

HOUSE BILL No. 4505

April 1, 2003, Introduced by Reps. Stakoe, Stahl, Nofs, Milosch, Garfield and Gaffney and referred to the Committee on Health Policy.

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 by 1997 PA 57 and section 5205 as amended by 2000 PA 37.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 5204. (1) A police officer, a ~~fire fighter~~
2 **firefighter**, a local correctional officer or other county
3 employee, a court employee, ~~or~~ an individual making a lawful
4 arrest, **or an elementary or secondary school teacher or other**
5 **elementary or secondary school employee** may proceed under this
6 section if he or she has received training in the transmission of
7 bloodborne diseases under the rules governing exposure to
8 bloodborne diseases in the workplace promulgated by the
9 occupational health standards commission or incorporated by

1 reference under the Michigan occupational safety and health act,
2 1974 PA 154, MCL 408.1001 to 408.1094.

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

17 (3) ~~An officer or employee or an individual making a lawful~~
18 ~~arrest~~ **An individual** who **is entitled to and** desires to make a
19 request described in subsection (2) shall make the request to his
20 or her employer in writing on a form provided by the department
21 as soon as possible, but not later than 72 hours, after the
22 exposure occurs. The request form shall be dated and shall
23 contain, at a minimum, the name and address of the ~~officer,~~
24 ~~employee, or individual making a lawful arrest~~ making the
25 ~~request~~ **requester** and a description of his or her exposure to
26 the blood or other body fluids of the arrestee, correctional
27 facility inmate, parolee, ~~or~~ probationer, **or pupil**. The

1 request form shall also contain a statement that the requester is
2 subject to the confidentiality requirements of subsection (7) and
3 section 5131. The request form shall not contain information
4 that would identify the arrestee, correctional facility inmate,
5 parolee, ~~or~~ probationer, **or pupil** by name, except if necessary
6 to identify the individual for purposes of testing under this
7 section.

8 (4) The employer of an individual making a request under
9 subsections (2) and (3) shall accept as fact the requester's
10 description of his or her exposure to blood or other body fluids
11 as described in subsection (2). The requester's employer shall
12 have the test for HIV infection, HBV infection, HCV infection, or
13 **a combination of or** all 3 infections performed by the local
14 health department or by a health care provider designated by the
15 local health department. If the test subject **or, if the test**
16 **subject is a minor, the test subject's parent or legal guardian**
17 consents to the performance of the test or tests named in the
18 request, the requester's employer shall transport the test
19 subject to the local health department or designated health care
20 provider for testing, or a representative of the local health
21 department or designated health care provider shall come to where
22 the test subject is held or housed **or attending school** to take a
23 blood or other body fluid sample for testing, as soon as
24 practicable after the local health department receives the
25 request for testing from the requester's employer. If the test
26 subject **refuses to undergo or, if the test subject is a minor,**
27 **the test subject's parent or legal guardian** refuses to **allow the**

1 **minor to** undergo, 1 or more tests specified in the request, the
2 requester's employer may proceed with a petition to the family
3 division of ~~the~~ circuit court in the manner provided in section
4 5205 or 5207, as appropriate.

5 (5) A local health department or a health care provider
6 designated by the local health department that performs 1 or more
7 tests under this section may charge the ~~officer or employee or~~
8 ~~arresting individual requesting the test~~ **individual making a**
9 **request under subsections (2) and (3)** for the reasonable and
10 customary charges of each test. The ~~officer or employee or~~
11 ~~arresting individual requesting the test~~ **requester** is
12 responsible for the payment of the charges if the charges are not
13 payable by the ~~officer's or employee's or arresting~~
14 ~~individual's~~ **requester's** employer, pursuant to an agreement
15 between the ~~officer or employee or arresting individual~~
16 **requester** and the employer, or by the ~~officer's or employee's or~~
17 ~~arresting individual's~~ **requester's** health care payment or
18 benefits plan. A local health department or a health care
19 provider designated by the local health department to perform an
20 HIV test under this section is not required to provide HIV
21 counseling pursuant to section 5133(1) to ~~an officer or employee~~
22 ~~or arresting individual~~ **a requester** who requests that an
23 arrestee, correctional facility inmate, parolee, ~~or~~
24 probationer, **or pupil** be tested for HIV under this section,
25 unless the local health department or designated health care
26 provider tests the ~~officer or employee or arresting individual~~
27 **requester** for HIV.

1 (6) A local health department or a health care provider
2 designated by the local health department to perform a test under
3 this section shall, on a form provided by the department, notify
4 the ~~requesting officer or employee or arresting~~ individual
5 **making a request under subsections (2) and (3)** of the HIV test,
6 HBV test, or HCV test results, as applicable, whether positive or
7 negative, within 2 days after the test results are obtained by
8 the local health department or designated health care provider.
9 The notification shall be transmitted directly to the ~~requesting~~
10 ~~officer or employee or arresting individual~~ **requester** or ~~—, upon~~
11 ~~request of the requesting officer or employee or arresting~~
12 ~~individual,~~ to ~~his or her~~ a primary care physician or ~~to~~
13 ~~another~~ **other** health professional designated by the ~~officer or~~
14 ~~employee or arresting individual~~ **requester**. The notification
15 required under this subsection shall include an explanation of
16 the confidentiality requirements of subsection (7). The
17 notification required under this subsection shall also contain a
18 statement recommending that the ~~requesting officer, employee, or~~
19 ~~arresting individual~~ **requester** undergo an HIV test, an HBV test,
20 or an HCV test, or **a combination of or** all 3 tests.

21 (7) The notice required under subsection (6) shall not
22 contain information that would identify the arrestee,
23 correctional facility inmate, parolee, ~~or~~ probationer, **or pupil**
24 who tested positive or negative for HIV, HBV, or HCV. The
25 information contained in the notice is confidential and is
26 subject to this section, the rules promulgated under
27 section 5111(2), and section 5131. A person who receives

1 confidential information under this section shall disclose the
2 information to others only to the extent consistent with the
3 authorized purpose for which the information was obtained.

4 (8) The department may promulgate rules to administer this
5 section. The department shall develop and distribute the forms
6 required under this section.

7 (9) In addition to the penalties prescribed in the rules
8 promulgated under section 5111(2) and in section 5131, a person
9 who discloses information in violation of subsection (7) is
10 guilty of a misdemeanor.

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

15 (11) A person or governmental entity that makes a good faith
16 effort to comply with subsections (1) to (6) is immune from civil
17 liability or criminal penalty based on compliance with, or the
18 failure to comply with, those subsections.

19 (12) As used in this section and section 5205:

20 (a) "Correctional facility" means a municipal or county jail,
21 work camp, lockup, holding center, halfway house, community
22 corrections center, or any other facility maintained by a
23 municipality or county that houses adult prisoners. Correctional
24 facility does not include a facility owned or operated by the
25 department of corrections.

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

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

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

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

4 (f) "HCV infected" or "HCV infection" means the status of an
5 individual who has tested positive for the presence of HCV
6 antibodies or has tested positive for ~~HBV~~ HCV using an RNA
7 test.

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

9 (h) "HIV infected" means that term as defined in
10 section 5101.

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

13 (i) A private security police officer authorized to make an
14 arrest without a warrant under section 30 of the private security
15 ~~guard~~ **business and security alarm** act of 1968, 1968 PA 330,
16 MCL 338.1080, and section 15 **of chapter IV** of the code of
17 criminal procedure, 1927 PA 175, MCL 764.15.

18 (ii) A merchant, agent of a merchant, employee of a merchant,
19 or independent contractor providing security for a merchant
20 authorized to make an arrest in the merchant's store and in the
21 course of his or her employment as prescribed by section 16(d) **of**
22 **chapter IV** of the code of criminal procedure, 1927 PA 175,
23 MCL 764.16. Individual making a lawful arrest or arresting
24 individual does not include a private person authorized to make
25 an arrest under section 16(a) and (b) **of chapter IV** of the code
26 of criminal procedure, 1927 PA 175, MCL 764.16.

27 (j) "Local correctional officer" means an individual employed

1 by a local governmental unit in a correctional facility as a
2 corrections officer.

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

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
12 department may petition the circuit court for the county of
13 Ingham or for the county served by the local health department
14 for an order 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
19 emergency order is sought under section 5207, has failed or
20 refused to comply with a warning notice issued under section
21 5203.

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

25 (c) The type of relief sought.

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

1 (3) If a test subject refuses to undergo **or, if the test**
2 **subject is a minor, the test subject's parent or legal guardian**
3 **refuses to allow the minor to undergo,** a test requested by an
4 officer, ~~or~~ employee, ~~or~~ an arresting individual, **or an**
5 **elementary or secondary school teacher or other elementary or**
6 **secondary school employee** under section 5204, the ~~officer's or~~
7 ~~employee's or arresting individual's~~ **requester's** employer may
8 petition the circuit court for the county in which the employer
9 is located or the appropriate district court for an order as
10 described in subsection (7).

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

13 (a) Substantially the same information contained in the
14 request made to ~~an officer's or employee's or arresting~~
15 ~~individual's~~ **a requester's** employer under section 5204(2) and
16 (3), except that the petition shall contain the name of the
17 arrestee, correctional facility inmate, parolee, ~~or~~
18 probationer, **or pupil** who is the proposed test subject.

19 (b) The reasons for the ~~officer's or employee's or arresting~~
20 ~~individual's~~ **requester's** determination that the exposure
21 described in the request made under section 5204(2) and (3) could
22 have transmitted HIV, HBV, or HCV, or all or a combination of
23 those viruses, along with the date and place the ~~officer or~~
24 ~~employee or arresting individual~~ **requester** received the training
25 in the transmission of bloodborne diseases required under section
26 5204(1).

27 (c) The fact that the arrestee, correctional facility inmate,

1 parolee, ~~or~~ probationer, or pupil has refused to undergo or, if
2 the pupil is a minor, the pupil's parent or legal guardian has
3 refused to allow the pupil to undergo, the test or tests
4 requested under section 5204(2) and (3).

5 (d) The type of relief sought.

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

8 (5) Upon receipt of a petition filed under subsection (1),
9 the circuit court shall fix a date for hearing that shall be as
10 soon as possible, but not later than 14 days after the date the
11 petition is filed. Notice of the petition and the time and place
12 of the hearing shall be served personally on the individual and
13 on the petitioner not less than 3 days before the date of the
14 hearing. Notice of the hearing shall include notice of the
15 individual's right to appear at the hearing, the right to present
16 and cross-examine witnesses, and the right to counsel as provided
17 in subsection (12). The individual and the petitioner may waive
18 notice of hearing, and upon filing of the waiver in writing, the
19 circuit court may hear the petition immediately. Upon receipt of
20 a petition filed under subsection (3), the circuit court or the
21 district court shall fix a date for hearing that shall be as soon
22 as possible, but not later than 24 hours after the time and date
23 the petition is filed. Notice of the petition and the time and
24 place of the hearing shall be served personally on both the
25 proposed test subject under section 5204 and the petitioner
26 within a time period that is reasonable under the circumstances.
27 Notice of the hearing shall include notice of the proposed test

1 subject's right to appear at the hearing, the right to present
2 and cross-examine witnesses, and the right to counsel as provided
3 in subsection (12). The proposed test subject and the petitioner
4 may waive notice of the hearing, and upon filing of the waiver in
5 writing, the circuit court or the district court may hear the
6 petition filed under subsection (3) immediately.

7 (6) Upon a finding by the circuit court that the department
8 or local health department has proven the allegations set forth
9 in a petition filed under subsection (1) by clear and convincing
10 evidence, the circuit court may issue 1 or more of the following
11 orders:

12 (a) An order that the individual participate in a designated
13 education program.

14 (b) An order that the individual participate in a designated
15 counseling program.

16 (c) An order that the individual participate in a designated
17 treatment program.

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

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

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

26 (g) An order that the individual live part-time or full-time
27 in a supervised setting for the period and under the conditions

1 set by the circuit court.

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

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

9 (7) Upon a finding by the circuit court or the district court
10 that the ~~officer's or employee's or arresting individual's~~
11 **requester's** employer has proven the allegations set forth in a
12 petition filed under subsection (3), including, but not limited
13 to, the ~~requesting officer's or employee's or arresting~~
14 ~~individual's~~ **requester's** description of his or her exposure to
15 the blood or body fluids of the proposed test subject, the
16 circuit court or the district court may issue an order requiring
17 the proposed test subject to undergo a test for HIV infection,
18 HBV infection, or HCV infection, or all or a combination of the 3
19 infections.

20 (8) The circuit court shall not issue an order authorized
21 under subsection (6)(h) unless the court first considers the
22 recommendation of a commitment review panel appointed by the
23 court under this subsection to review the need for commitment of
24 the individual to a health facility. The commitment review panel
25 shall consist of 3 physicians appointed by the court from a list
26 of physicians submitted by the department. Not less than 2 of
27 the physicians shall have training and experience in the

1 diagnosis and treatment of serious communicable diseases and
2 infections. However, upon the motion of the individual who is
3 the subject of the order, the court shall appoint as 1 member of
4 the commitment review panel a physician who is selected by the
5 individual. The commitment review panel shall do all of the
6 following:

7 (a) Review the record of the proceeding.

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

10 (c) Recommend either commitment or an alternative or
11 alternatives to commitment, and document the reasons for the
12 recommendation.

13 (9) An individual committed to a facility under subsection
14 (6)(h) may appeal to the circuit court for a commitment review
15 panel recommendation as to whether or not the patient's
16 commitment should be terminated. Upon the filing of a claim of
17 appeal under this subsection, the court shall reconvene the
18 commitment review panel appointed under subsection ~~(5)~~ (8) as
19 soon as practicable, but not more than 14 days after the filing
20 of the claim of appeal. Upon reconvening, the commitment review
21 panel shall do all of the following:

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

24 (b) Interview the individual, or document the reasons why the
25 individual was not interviewed.

26 (c) Recommend to the court either termination or continuation
27 of the commitment, and document the reasons for the

1 recommendation.

2 (10) Upon receipt of the recommendation of the commitment
3 review panel under subsection (9), the circuit court may
4 terminate or continue the commitment.

5 (11) The cost of implementing an order issued under
6 subsection (6) shall be borne by the individual who is the
7 subject of the order, unless the individual is unable to pay all
8 or a part of the cost, as determined by the circuit court. If
9 the court determines that the individual is unable to pay all or
10 a part of the cost of implementing the order, then the state
11 shall pay all of the cost or that part of the cost that the
12 individual is unable to pay, upon the certification of the
13 department. The cost of implementing an order issued under
14 subsection (7) shall be borne by the arrestee, correctional
15 facility inmate, parolee, ~~or~~ probationer, **or parent or legal**
16 **guardian of the pupil** who is tested under the order.

17 (12) An individual who is the subject of a petition filed
18 under this section or an affidavit filed under section 5207 has
19 the right to counsel at all stages of the proceedings. If the
20 individual is unable to pay the cost of counsel, the circuit
21 court shall appoint counsel for the individual.

22 (13) An order issued by the circuit court under subsection
23 (6) may be appealed to the court of appeals. The court of
24 appeals shall hear the appeal within 30 days after the date the
25 claim of appeal is filed with the court of appeals. However, an
26 order issued by the circuit court under subsection (6) shall not
27 be stayed pending appeal, unless ordered by the court of appeals

1 on motion for good cause. An order issued by the circuit court
2 under subsection (7) may be appealed to the court of appeals.
3 The court of appeals shall hear the appeal within 15 days after
4 the date the claim of appeal is filed with the court of appeals.
5 However, an order issued by the circuit court under subsection
6 (7) shall not be stayed pending appeal, unless ordered by the
7 court of appeals on motion for good cause. An order issued by a
8 district court under subsection (7) may be appealed to the
9 circuit court for the county in which the district court is
10 located. The circuit court shall hear the appeal within 15 days
11 after the date the claim of appeal is filed with the circuit
12 court. However, an order issued by a district court under
13 subsection (7) shall not be stayed pending appeal, unless ordered
14 by the circuit court on motion for good cause.

15 (14) An individual committed to a facility under this section
16 who leaves the facility before the date designated in the
17 commitment order without the permission of the circuit court or
18 who refuses to undergo a test for HIV infection, HBV infection,
19 HCV infection, or all or a combination of the 3 infections is
20 guilty of contempt.