

PUBLIC HEALTH CODE (EXCERPT)
Act 368 of 1978

333.5204 Request for testing made by officer, employee, or individual making lawful arrest; procedures; rules; definitions.

Sec. 5204. (1) A police officer, a fire fighter, a local correctional officer or other county employee, a court employee, or an individual making a lawful arrest may proceed under this section if he or she has received training in the transmission of bloodborne diseases under the rules governing exposure to bloodborne diseases in the workplace promulgated by the occupational health standards commission or incorporated by reference under the Michigan occupational safety and health act, 1974 PA 154, MCL 408.1001 to 408.1094.

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

(3) An officer or employee or an individual making a lawful arrest who desires to make a request described in subsection (2) shall make the request to his or her employer in writing on a form provided by the department as soon as possible, but not later than 72 hours, after the exposure occurs. The request form shall be dated and shall contain, at a minimum, the name and address of the officer, employee, or individual making a lawful arrest making the request and a description of his or her exposure to the blood or other body fluids of the arrestee, correctional facility inmate, parolee, or probationer. The request form shall also contain a statement that the requester is subject to the confidentiality requirements of subsection (7) and section 5131. The request form shall not contain information that would identify the arrestee, correctional facility inmate, parolee, or probationer by name, except if necessary to identify the individual for purposes of testing under this section.

(4) The employer of an individual making a request under subsections (2) and (3) shall accept as fact the requester's description of his or her exposure to blood or other body fluids as described in subsection (2). The requester's employer shall have the test for HIV infection, HBV infection, HCV infection, or all 3 infections performed by the local health department or by a health care provider designated by the local health department. If the test subject consents to the performance of the test or tests named in the request, the requester's employer shall transport the test subject to the local health department or designated health care provider for testing, or a representative of the local health department or designated health care provider shall come to where the test subject is held or housed to take a blood or other body fluid sample for testing, as soon as practicable after the local health department receives the request for testing from the requester's employer. If the test subject refuses to undergo 1 or more tests specified in the request, the requester's employer may proceed with a petition to the family division of the circuit court in the manner provided in section 5205 or 5207, as appropriate.

(5) A local health department or a health care provider designated by the local health department that performs 1 or more tests under this section may charge the officer or employee or arresting individual requesting the test for the reasonable and customary charges of each test. The officer or employee or arresting individual requesting the test is responsible for the payment of the charges if the charges are not payable by the officer's or employee's or arresting individual's employer, pursuant to an agreement between the officer or employee or arresting individual and the employer, or by the officer's or employee's or arresting individual's health care payment or benefits plan. A local health department or a health care provider designated by the local health department to perform an HIV test under this section is not required to provide HIV counseling pursuant to section 5133(1) to an officer or employee or arresting individual who requests that an arrestee, correctional facility inmate, parolee, or probationer be tested for HIV under this section, unless the local health department or designated health care provider tests the officer or employee or arresting individual for HIV.

(6) A local health department or a health care provider designated by the local health department to perform a test under this section shall, on a form provided by the department, notify the requesting officer or employee or arresting individual of the HIV test, HBV test, or HCV test results, as applicable, whether positive or negative, within 2 days after the test results are obtained by the local health department or designated health care provider. The notification shall be transmitted directly to the requesting officer or employee or arresting individual or, upon request of the requesting officer or employee or arresting individual, to his or her primary care physician or to another health professional designated by the officer or

employee or arresting individual. The notification required under this subsection shall include an explanation of the confidentiality requirements of subsection (7). The notification required under this subsection shall also contain a statement recommending that the requesting officer, employee, or arresting individual undergo an HIV test, an HBV test, or an HCV test, or all 3 tests.

(7) The notice required under subsection (6) shall not contain information that would identify the arrestee, correctional facility inmate, parolee, or probationer who tested positive or negative for HIV, HBV, or HCV. The information contained in the notice is confidential and is subject to this section, the rules promulgated under section 5111, and section 5131. A person who receives confidential information under this section shall disclose the information to others only to the extent consistent with the authorized purpose for which the information was obtained.

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

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

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

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

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

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

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

(c) "HBV" means hepatitis B virus.

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

(e) "HCV" means hepatitis C virus.

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

(g) "HIV" means human immunodeficiency virus.

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

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

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

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

(j) "Local correctional officer" means an individual employed by a local governmental unit in a correctional facility as a corrections officer.

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

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