

# HOUSE BILL No. 6019

May 16, 2018, Introduced by Rep. Hammoud and referred to the Committee on Health Policy.

A bill to amend 1978 PA 368, entitled  
"Public health code,"  
by amending section 5131 (MCL 333.5131), as amended by 2010 PA 119.

## 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 information  
3       pertaining to partner notification under section 5114a, that are  
4       associated with ~~the serious communicable diseases or infections of~~  
5       HIV infection and acquired immunodeficiency syndrome are  
6       confidential. A person shall release reports, records, data, and  
7       information described in this subsection only pursuant to this  
8       section.

9       (2) Except as otherwise provided by law, the test results of a  
10      test for HIV infection or acquired immunodeficiency syndrome and

1 the fact that such a test was ordered is information that is  
2 subject to section 2157 of the revised judicature act of 1961, 1961  
3 PA 236, MCL 600.2157.

4 (3) The disclosure of information pertaining to HIV infection  
5 or acquired immunodeficiency syndrome in response to a court order  
6 and subpoena is limited to only the following cases and is subject  
7 to all of the following restrictions:

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

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

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

14 (b) If a court issues an order for the disclosure of the  
15 information, the order ~~shall~~**MUST** do all of the following:

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

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

21 (iii) Include ~~such~~**ANY** other measures as considered necessary  
22 by the court to limit disclosure for the protection of the patient.

23 (4) A person who releases information pertaining to HIV  
24 infection or acquired immunodeficiency syndrome to a legislative  
25 body shall not identify in the information a specific individual  
26 who was tested or is being treated for HIV infection or acquired  
27 immunodeficiency syndrome.

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

3 (a) Information pertaining to an individual who is HIV  
4 infected or has been diagnosed as having acquired immunodeficiency  
5 syndrome, if the information is disclosed to the department, a  
6 local health department, or other health care provider for 1 or  
7 more of the following purposes:

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

9 (ii) To prevent further transmission of HIV.

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

11 (b) Information pertaining to an individual who is HIV  
12 infected or has been diagnosed as having acquired immunodeficiency  
13 syndrome, if the information is disclosed by a physician or local  
14 health officer to an individual who is known by the physician or  
15 local health officer to be a contact of the individual who is HIV  
16 infected or has been diagnosed as having acquired immunodeficiency  
17 syndrome, if the physician or local health officer determines that  
18 the disclosure of the information is necessary to prevent a  
19 reasonably foreseeable risk of further transmission of HIV. This  
20 subdivision imposes an affirmative duty upon a physician or local  
21 health officer to disclose information pertaining to an individual  
22 who is HIV infected or has been diagnosed as having acquired  
23 immunodeficiency syndrome to an individual who is known by the  
24 physician or local health officer to be a contact of the individual  
25 who is HIV infected or has been diagnosed as having acquired  
26 immunodeficiency syndrome. A physician or local health officer may  
27 discharge the affirmative duty imposed under this subdivision by

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

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

20 (d) Information pertaining to an individual who is HIV  
21 infected or has been diagnosed as having acquired immunodeficiency  
22 syndrome, if the disclosure is expressly authorized in writing by  
23 the individual. This subdivision applies only if the written  
24 authorization is specific to HIV infection or acquired  
25 immunodeficiency syndrome. If the individual is a minor or  
26 incapacitated, the written authorization may be executed by the  
27 parent or legal guardian of the individual.

1 (e) Information disclosed under section 5114, 5114a, 5119(3),  
2 5129, 5204, or 20191 or information disclosed as required by rule  
3 promulgated under section 5111.

4 (f) Information pertaining to an individual who is HIV  
5 infected or has been diagnosed as having acquired immunodeficiency  
6 syndrome, if the information is part of a report required under the  
7 child protection law, 1975 PA 238, MCL 722.621 to 722.638.

8 (g) Information pertaining to an individual who is HIV  
9 infected or has been diagnosed as having acquired immunodeficiency  
10 syndrome, if the information is disclosed by the department, ~~or~~  
11 ~~human services~~, the probate court, or a child placing agency in  
12 order to care for a minor and to place the minor with a child care  
13 organization licensed under 1973 PA 116, MCL 722.111 to 722.128.  
14 The person disclosing the information shall disclose it only to the  
15 director of the child care organization or, if the child care  
16 organization is a private home, to the individual who holds the  
17 license for the child care organization. An individual to whom  
18 information is disclosed under this subdivision is subject to  
19 subsection (1). As used in this subdivision, "child care  
20 organization" and "child placing agency" mean those terms as  
21 defined in section 1 of 1973 PA 116, MCL 722.111.

22 (6) A person who releases the results of an HIV test or other  
23 information described in subsection (1) in compliance with  
24 subsection (5) is immune from civil or criminal liability and  
25 administrative penalties including, but not limited to, ~~licensure~~  
26 **LICENSING** sanctions, for the release of that information.

27 (7) A person who discloses information under subsection (5)

1 shall not include in the disclosure information that identifies the  
2 individual to whom the information pertains, unless the identifying  
3 information is determined by the person making the disclosure to be  
4 reasonably necessary to prevent a foreseeable risk of transmission  
5 of HIV, **TO PROTECT THE HEALTH OF THE INDIVIDUAL TO WHOM THE**  
6 **INFORMATION PERTAINS, TO PREVENT THE FURTHER TRANSMISSION OF HIV,**  
7 **OR TO DIAGNOSE AND CARE FOR A PATIENT. A PERSON DISCLOSING**  
8 **IDENTIFYING INFORMATION UNDER THIS SUBSECTION SHALL DISCLOSE ONLY**  
9 **THE MINIMUM INFORMATION NECESSARY TO ACCOMPLISH THE INTENDED**  
10 **PURPOSE OF THE DISCLOSURE.** This subsection does not apply to  
11 information disclosed under subsection (5)(d), (f), or (g).

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

20 Enacting section 1. This amendatory act takes effect 90 days  
21 after the date it is enacted into law.