



# HOUSE BILL No. 5523

March 21, 2000, Introduced by Reps. Kowall, Julian, Shackleton, Gilbert, DeRossett, Gosselin, Bisbee, Allen, Birkholz, Richardville, Shulman, Richner, Faunce, Van Woerkom, Bovin, Mortimer, Pappageorge, Bishop, Law, Sanborn, Gielegem, Tabor, Koetje, Vear, Rick Johnson, DeVuyst, Lockwood and Daniels 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 and section 5205 as amended by 1997 PA 57.

## 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 employ-  
3 ee, a court employee, ~~or~~ an individual making a lawful arrest,  
4 OR AN ELEMENTARY OR SECONDARY SCHOOL TEACHER OR OTHER ELEMENTARY  
5 OR SECONDARY SCHOOL EMPLOYEE may proceed under this section if he  
6 or she has received training in the transmission of bloodborne  
7 diseases under the rules governing exposure to bloodborne dis-  
8 eases in the workplace promulgated by the occupational health  
9 standards commission or incorporated by reference under the

1 Michigan occupational safety and health act, 1974 PA 154,  
2 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 oth-  
9 erwise performing the duties of his or her employment, determines  
10 that he or she has sustained a percutaneous, mucous membrane, or  
11 open wound exposure to the blood or body fluids of an arrestee,  
12 correctional facility inmate, parolee, ~~or~~ probationer, OR PUPIL  
13 may request that the arrestee, correctional facility inmate,  
14 parolee, ~~or~~ probationer, OR PUPIL be tested for HIV infection,  
15 HBV infection, HCV infection, or A COMBINATION OF OR all 3 infec-  
16 tions, pursuant to this section.

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

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

7 (4) The employer of an individual making a request under  
8 subsections (2) and (3) shall accept as fact the requester's  
9 description of his or her exposure to blood or other body fluids  
10 as described in subsection (2). The requester's employer shall  
11 have the test for HIV infection, HBV infection, HCV infection, or  
12 A COMBINATION OF OR all 3 infections performed by the local  
13 health department or by a health care provider designated by the  
14 local health department. If the test subject OR, IF THE TEST  
15 SUBJECT IS A MINOR, THE TEST SUBJECT'S PARENT OR LEGAL GUARDIAN  
16 consents to the performance of the test or tests named in the  
17 request, the requester's employer shall transport the test  
18 subject to the local health department or designated health care  
19 provider for testing, or a representative of the local health  
20 department or designated health care provider shall come to where  
21 the test subject is held or housed OR ATTENDING SCHOOL to take a  
22 blood or other body fluid sample for testing, as soon as practi-  
23 cable after the local health department receives the request for  
24 testing from the requester's employer. If the test subject OR,  
25 IF THE TEST SUBJECT IS A MINOR, THE TEST SUBJECT'S PARENT OR  
26 LEGAL GUARDIAN refuses to undergo 1 or more tests specified in  
27 the request, the requester's employer may proceed with a petition

1 to the family division of the circuit court in the manner  
2 provided in section 5205 or 5207, as appropriate.

3       (5) A local health department or a health care provider des-  
4 ignated by the local health department that performs 1 or more  
5 tests under this section may charge the ~~officer or employee or~~  
6 ~~arresting individual requesting the test~~ INDIVIDUAL MAKING A  
7 REQUEST UNDER SUBSECTIONS (2) AND (3) for the reasonable and cus-  
8 tomary charges of each test. The ~~officer or employee or arrest-~~  
9 ~~ing individual requesting the test~~ REQUESTER is responsible for  
10 the payment of the charges if the charges are not payable by the  
11 ~~officer's or employee's or arresting individual's~~ REQUESTER'S  
12 employer, pursuant to an agreement between the ~~officer or~~  
13 ~~employee or arresting individual~~ REQUESTER and the employer, or  
14 by the ~~officer's or employee's or arresting individual's~~  
15 REQUESTER'S health care payment or benefits plan. A local health  
16 department or a health care provider designated by the local  
17 health department to perform an HIV test under this section is  
18 not required to provide HIV counseling pursuant to  
19 section 5133(1) to ~~an officer or employee or arresting~~  
20 ~~individual~~ A REQUESTER who requests that an arrestee, correc-  
21 tional facility inmate, parolee, ~~or~~ probationer, OR PUPIL be  
22 tested for HIV under this section, unless the local health  
23 department or designated health care provider tests the ~~officer~~  
24 ~~or employee or arresting individual~~ REQUESTER for HIV.

25       (6) A local health department or a health care provider des-  
26 ignated by the local health department to perform a test under  
27 this section shall, on a form provided by the department, notify

1 the ~~requesting officer or employee or arresting~~ individual  
2 MAKING A REQUEST UNDER SUBSECTIONS (2) AND (3) of the HIV test,  
3 HBV test, or HCV test results, as applicable, whether positive or  
4 negative, within 2 days after the test results are obtained by  
5 the local health department or designated health care provider.  
6 The notification shall be transmitted directly to the ~~requesting~~  
7 ~~officer or employee or arresting individual~~ REQUESTER or ~~, upon~~  
8 ~~request of the requesting officer or employee or arresting~~  
9 ~~individual, to his or her~~ A primary care physician or ~~to~~  
10 ~~another~~ OTHER health professional designated by the ~~officer or~~  
11 ~~employee or arresting individual~~ REQUESTER. The notification  
12 required under this subsection shall include an explanation of  
13 the confidentiality requirements of subsection (7). The notifi-  
14 cation required under this subsection shall also contain a state-  
15 ment recommending that the ~~requesting officer, employee, or~~  
16 ~~arresting individual~~ REQUESTER undergo an HIV test, an HBV test,  
17 or an HCV test, or A COMBINATION OF OR all 3 tests.

18 (7) The notice required under subsection (6) shall not con-  
19 tain information that would identify the arrestee, correctional  
20 facility inmate, parolee, ~~or~~ probationer, OR PUPIL who tested  
21 positive or negative for HIV, HBV, or HCV. The information con-  
22 tained in the notice is confidential and is subject to this sec-  
23 tion, the rules promulgated under section 5111(2), and  
24 section 5131. A person who receives confidential information  
25 under this section shall disclose the information to others only  
26 to the extent consistent with the authorized purpose for which  
27 the information was obtained.

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

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

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

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

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

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

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

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

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

- 1 (e) "HCV" means hepatitis C virus.
- 2 (f) "HCV infected" or "HCV infection" means the status of an  
3 individual who has tested positive for the presence of HCV anti-  
4 bodies or has tested positive for ~~HBV~~ HCV using an RNA test.
- 5 (g) "HIV" means human immunodeficiency virus.
- 6 (h) "HIV infected" means that term as defined in  
7 section 5101.
- 8 (i) "Individual making a lawful arrest" or "arresting  
9 individual" means 1 of the following:
- 10 (i) A private security police officer authorized to make an  
11 arrest without a warrant under section 30 of the private security  
12 guard act of 1968, 1968 PA 330, MCL 338.1080, and section 15 of  
13 the code of criminal procedure, 1927 PA 175, MCL 764.15.
- 14 (ii) A merchant, agent of a merchant, employee of a mer-  
15 chant, or independent contractor providing security for a mer-  
16 chant authorized to make an arrest in the merchant's store and in  
17 the course of his or her employment as prescribed by section  
18 16(d) of the code of criminal procedure, 1927 PA 175,  
19 MCL 764.16. Individual making a lawful arrest or arresting indi-  
20 vidual does not include a private person authorized to make an  
21 arrest under section 16(a) and (b) of the code of criminal proce-  
22 dure, 1927 PA 175, MCL 764.16.
- 23 (j) "Local correctional officer" means an individual  
24 employed by a local governmental unit in a correctional facility  
25 as a corrections officer.
- 26 (k) "Officer" means a law enforcement officer, motor carrier  
27 officer, or property security officer employed by the state, a

1 law enforcement officer employed by a local governmental unit, a  
2 ~~fire fighter~~ FIREFIGHTER employed by or volunteering for a  
3 local governmental unit, or a local correctional officer.

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

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

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

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

20       (c) The type of relief sought.

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

23       (3) If a test subject OR, IF THE TEST SUBJECT IS A MINOR,  
24 THE TEST SUBJECT'S PARENT OR LEGAL GUARDIAN refuses to undergo a  
25 test requested by an officer, ~~or~~ employee, ~~or~~ an arresting  
26 individual, OR AN ELEMENTARY OR SECONDARY SCHOOL TEACHER OR OTHER  
27 ELEMENTARY OR SECONDARY SCHOOL EMPLOYEE under section 5204, the



1 ~~officer's or employee's or arresting individual's~~ REQUESTER'S  
2 employer may petition the circuit court for the county in which  
3 the employer is located for an order as described in subsection  
4 (7).

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

7 (a) Substantially the same information contained in the  
8 request made to ~~an officer's or employee's or arresting~~  
9 ~~individual's~~ A REQUESTER'S employer under section 5204(2) and  
10 (3), except that the petition shall contain the name of the  
11 arrestee, correctional facility inmate, parolee, ~~or~~  
12 probationer, OR PUPIL who is the proposed test subject.

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

21 (c) The fact that the arrestee, correctional facility  
22 inmate, parolee, ~~or~~ probationer, OR PUPIL OR, IF THE PUPIL IS A  
23 MINOR, THE PUPIL'S PARENT OR LEGAL GUARDIAN has refused to  
24 undergo the test or tests requested under section 5204(2) and  
25 (3).

26 (d) The type of relief sought.

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

3 (5) Upon receipt of a petition filed under subsection (1) or  
4 (3), the circuit court shall fix a date for hearing that shall be  
5 as soon as possible, but not later than 14 days after the date  
6 the petition is filed. Notice of the petition and the time and  
7 place of the hearing shall be served personally on the individual  
8 or the proposed test subject under section 5204 and on the peti-  
9 tioner not less than 3 days before the date of the hearing.  
10 Notice of the hearing shall include notice of the individual's or  
11 proposed test subject's right to appear at the hearing, the right  
12 to present and cross-examine witnesses, and the right to counsel  
13 as provided in subsection (13). The individual or the proposed  
14 test subject and the petitioner may waive notice of hearing, and  
15 upon filing of the waiver in writing, the court may hear the  
16 petition immediately.

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

22 (a) An order that the individual participate in a designated  
23 education program.

24 (b) An order that the individual participate in a designated  
25 counseling program.

26 (c) An order that the individual participate in a designated  
27 treatment program.

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

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

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

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

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

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

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

1 HBV infection, or HCV infection, or A COMBINATION OF OR all 3  
2 infections, subject to subsection (9).

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

17       (a) Review the record of the proceeding.

18       (b) Interview the individual, or document the reasons why  
19 the individual was not interviewed.

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

23       (9) The circuit court shall not issue an order authorized  
24 under subsection (7) unless the court first considers the recom-  
25 mendation of a review panel appointed by the court under this  
26 subsection to review the need for testing the proposed test  
27 subject for HIV infection, HBV infection, HCV infection, or A

1 COMBINATION OF OR all 3 infections. The review panel shall  
2 consist of 3 physicians appointed by the court from a list of  
3 physicians submitted by the department. Not ~~less~~ FEWER than 2  
4 of the physicians shall have training and experience in the diag-  
5 nosis and treatment of serious communicable diseases and  
6 infections. However, upon the motion of the individual who is  
7 the subject of the order, the court shall appoint as 1 member of  
8 the review panel a physician who is selected by that individual.  
9 The review panel shall do all of the following:

10 (a) Review the record of the proceeding.

11 (b) Interview the individual who is the subject of the  
12 order, or document the reasons why the individual was not  
13 interviewed.

14 (c) Recommend either that the individual who is the subject  
15 of the order be tested for HIV infection, HBV infection, HCV  
16 infection, or A COMBINATION OF OR all 3 infections, or that the  
17 individual not be tested for any of the infections, and document  
18 the reasons for the recommendation.

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

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

3 (b) Interview the individual, or document the reasons why  
4 the individual was not interviewed.

5 (c) Recommend to the court either termination or continua-  
6 tion of the commitment, and document the reasons for the  
7 recommendation.

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

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

23 (13) An individual who is the subject of a petition filed  
24 under this section or an affidavit filed under section 5207 has  
25 the right to counsel at all stages of the proceedings. If the  
26 individual OR, IF THE INDIVIDUAL IS A MINOR, THE INDIVIDUAL'S

1 PARENT OR LEGAL GUARDIAN is unable to pay the cost of counsel,  
2 the circuit court shall appoint counsel for the individual.

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

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