

HOUSE BILL No. 4787

June 11, 1999, Introduced by Reps. Shackleton, Kowall, Tabor, Sheltroun, LaSata, Mortimer, Law, Rick Johnson, Allen, DeHart, Green, Ehardt, Bovin, Howell, Mans, DeWeese, Garcia, Bishop, Voorhees, Birkholz and Scranton and referred to the Committee on Criminal Law and Corrections.

A bill to amend 1978 PA 368, entitled
"Public health code,"
by amending sections 5204 and 5205 (MCL 333.5204 and 333.5205),
section 5204 as added and section 5205 as amended by 1997 PA 57.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 5204. (1) ~~A~~ EXCEPT AS OTHERWISE PROVIDED IN SUBSEC-
2 TION (3), A police officer, a ~~fire fighter~~ FIREFIGHTER, a local
3 correctional officer or other county employee, a court employee,
4 or an individual making a lawful arrest may proceed under this
5 section if he or she has received training in the transmission of
6 bloodborne diseases under the rules governing exposure to blood-
7 borne diseases in the workplace promulgated by the occupational
8 health standards commission or incorporated by reference under
9 the Michigan occupational safety and health act, 1974 PA 154, MCL
10 408.1001 to 408.1094.

1 (2) A police officer, a ~~fire fighter~~ FIREFIGHTER, a local
2 correctional officer or other county employee, a court employee,
3 or an individual making a lawful arrest who has received the
4 training described in subsection (1) and who, while performing
5 his or her official duties or otherwise performing the duties of
6 his or her employment, determines that he or she has sustained a
7 percutaneous, mucous membrane, or open wound exposure to the
8 blood or body fluids of an arrestee, correctional facility
9 inmate, parolee, or probationer may request that the arrestee,
10 correctional facility inmate, parolee, or probationer be tested
11 for HIV infection, HBV infection, HCV infection, or A COMBINATION
12 OF OR all 3 infections, pursuant to this section.

13 (3) IF A PRISONER IS ARRESTED, CHARGED, OR CONVICTED UNDER
14 SECTION 81C OF THE MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.81C,
15 AND IF THE VICTIM OF THE ASSAULT OR BATTERY UNDER THAT SECTION IS
16 A POLICE OFFICER, FIREFIGHTER, LOCAL CORRECTIONAL OFFICER OR
17 OTHER COUNTY EMPLOYEE, A COURT EMPLOYEE OR COURT OFFICER, OR AN
18 INDIVIDUAL MAKING A LAWFUL ARREST, THE VICTIM MAY REQUEST THAT
19 THE PRISONER BE TESTED FOR HIV INFECTION, HBV INFECTION, HCV
20 INFECTION, OR A COMBINATION OF OR ALL 3 INFECTIONS, OR FOR 1 OR
21 MORE VENEREAL DISEASES, PURSUANT TO THIS SECTION. IT IS NOT NEC-
22 ESSARY THAT THE INDIVIDUAL REQUESTING THE TEST HAVE RECEIVED THE
23 TRAINING DESCRIBED IN SUBSECTION (1).

24 (4) ~~-(3)-~~ An officer or employee or an individual making a
25 lawful arrest who desires to make a request described in
26 subsection (2) shall make the request to his or her employer in
27 writing on a form provided by the department as soon as possible,

1 but not later than 72 hours, after the exposure occurs. The
2 request form shall be dated and shall contain, at a minimum, the
3 name and address of the officer, employee, or individual making a
4 lawful arrest making the request and a description of his or her
5 exposure to the blood or other body fluids of the arrestee, cor-
6 rectional facility inmate, parolee, or probationer. The request
7 form shall also contain a statement that the requester is subject
8 to the confidentiality requirements of subsection ~~(7)~~ (9) and
9 section 5131. The request form shall not contain information
10 that would identify the arrestee, correctional facility inmate,
11 parolee, or probationer by name, except if necessary to identify
12 the individual for purposes of testing under this section.

13 (5) A VICTIM WHO MAKES A REQUEST UNDER SUBSECTION (3) SHALL
14 MAKE THE REQUEST TO HIS OR HER EMPLOYER IN WRITING ON A FORM PRO-
15 VIDED BY THE DEPARTMENT AS SOON AS POSSIBLE, BUT NOT LATER THAN
16 72 HOURS, AFTER THE ASSAULT OR BATTERY DESCRIBED IN SUBSECTION
17 (3). THE REQUEST FORM SHALL BE DATED AND SIGNED BY THE VICTIM
18 AND SHALL CONTAIN, AT A MINIMUM, THE NAME AND ADDRESS OF THE
19 VICTIM AND A DESCRIPTION OF HIS OR HER EXPOSURE TO THE BODY FLUID
20 OR FECES OF THE PRISONER. THE REQUEST FORM SHALL ALSO CONTAIN A
21 STATEMENT THAT THE REQUESTER IS SUBJECT TO SECTION 5131.

22 (6) ~~(4)~~ The employer of an individual making a request
23 under ~~subsections~~ SUBSECTION (2), ~~and~~ (3), OR (4) shall
24 accept as fact the requester's description of his or her exposure
25 to blood or other body fluids OR FECES as described in subsection
26 (2) OR (3). The requester's employer shall have the test for HIV
27 infection, HBV infection, HCV infection, or A COMBINATION OF OR

1 all 3 infections AND, IN THE CASE OF A REQUEST MADE UNDER
2 SUBSECTION (3), THE TEST FOR 1 OR MORE VENEREAL DISEASES per-
3 formed by the local health department or by a health care pro-
4 vider designated by the local health department. If the test
5 subject consents to the performance of the test or tests named in
6 the request, the requester's employer shall transport the test
7 subject to the local health department or designated health care
8 provider for testing, or a representative of the local health
9 department or designated health care provider shall come to where
10 the test subject is held or housed to take a blood or other body
11 fluid sample for testing, as soon as practicable after the local
12 health department receives the request for testing from the
13 requester's employer. If the test subject refuses to undergo 1
14 or more tests specified in the request, the requester's employer
15 may proceed with a petition to the ~~family division of the cir-~~
16 cuit court in the manner provided in section 5205 or 5207, as
17 appropriate.

18 (7) ~~(5)~~ A local health department or a health care pro-
19 vider designated by the local health department that performs 1
20 or more tests under this section may charge the officer or
21 employee or arresting individual OR VICTIM DESCRIBED IN SUBSEC-
22 TION (3) requesting the test for the reasonable and customary
23 charges of each test. The officer or employee or arresting indi-
24 vidual OR VICTIM DESCRIBED IN SUBSECTION (3) requesting the test
25 is responsible for the payment of the charges if the charges are
26 not payable by ~~the officer's or employee's or arresting~~
27 ~~individual's~~ HIS OR HER employer, pursuant to an agreement

1 between the officer or employee or arresting individual OR VICTIM
2 DESCRIBED IN SUBSECTION (3) and the employer, or by ~~the~~
3 ~~officer's or employee's or arresting individual's~~ HIS OR HER
4 health care payment or benefits plan. A local health department
5 or a health care provider designated by the local health depart-
6 ment to perform an HIV test under this section is not required to
7 provide HIV counseling pursuant to section 5133(1) to an officer
8 or employee or arresting individual OR VICTIM DESCRIBED IN SUB-
9 SECTION (3) who requests that an arrestee, correctional facility
10 inmate, parolee, or probationer be tested for HIV under this sec-
11 tion, unless the local health department or designated health
12 care provider tests the ~~officer or employee or arresting~~
13 REQUESTING individual for HIV.

14 (8) ~~(6)~~ A local health department or a health care pro-
15 vider designated by the local health department to perform a test
16 under this section shall, on a form provided by the department,
17 notify the requesting officer or employee or arresting individual
18 OR VICTIM DESCRIBED IN SUBSECTION (3) of the HIV test, HBV test,
19 ~~or~~ HCV test, OR VENEREAL DISEASE TEST results, as applicable,
20 whether positive or negative, within 2 days after the test
21 results are obtained by the local health department or designated
22 health care provider. The notification shall be transmitted
23 directly to the requesting officer or employee or arresting indi-
24 vidual OR VICTIM DESCRIBED IN SUBSECTION (3) or, upon request of
25 the requesting officer or employee or arresting individual OR
26 VICTIM DESCRIBED IN SUBSECTION (3), to his or her primary care
27 physician or to another health professional designated by the

1 officer or employee or arresting individual OR VICTIM DESCRIBED
2 IN SUBSECTION (3). The notification required under this subsec-
3 tion shall include an explanation of the confidentiality require-
4 ments of subsection (7). The notification required under this
5 subsection shall also contain a statement recommending that the
6 requesting officer, employee, or arresting individual OR VICTIM
7 DESCRIBED IN SUBSECTION (3) undergo an HIV test, an HBV test, or
8 an HCV test, or A COMBINATION OF OR all 3 tests AND A TEST FOR
9 VENEREAL DISEASE, AS APPROPRIATE.

10 (9) ~~(7) The~~ EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSEC-
11 TION, THE notice required under subsection ~~(6)~~ (8) shall not
12 contain information that would identify the arrestee, correc-
13 tional facility inmate, parolee, or probationer who tested posi-
14 tive or negative for HIV, HBV, or HCV. The information contained
15 in the notice is confidential and is subject to this section, the
16 rules promulgated under section 5111(2), and section 5131. A
17 person who receives confidential information under this section
18 shall disclose the information to others only to the extent con-
19 sistent with the authorized purpose for which the information was
20 obtained. THIS SUBSECTION DOES NOT APPLY TO A TEST REQUESTED
21 UNDER SUBSECTION (3), EXCEPT THAT THE INFORMATION CONTAINED IN
22 THE NOTICE IS SUBJECT TO SECTION 5131.

23 (10) ~~(8)~~ The department may promulgate rules to administer
24 this section. The department shall develop and distribute the
25 forms required under this section.

26 (11) ~~(9)~~ In addition to the penalties prescribed in the
27 rules promulgated under section 5111(2) and in section 5131, a

1 person who discloses information in violation of subsection ~~(7)~~
2 (9) is guilty of a misdemeanor.

3 (12) ~~(10)~~ A local health department or designated health
4 care provider shall report to the department each test result
5 obtained under this section that indicates that an individual is
6 HIV infected, in compliance with section 5114.

7 (13) ~~(11)~~ A person or governmental entity that makes a
8 good faith effort to comply with subsections (1) to (6) is immune
9 from civil liability or criminal penalty based on compliance
10 with, or the failure to comply with, those subsections.

11 (14) ~~(12)~~ As used in this section and section 5205:

12 (a) "Correctional facility" means a municipal or county
13 jail, work camp, lockup, holding center, halfway house, community
14 corrections center, or any other facility maintained by a municipi-
15 pality or county that houses adult prisoners. CORRECTIONAL
16 FACILITY INCLUDES A JUVENILE FACILITY AS THAT TERM IS DEFINED IN
17 SECTION 2 OF THE JUVENILE FACILITIES ACT, 1988 PA 73, MCL
18 803.222. Correctional facility does not include a facility owned
19 or operated by the department of corrections.

20 (b) "Employee" means a county employee or a court employee.

21 (c) "HBV" means hepatitis B virus.

22 (d) "HBV infected" or "HBV infection" means the status of an
23 individual who is tested as HBsAg-positive.

24 (e) "HCV" means hepatitis C virus.

25 (f) "HCV infected" or "HCV infection" means the status of an
26 individual who has tested positive for the presence of HCV

1 antibodies or has tested positive for ~~HBV~~ HCV using an RNA
2 test.

3 (g) "HIV" means human immunodeficiency virus.

4 (h) "HIV infected" means that term as defined in
5 section 5101.

6 (i) "Individual making a lawful arrest" or "arresting
7 individual" means 1 of the following:

8 (i) A private security police officer authorized to make an
9 arrest without a warrant under section 30 of the private security
10 guard act of 1968, 1968 PA 330, MCL 338.1080, and section 15 of
11 the code of criminal procedure, 1927 PA 175, MCL 764.15.

12 (ii) A merchant, agent of a merchant, employee of a mer-
13 chant, or independent contractor providing security for a mer-
14 chant authorized to make an arrest in the merchant's store and in
15 the course of his or her employment as prescribed by section
16 16(d) of the code of criminal procedure, 1927 PA 175, MCL
17 764.16. Individual making a lawful arrest or arresting individ-
18 ual does not include a private person authorized to make an
19 arrest under section 16(a) and (b) of the code of criminal proce-
20 dure, 1927 PA 175, MCL 764.16.

21 (j) "Local correctional officer" means an individual
22 employed by OR UNDER CONTRACT TO a local governmental unit in a
23 correctional facility as a corrections officer. LOCAL CORREC-
24 TIONAL OFFICER INCLUDES AN INDIVIDUAL EMPLOYED BY OR UNDER CON-
25 TRACT TO A JUVENILE FACILITY AS THAT TERM IS DEFINED IN SECTION 2
26 OF THE JUVENILE FACILITIES ACT, 1988 PA 73, MCL 803.222.

1 (k) "Officer" means a law enforcement officer, motor carrier
2 officer, or property security officer employed by the state, a
3 law enforcement officer employed by a local governmental unit, a
4 fire fighter employed by or volunteering for a local governmental
5 unit, or a local correctional officer.

6 (l) "VENEREAL DISEASE" MEANS THAT TERM AS DEFINED IN SECTION
7 5101.

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

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

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

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

24 (c) The type of relief sought.

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

1 (3) If a test subject refuses to undergo a test requested by
2 an officer or employee or an arresting individual under section
3 ~~5204~~ 5204(2) OR BY A VICTIM UNDER SECTION 5204(3), the
4 officer's or employee's or arresting individual's OR VICTIM'S
5 employer may petition the circuit court for the county in which
6 the employer is located for an order as described in subsection
7 (7).

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

10 (a) Substantially the same information contained in the
11 request made to an officer's or employee's or arresting
12 individual's OR VICTIM'S employer under section 5204(2) ~~and~~ OR
13 (3) AND (4), except that the petition shall contain the name of
14 the arrestee, correctional facility inmate, parolee, or proba-
15 tioner who is the proposed test subject.

16 (b) The reasons for the officer's or employee's or arresting
17 individual's OR VICTIM'S determination that the exposure
18 described in the request made under section 5204(2) and ~~(3)~~ (4)
19 could have transmitted HIV, HBV, or HCV, or a combination OR ALL
20 of those viruses, along with the date and place the officer or
21 employee or arresting individual received the training in the
22 transmission of bloodborne diseases required under section
23 5204(1).

24 (c) The fact that the arrestee, correctional facility
25 inmate, parolee, or probationer has refused to undergo the test
26 or tests requested under section 5204(2) ~~and~~ OR (3) AND (4).

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) Upon receipt of a petition filed under subsection (1) or
5 (3), the circuit court shall fix a date for hearing that shall be
6 as soon as possible, but not later than 14 days after the date
7 the petition is filed. Notice of the petition and the time and
8 place of the hearing shall be served personally on the individual
9 or the proposed test subject under section 5204 and on the peti-
10 tioner not less than 3 days before the date of the hearing.

11 Notice of the hearing shall include notice of the individual's or
12 proposed test subject's right to appear at the hearing, the right
13 to present and cross-examine witnesses, and the right to counsel
14 as provided in subsection (13). The individual or the proposed
15 test subject and the petitioner may waive notice of hearing, and
16 upon filing of the waiver in writing, the court may hear the
17 petition immediately.

18 (6) Upon a finding by the circuit court that the department
19 or local health department has proven the allegations set forth
20 in a petition filed under subsection (1) by clear and convincing
21 evidence, the circuit court may issue 1 or more of the following
22 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 circuit court.

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

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

21 (7) Upon a finding by the circuit court that the officer's
22 or employee's or arresting individual's OR VICTIM'S employer has
23 proven the allegations set forth in a petition filed under sub-
24 section (3), including, but not limited to, the requesting
25 officer's or employee's or arresting individual's OR VICTIM'S
26 description of his or her exposure to the blood or body fluids OR
27 FECES of the proposed test subject, the court may issue an order

1 requiring the proposed test subject to undergo a test for HIV
2 infection, HBV infection, or HCV infection, or A COMBINATION OF
3 OR all 3 infections, OR A TEST FOR 1 OR MORE VENEREAL DISEASES,
4 AS SPECIFIED IN THE REQUEST subject to subsection (9).

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

19 (a) Review the record of the proceeding.

20 (b) Interview the individual, or document the reasons why
21 the individual was not interviewed.

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

25 (9) The circuit court shall not issue an order authorized
26 under subsection (7) unless the court first considers the
27 recommendation of a review panel appointed by the court under

1 this subsection to review the need for testing the proposed test
2 subject for HIV infection, HBV infection, HCV infection, or A
3 COMBINATION OF OR all 3 infections OR FOR 1 OR MORE VENEREAL
4 DISEASES. The review panel shall consist of 3 physicians
5 appointed by the court from a list of physicians submitted by the
6 department. Not less than 2 of the physicians shall have train-
7 ing and experience in the diagnosis and treatment of serious com-
8 municable diseases and infections. However, upon the motion of
9 the individual who is the subject of the order, the court shall
10 appoint as 1 member of the review panel a physician who is
11 selected by that individual. The review panel shall do all of
12 the following:

13 (a) Review the record of the proceeding.

14 (b) Interview the individual who is the subject of the
15 order, or document the reasons why the individual was not
16 interviewed.

17 (c) Recommend either that the individual who is the subject
18 of the order be tested for HIV infection, HBV infection, HCV
19 infection, or A COMBINATION OF OR all 3 infections, OR 1 OR MORE
20 VENEREAL DISEASES or that the individual not be tested for any of
21 the infections OR VENEREAL DISEASES, and document the reasons for
22 the recommendation.

23 (10) An individual committed to a facility under subsection
24 (6)(h) may appeal to the circuit court for a commitment review
25 panel recommendation as to whether or not the patient's commit-
26 ment should be terminated. Upon the filing of a claim of appeal
27 under this subsection, the court shall reconvene the commitment

1 review panel appointed under subsection (5) as soon as
2 practicable, but not more than 14 days after the filing of the
3 claim of appeal. Upon reconvening, the commitment review panel
4 shall do all of the following:

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

7 (b) Interview the individual, or document the reasons why
8 the individual was not interviewed.

9 (c) Recommend to the court either termination or continua-
10 tion of the commitment, and document the reasons for the
11 recommendation.

12 (11) Upon receipt of the recommendation of the commitment
13 review panel under subsection (10), the circuit court may termi-
14 nate or continue the commitment.

15 (12) The cost of implementing an order issued under
16 subsection (6) shall be borne by the individual who is the
17 subject of the order, unless the individual is unable to pay all
18 or a part of the cost, as determined by the circuit court. If
19 the court determines that the individual is unable to pay all or
20 a part of the cost of implementing the order, then the state
21 shall pay all of the cost or that part of the cost that the indi-
22 vidual is unable to pay, upon the certification of the
23 department. The cost of implementing an order issued under sub-
24 section (7) shall be borne by the arrestee, correctional facility
25 inmate, parolee, or probationer who is tested under the order.

26 (13) An individual who is the subject of a petition filed
27 under this section or an affidavit filed under section 5207 has

1 the right to counsel at all stages of the proceedings. If the
2 individual is unable to pay the cost of counsel, the circuit
3 court shall appoint counsel for the individual.

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

11 (15) An individual committed to a facility under this sec-
12 tion who leaves the facility before the date designated in the
13 commitment order without the permission of the circuit court or
14 who refuses to undergo a test for HIV infection, HBV infection,
15 HCV infection, or A COMBINATION OF OR all 3 infections OR 1 OR
16 MORE VENEREAL DISEASES is guilty of contempt.

17 Enacting section 1. This amendatory act does not take
18 effect unless all of the following bills of the 90th Legislature
19 are enacted into law:

20 (a) Senate Bill No. _____ or House Bill No. _____ (request
21 no. 01146'99).

22 (b) Senate Bill No. _____ or House Bill No. _____ (request
23 no. 03239'99 a).