

# HOUSE BILL No. 5144

October 9, 1989, Introduced by Reps. Profit, Bennane, Gubow, Bandstra, Pridnia, Martin, DeMars, Hoffman, Kosteva, Stupak, Law, Dolan and Palamara and referred to the Committee on Public Health.

A bill to amend sections 5131 and 5203 of Act No. 368 of the Public Acts of 1978, entitled as amended  
"Public health code,"

section 5131 as amended by Act No. 174 of the Public Acts of 1989 and section 5203 as amended by Act No. 490 of the Public Acts of 1988, being sections 333.5131 and 333.5203 of the Michigan Compiled Laws; and to add section 5212.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Section 1. Sections 5131 and 5203 of Act No. 368 of the  
2 Public Acts of 1978, section 5131 as amended by Act No. 174 of  
3 the Public Acts of 1989 and section 5203 as amended by Act  
4 No. 490 of the Public Acts of 1988, being sections 333.5131 and  
5 333.5203 of the Michigan Compiled Laws, are amended and section  
6 5212 is added to read as follows:

1       Sec. 5131. (1) All reports, records, and data pertaining to  
2 testing, care, treatment, reporting, and research associated with  
3 the serious communicable diseases or infections of HIV infection,  
4 acquired immunodeficiency syndrome, and acquired immunodeficiency  
5 syndrome related complex are confidential, and shall be released  
6 only pursuant to this section. ~~, or if a report is required~~  
7 ~~under the child protection law, Act No. 238 of the Public Acts of~~  
8 ~~1975, being sections 722.621 to 722.636 of the Michigan Compiled~~  
9 ~~Laws.~~

10       (2) Except as otherwise provided by law, the test results of  
11 a test for HIV infection, acquired immunodeficiency syndrome, or  
12 acquired immunodeficiency syndrome related complex and the fact  
13 that such a test was ordered is information that is subject to  
14 section 2157 of the revised judicature act of 1961, Act No. 236  
15 of the Public Acts of 1961, being section 600.2157 of the  
16 Michigan Compiled Laws.

17       (3) The disclosure of information pertaining to HIV infec-  
18 tion, acquired immunodeficiency syndrome, or acquired immunodefi-  
19 ciency syndrome related complex in response to a court order and  
20 subpoena shall be limited to only the following cases and subject  
21 to all of the following restrictions:

22       (a) The court that is petitioned for an order to disclose  
23 the information shall determine both of the following:

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

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

1 (b) If a court issues an order for the disclosure of the  
2 information, the order shall do all of the following:

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

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

8 (iii) Include such other measures as considered necessary by  
9 the court to limit disclosure for the protection of the patient.

10 (4) Information pertaining to HIV infection, acquired immu-  
11 nodeficiency syndrome, or acquired immunodeficiency syndrome  
12 related complex that is released to a legislative body shall not  
13 contain information that identifies a specific individual who was  
14 tested or is being treated for HIV infection, acquired immunode-  
15 ficiency syndrome, or acquired immunodeficiency syndrome related  
16 complex.

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

19 (a) Information pertaining to an individual who is HIV  
20 infected or has been diagnosed as having acquired immunodefi-  
21 ciency syndrome or acquired immunodeficiency syndrome related  
22 complex, if the information is disclosed to the department, a  
23 local health department, or other health care provider for 1 or  
24 more of the following purposes:

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

26 (ii) To prevent further transmission of HIV.

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

2 (b) Information pertaining to an individual who is HIV  
3 infected or has been diagnosed as having acquired immunodeficiency  
4 syndrome or acquired immunodeficiency syndrome related  
5 complex, if the information is disclosed by a physician or  
6 ~~public~~ LOCAL health officer to an individual who is known by  
7 the physician or local health officer to be a contact of the  
8 individual who is HIV infected or has been diagnosed as having  
9 acquired immunodeficiency syndrome or acquired immunodeficiency  
10 syndrome related complex, if the physician or local health officer  
11 determines that the disclosure of the information is necessary  
12 to prevent a reasonably foreseeable risk of further transmission  
13 of HIV. This subdivision does not impose an affirmative  
14 duty upon a physician or local health officer to disclose information  
15 pertaining to an individual who is HIV infected or has  
16 been diagnosed as having acquired immunodeficiency syndrome or  
17 acquired immunodeficiency syndrome related complex to an individual  
18 who is known by the physician or local health officer to be a  
19 contact of the individual who is HIV infected or has been diagnosed  
20 as having acquired immunodeficiency syndrome or acquired  
21 immunodeficiency syndrome related complex.

22 (c) Information pertaining to an individual who is HIV  
23 infected or has been diagnosed as having acquired immunodeficiency  
24 syndrome or acquired immunodeficiency syndrome related  
25 complex, if the information is disclosed by an authorized representative  
26 of the department or a local health officer to an  
27 employee of a school district, and if the department

1 representative or local health officer determines that the  
2 disclosure is necessary to prevent a reasonably foreseeable risk  
3 of transmission of HIV to pupils in the school district. An  
4 employee of a school district to whom information is disclosed  
5 under this subdivision is subject to subsection (1).

6 (d) Information pertaining to an individual who is HIV  
7 infected or has been diagnosed as having acquired immunodefi-  
8 ciency syndrome or acquired immunodeficiency syndrome related  
9 complex, if the disclosure is expressly authorized in writing by  
10 the individual, but only if the written authorization is specific  
11 to HIV infection, acquired immunodeficiency syndrome, or acquired  
12 immunodeficiency syndrome related complex. If the individual is  
13 a minor or incapacitated, the written authorization may be exe-  
14 cuted by the parent or legal guardian of the individual.

15 (e) Information disclosed under section 5114, 5114a,  
16 5119(3), 5129, {5212,} or 20191(1).

17 (F) INFORMATION PERTAINING TO AN INDIVIDUAL WHO IS HIV  
18 INFECTED OR HAS BEEN DIAGNOSED AS HAVING ACQUIRED IMMUNODEFI-  
19 CIENCY SYNDROME OR ACQUIRED IMMUNODEFICIENCY SYNDROME RELATED  
20 COMPLEX, IF THE INFORMATION IS PART OF A REPORT REQUIRED UNDER  
21 THE CHILD PROTECTION LAW, ACT NO. 238 OF THE PUBLIC ACTS OF 1975,  
22 BEING SECTIONS 722.621 TO 722.636 OF THE MICHIGAN COMPILED LAWS.

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

1       (7) Information disclosed under subsection (5) shall not  
2 contain information that identifies the individual to whom the  
3 information pertains, unless the identifying information is  
4 determined by the person making the disclosure to be reasonably  
5 necessary to prevent a foreseeable risk of transmission of HIV.  
6 This subsection does not apply to information disclosed under  
7 subsection (5)(d) OR (F).

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

16       Sec. 5203. (1) Upon a determination by a department repre-  
17 sentative or a local health officer that an individual is a car-  
18 rier and is a health threat to others OR UNDER THE CIRCUMSTANCES  
19 DESCRIBED IN SECTION 5212(1), the department representative or  
20 local health officer shall issue a warning notice to the individ-  
21 ual requiring the individual to cooperate with the department or  
22 local health department in efforts to prevent or control trans-  
23 mission of serious communicable diseases or infections. The  
24 warning notice may also require the individual to participate in  
25 education, counseling, or treatment programs, and to undergo med-  
26 ical tests to verify the person's status as a carrier.

1 (2) A warning notice issued under subsection (1) shall be in  
2 writing, except that in urgent circumstances, the warning notice  
3 may be an oral statement, followed by a written statement within  
4 3 days. A warning notice shall be individual and specific and  
5 shall not be issued to a class of persons. A written warning  
6 notice shall be served either by registered mail, return receipt  
7 requested, or personally by an individual who is employed by, or  
8 under contract to, the department or a local health department.

9 (3) A warning notice issued under subsection (1) shall  
10 include a statement that unless the individual takes the action  
11 requested in the warning notice, the department representative or  
12 local health officer shall seek an order from the probate court,  
13 pursuant to this part. The warning notice shall also state that,  
14 except in cases of emergency, the individual to whom the warning  
15 notice is issued has the right to notice and a hearing and other  
16 rights provided in this part before the probate court issues an  
17 order.

18 SEC. 5212. (1) IF AN OFFICER IS EXPOSED TO THE BLOOD OR  
19 BODY FLUID OF AN INDIVIDUAL DURING THE COURSE OF THE OFFICER'S  
20 OFFICIAL DUTIES, THE OFFICER MAY WITHIN 72 HOURS AFTER THE EXPO-  
21 SURE REQUEST THE LOCAL HEALTH DEPARTMENT TO REVIEW THE CIRCUM-  
22 STANCES OF THE EXPOSURE TO DETERMINE IF THE EXPOSURE COULD HAVE  
23 TRANSMITTED HIV. PURSUANT TO A REQUEST MADE UNDER THIS SUBSEC-  
24 TION, IF THE LOCAL HEALTH DEPARTMENT DETERMINES THAT AN EXPOSURE  
25 HAS OCCURRED THAT COULD REASONABLY HAVE TRANSMITTED HIV, THE  
26 LOCAL HEALTH DEPARTMENT SHALL ISSUE A WARNING NOTICE UNDER  
27 SECTION 5203. AT A MINIMUM, THE WARNING NOTICE SHALL REQUIRE THE

1 INDIVIDUAL TO UNDERGO A TEST FOR HIV OR AN ANTIBODY TO HIV. THE  
2 LOCAL HEALTH DEPARTMENT OR A HEALTH CARE PROVIDER DESIGNATED BY  
3 THE LOCAL HEALTH DEPARTMENT SHALL ADMINISTER THE TEST. THE LOCAL  
4 HEALTH DEPARTMENT SHALL PROVIDE APPROPRIATE COUNSELING AND REFER-  
5 RAL SERVICES TO AN OFFICER WHO REQUESTS A REVIEW, WHETHER OR NOT  
6 THE INDIVIDUAL TO WHOM THE OFFICER WAS EXPOSED IS TESTED, AND TO  
7 AN INDIVIDUAL WHO IS TESTED UNDER THIS SECTION.

8 (2) THE RESULTS OF A TEST FOR HIV OR AN ANTIBODY TO HIV  
9 UNDER SUBSECTION (1) SHALL BE DISCLOSED BY THE LOCAL HEALTH  
10 DEPARTMENT ONLY TO PERSONS WHO DEMONSTRATE TO THE LOCAL HEALTH  
11 DEPARTMENT A NEED TO KNOW THE TEST RESULTS, AND AS OTHERWISE PRO-  
12 VIDED IN SUBSECTION (5). THE OFFICER WHO REQUESTED THE REVIEW  
13 UNDER SUBSECTION (1) HAS A NEED TO KNOW THE RESULTS OF A TEST FOR  
14 HIV OR AN ANTIBODY TO HIV PERFORMED ON THE INDIVIDUAL INVOLVED IN  
15 THE EXPOSURE.

16 (3) UPON THE REQUEST OF AN OFFICER REQUESTING A REVIEW UNDER  
17 SUBSECTION (1), THE LOCAL HEALTH DEPARTMENT SHALL PERFORM A TEST  
18 FOR HIV OR AN ANTIBODY TO HIV FOR THE OFFICER, FREE OF CHARGE.

19 (4) IF AN OFFICER REQUESTS A REVIEW UNDER SUBSECTION (1),  
20 THE LOCAL HEALTH DEPARTMENT SHALL ADVISE THE OFFICER OF HIS OR  
21 HER RIGHTS UNDER THIS SECTION, AND SHALL EXPLAIN TO THE OFFICER  
22 THAT THE OFFICER IS SUBJECT TO THE CONFIDENTIALITY PROVISIONS OF  
23 SECTION 5131 AND THE PENALTIES UNDER THAT SECTION.

24 (5) THE LOCAL HEALTH DEPARTMENT SHALL REPORT EACH TEST  
25 RESULT UNDER THIS SECTION THAT INDICATES THAT AN INDIVIDUAL IS  
26 HIV INFECTED TO THE DEPARTMENT, IN COMPLIANCE WITH SECTION 5114.



1       (6) THE DEPARTMENT, THE LOCAL HEALTH DEPARTMENT PROVIDING  
2 THE TESTING, THE AGENCY EMPLOYING THE OFFICER, AND THE OFFICER  
3 ARE NOT FINANCIALLY RESPONSIBLE FOR MEDICAL CARE RECEIVED BY THE  
4 INDIVIDUAL TO WHOM THE OFFICER WAS EXPOSED AS A RESULT OF A  
5 REFERRAL MADE UNDER SUBSECTION (1).

6       (7) UPON REQUEST, THE DEPARTMENT SHALL WORK WITH A STATE,  
7 COUNTY, OR LOCAL LAW ENFORCEMENT AGENCY TO DEVELOP AND IMPLEMENT  
8 A COMPREHENSIVE HIV EDUCATION PROGRAM FOR ALL OFFICERS THAT  
9 INCLUDES, AT A MINIMUM, EDUCATION CONCERNING HIV TRANSMISSION,  
10 TREATMENT, AND PROTECTIVE MEASURES SPECIFIC TO LAW ENFORCEMENT  
11 AND CORRECTIONS.

12       (8) THE DEPARTMENT SHALL DEVELOP GUIDELINES TO ASSIST LOCAL  
13 HEALTH DEPARTMENTS IN DETERMINING IF AN EXPOSURE COULD HAVE  
14 TRANSMITTED HIV.

15       (9) AS USED IN THIS SECTION, "OFFICER" MEANS A LAW ENFORCE-  
16 MENT OFFICER EMPLOYED BY THE STATE OR A UNIT OF LOCAL GOVERNMENT,  
17 OR A LOCAL CORRECTIONAL OFFICER AS DEFINED IN SECTION 2 OF THE  
18 CORRECTIONAL OFFICERS' TRAINING ACT OF 1982, ACT NO. 415 OF THE  
19 PUBLIC ACTS OF 1982, BEING SECTION 791.502 OF THE MICHIGAN  
20 COMPILED LAWS.