test
25 subject.

26 (b) The reasons for the officer's or employee's or arresting
27 individual's determination that the exposure described in the

1 request made under section 5204(2) and (3) could have transmitted
2 HIV, HBV, or HCV, or ALL OR a combination of those viruses, along
3 with the date and place the officer or employee or arresting
4 individual received the training in the transmission of blood-
5 borne diseases required under section 5204(1).

6 (c) The fact that the arrestee, correctional facility
7 inmate, parolee, or probationer has refused to undergo the test
8 or tests requested under section 5204(2) and (3).

9 (d) The type of relief sought.

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

12 (5) Upon receipt of a petition filed under subsection (1) ~~or~~
13 ~~(3)~~, the circuit court shall fix a date for hearing that shall be
14 as soon as possible, but not later than 14 days after the date
15 the petition is filed. Notice of the petition and the time and
16 place of the hearing shall be served personally on the individual
17 ~~or the proposed test subject under section 5204~~ and on the peti-
18 tioner not less than 3 days before the date of the hearing.
19 Notice of the hearing shall include notice of the individual's ~~or~~
20 ~~proposed test subject's~~ right to appear at the hearing, the right
21 to present and cross-examine witnesses, and the right to counsel
22 as provided in subsection ~~-(13)-~~ (12). The individual ~~or the~~
23 ~~proposed test subject~~ and the petitioner may waive notice of
24 hearing, and upon filing of the waiver in writing, the CIRCUIT court
25 may hear the petition immediately. UPON RECEIPT OF A PETITION FILED
UNDER SUBSECTION (3), THE CIRCUIT COURT OR THE DISTRICT COURT SHALL
FIX A DATE FOR HEARING THAT SHALL BE AS SOON AS POSSIBLE, BUT NOT
LATER THAN 24 HOURS AFTER THE TIME AND DATE THE PETITION IS FILED.
NOTICE OF THE PETITION AND THE TIME AND PLACE OF THE HEARING SHALL
BE SERVED PERSONALLY ON BOTH THE PROPOSED TEST SUBJECT UNDER SECTION
5204 AND THE PETITIONER WITHIN A TIME PERIOD THAT IS REASONABLE
UNDER THE CIRCUMSTANCES. NOTICE OF THE HEARING SHALL INCLUDE NOTICE
OF THE PROPOSED TEST SUBJECT'S RIGHT TO APPEAR AT THE HEARING, THE
RIGHT TO PRESENT AND CROSS-EXAMINE WITNESSES, AND THE RIGHT TO
COUNSEL AS PROVIDED IN SUBSECTION (12). THE PROPOSED TEST SUBJECT
AND THE PETITIONER MAY WAIVE NOTICE OF THE HEARING. AND UPON FILING
OF THE WAIVER IN WRITING, THE CIRCUIT COURT OR THE DISTRICT COURT
MAY HEAR THE PETITION FILED UNDER SUBSECTION (3) IMMEDIATELY.

26 (6) Upon a finding by the circuit court that the department
27 or local health department has proven the allegations set forth

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1 in a petition filed under subsection (1) by clear and convincing
2 evidence, the circuit court may issue 1 or more of the following
3 orders:

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

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

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

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

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

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

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

21 (h) Subject to subsection (8), an order that the individual
22 be committed to an appropriate facility for the period and under
23 the conditions set by the circuit court. A commitment ordered
24 under this subdivision shall not be for more than 6 months,
25 unless the director of the facility, upon motion, shows good
26 cause for continued commitment.

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

2 (7) Upon a finding by the circuit court OR THE DISTRICT COURT
3 that the officer's
4 or employee's or arresting individual's employer has proven the
5 allegations set forth in a petition filed under subsection (3),
6 including, but not limited to, the requesting officer's or
7 employee's or arresting individual's description of his or her
8 exposure to the blood or body fluids of the proposed test
9 subject, the CIRCUIT COURT OR THE DISTRICT court may issue an order
10 requiring the proposed test
11 subject to undergo a test for HIV infection, HBV infection, or
12 HCV infection, or all OR A COMBINATION OF THE 3 infections. —
13 ~~subject to subsection (9).~~

14 (8) The circuit court shall not issue an order authorized
15 under subsection (6)(h) unless the court first considers the
16 recommendation of a commitment review panel appointed by the
17 court under this subsection to review the need for commitment of
18 the individual to a health facility. The commitment review panel
19 shall consist of 3 physicians appointed by the court from a list
20 of physicians submitted by the department. Not less than 2 of
21 the physicians shall have training and experience in the diagno-
22 sis and treatment of serious communicable diseases and
23 infections. However, upon the motion of the individual who is
24 the subject of the order, the court shall appoint as 1 member of
25 the commitment review panel a physician who is selected by the
26 individual. The commitment review panel shall do all of the
27 following:

28 (a) Review the record of the proceeding.

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

3 (c) Recommend either commitment or an alternative or alter-
4 natives to commitment, and document the reasons for the
5 recommendation.

6 ~~-(9) The circuit court shall not issue an order authorized~~
7 ~~under subsection (7) unless the court first considers the recom-~~
8 ~~mendation of a review panel appointed by the court under this~~
9 ~~subsection to review the need for testing the proposed test~~
10 ~~subject for HIV infection, HBV infection, HCV infection, or all 3~~
11 ~~infections. The review panel shall consist of 3 physicians~~
12 ~~appointed by the court from a list of physicians submitted by the~~
13 ~~department. Not less than 2 of the physicians shall have train-~~
14 ~~ing and experience in the diagnosis and treatment of serious com-~~
15 ~~municable diseases and infections. However, upon the motion of~~
16 ~~the individual who is the subject of the order, the court shall~~
17 ~~appoint as 1 member of the review panel a physician who is~~
18 ~~selected by that individual. The review panel shall do all of~~
19 ~~the following:~~

20 ~~(a) Review the record of the proceeding.~~

21 ~~(b) Interview the individual who is the subject of the~~
22 ~~order, or document the reasons why the individual was not~~
23 ~~interviewed.~~

24 ~~(c) Recommend either that the individual who is the subject~~
25 ~~of the order be tested for HIV infection, HBV infection, HCV~~
26 ~~infection, or all 3 infections, or that the individual not be~~

1 ~~tested for any of the infections, and document the reasons for~~
2 ~~the recommendation.~~

3 (9) ~~—(10)—~~ An individual committed to a facility under
4 subsection (6)(h) may appeal to the circuit court for a commit-
5 ment review panel recommendation as to whether or not the
6 patient's commitment should be terminated. Upon the filing of a
7 claim of appeal under this subsection, the court shall reconvene
8 the commitment review panel appointed under subsection (5) as
9 soon as practicable, but not more than 14 days after the filing
10 of the claim of appeal. Upon reconvening, the commitment review
11 panel shall do all of the following:

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

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

16 (c) Recommend to the court either termination or continua-
17 tion of the commitment, and document the reasons for the
18 recommendation.

19 (10) ~~—(11)—~~ Upon receipt of the recommendation of the com-
20 mitment review panel under subsection ~~—(10)—~~ (9), the circuit
21 court may terminate or continue the commitment.

22 (11) ~~—(12)—~~ The cost of implementing an order issued under
23 subsection (6) shall be borne by the individual who is the
24 subject of the order, unless the individual is unable to pay all
25 or a part of the cost, as determined by the circuit court. If
26 the court determines that the individual is unable to pay all or
27 a part of the cost of implementing the order, then the state

1 shall pay all of the cost or that part of the cost that the
2 individual is unable to pay, upon the certification of the
3 department. The cost of implementing an order issued under sub-
4 section (7) shall be borne by the arrestee, correctional facility
5 inmate, parolee, or probationer who is tested under the order.

6 (12) ~~-(13)-~~ An individual who is the subject of a petition
7 filed under this section or an affidavit filed under section 5207
8 has the right to counsel at all stages of the proceedings. If
9 the individual is unable to pay the cost of counsel, the circuit
10 court shall appoint counsel for the individual.

11 (13) ~~-(14)-~~ An order issued by the circuit court under ~~this~~
12 ~~section~~ SUBSECTION (6) may be appealed to the court of appeals. The
13 court of
14 appeals shall hear the appeal within 30 days after the date the
15 claim of appeal is filed with the court of appeals. However, an
16 order issued by the circuit court under ~~this section~~ SUBSECTION (6)
17 shall not be
18 stayed pending appeal, unless ordered by the court of appeals on
19 motion for good cause. AN ORDER ISSUED BY THE CIRCUIT COURT UNDER
20 SUBSECTION (7) MAY BE APPEALED TO THE COURT OF APPEALS. THE COURT
21 OF APPEALS SHALL HEAR THE APPEAL WITHIN 15 DAYS AFTER THE DATE THE
22 CLAIM OF APPEAL IS FILED WITH THE COURT OF APPEALS. HOWEVER, AN
23 ORDER ISSUED BY THE CIRCUIT COURT UNDER SUBSECTION (7) SHALL NOT BE
STAYED PENDING APPEAL. UNLESS ORDERED BY THE COURT OF APPEALS ON
MOTION FOR GOOD CAUSE. AN ORDER ISSUED BY A DISTRICT COURT UNDER
SUBSECTION (7) MAY BE APPEALED TO THE CIRCUIT COURT FOR THE COUNTY
IN WHICH THE DISTRICT COURT IS LOCATED. THE CIRCUIT COURT SHALL
HEAR THE APPEAL WITHIN 15 DAYS AFTER THE DATE THE CLAIM OF APPEAL IS
FILED WITH THE CIRCUIT COURT. HOWEVER, AN ORDER ISSUED BY A
DISTRICT COURT UNDER SUBSECTION (7) SHALL NOT BE STAYED PENDING
APPEAL, UNLESS ORDERED BY THE CIRCUIT COURT ON MOTION FOR GOOD
CAUSE.

18 (14) ~~-(15)-~~ An individual committed to a facility under this
19 section who leaves the facility before the date designated in the
20 commitment order without the permission of the circuit court or
21 who refuses to undergo a test for HIV infection, HBV infection,
22 HCV infection, or all OR A COMBINATION OF THE 3 infections is
23 guilty of contempt.

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