

SENATE BILL No. 519

July 13, 1989, Introduced by Senators N. SMITH and POLLACK
and referred to the Committee on Health Policy.

A bill to amend section 5131 of Act No. 368 of the Public
Acts of 1978, entitled as amended
"Public health code,"
as added by Act No. 488 of the Public Acts of 1988, being section
333.5131 of the Michigan Compiled Laws; and to add section 5130.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Section 5131 of Act No. 368 of the Public Acts
2 of 1978, as added by Act No. 488 of the Public Acts of 1988,
3 being section 333.5131 of the Michigan Compiled Laws, is amended
4 and section 5130 is added to read as follows:

5 SEC. 5130. (1) IF AN OFFICER IS EXPOSED TO THE BLOOD OR
6 BODY FLUID OF AN INDIVIDUAL DURING THE COURSE OF THE OFFICER'S
7 OFFICIAL DUTIES, THE OFFICER MAY WITHIN 72 HOURS AFTER THE
8 EXPOSURE REQUEST THE LOCAL HEALTH DEPARTMENT TO REVIEW THE
9 CIRCUMSTANCES OF THE EXPOSURE TO DETERMINE IF THE EXPOSURE COULD

1 HAVE TRANSMITTED HIV. PURSUANT TO A REQUEST MADE UNDER THIS
2 SUBSECTION, IF THE LOCAL HEALTH DEPARTMENT DETERMINES THAT AN
3 EXPOSURE HAS OCCURRED THAT COULD HAVE TRANSMITTED HIV, THE LOCAL
4 HEALTH DEPARTMENT SHALL ORDER THE INDIVIDUAL TO UNDERGO A TEST
5 FOR HIV OR AN ANTIBODY TO HIV, AND SHALL ADMINISTER THE TEST.
6 THE LOCAL HEALTH DEPARTMENT SHALL PROVIDE APPROPRIATE COUNSELING
7 AND REFERRAL SERVICES TO AN OFFICER WHO REQUESTS A REVIEW,
8 WHETHER OR NOT THE INDIVIDUAL INVOLVED IN THE EXPOSURE IS TESTED,
9 AND TO AN INDIVIDUAL WHO IS TESTED UNDER THIS SECTION.

10 (2) THE DEPARTMENT, THE LOCAL HEALTH DEPARTMENT PROVIDING
11 THE TESTING, THE AGENCY EMPLOYING THE OFFICER, AND THE OFFICER
12 ARE NOT FINANCIALLY RESPONSIBLE FOR MEDICAL CARE RECEIVED BY AN
13 INDIVIDUAL AS A RESULT OF A REFERRAL MADE UNDER SUBSECTION (1).

14 (3) THE RESULTS OF A TEST FOR HIV OR AN ANTIBODY TO HIV
15 UNDER SUBSECTION (1) SHALL BE DISCLOSED BY THE LOCAL HEALTH
16 DEPARTMENT ONLY TO PERSONS WHO DEMONSTRATE TO THE LOCAL HEALTH
17 DEPARTMENT A NEED TO KNOW THE TEST RESULTS, AND AS OTHERWISE PRO-
18 VIDED IN SUBSECTION (6). THE OFFICER WHO REQUESTED THE REVIEW
19 UNDER SUBSECTION (1) HAS A NEED TO KNOW THE RESULTS OF A TEST FOR
20 HIV OR AN ANTIBODY TO HIV PERFORMED ON THE INDIVIDUAL INVOLVED IN
21 THE EXPOSURE.

22 (4) UPON THE REQUEST OF AN OFFICER REQUESTING A REVIEW UNDER
23 SUBSECTION (1), THE LOCAL HEALTH DEPARTMENT SHALL PERFORM A TEST
24 FOR HIV OR AN ANTIBODY TO HIV FOR THE OFFICER, FREE OF CHARGE.

25 (5) IF AN OFFICER REQUESTS A REVIEW UNDER SUBSECTION (1),
26 THE LOCAL HEALTH DEPARTMENT SHALL ADVISE THE OFFICER OF HIS OR
27 HER RIGHTS UNDER THIS SECTION, AND SHALL EXPLAIN TO THE OFFICER

1 THAT THE OFFICER IS SUBJECT TO THE CONFIDENTIALITY PROVISIONS OF
2 SECTION 5131 AND THE PENALTIES UNDER THAT SECTION.

3 (6) THE LOCAL HEALTH DEPARTMENT SHALL REPORT EACH TEST
4 RESULT UNDER THIS SECTION THAT INDICATES THAT AN INDIVIDUAL IS
5 HIV INFECTED TO THE DEPARTMENT.

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 TO DETERMINE IF AN EXPOSURE COULD HAVE TRANS-
14 MITTED 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.

21 Sec. 5131. (1) All reports, records, and data pertaining to
22 testing, care, treatment, reporting, and research associated with
23 a communicable disease or a serious communicable disease or
24 infection are confidential, and shall be released only pursuant
25 to this section, or if a report is required under the child pro-
26 tection law, Act No. 238 of the Public Acts of 1975, being
27 sections 722.621 to 722.636 of the Michigan Compiled Laws.

1 (2) Except as otherwise provided by law, the test results of
2 a test for the presence of a communicable disease or a serious
3 communicable disease or infection and the fact that such a test
4 was ordered is information that is subject to section 2157 of the
5 revised judicature act of 1961, Act No. 236 of the Public Acts of
6 1961, being section 600.2157 of the Michigan Compiled Laws.

7 (3) The disclosure of information pertaining to a communica-
8 ble disease or a serious communicable disease or infection in
9 response to a court order and subpoena shall be limited to only
10 the following cases and subject to all of the following
11 restrictions:

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

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

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

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

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

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

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

1 (4) Information pertaining to a communicable disease or a
2 serious communicable disease or infection that is released to a
3 legislative body shall not contain information that identifies a
4 specific individual who was tested or is being treated for a com-
5 municable disease or a serious communicable disease or
6 infection.

7 (5) Subject to subsection ~~-(6)-~~ (7), subsection (1) does not
8 apply to the following:

9 (a) Information pertaining to an individual who has a commu-
10 nicable disease or a serious communicable disease or infection,
11 if the information is disclosed to the department, a local health
12 department, or other health care provider for 1 or more of the
13 following purposes:

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

15 (ii) To prevent further transmission of the communicable
16 disease or serious communicable disease or infection.

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

18 (b) Information pertaining to an individual who has a commu-
19 nicable disease or a serious communicable disease or infection,
20 if the information is disclosed by a physician or public health
21 officer to an individual who is known by the physician or local
22 health officer to be a contact of the individual who has a commu-
23 nicable disease or a serious communicable disease or infection,
24 if the physician or local health officer determines that the dis-
25 closure of the information is necessary to prevent a reasonably
26 foreseeable risk of further transmission of the communicable
27 disease or serious communicable disease or infection. This

1 subdivision does not impose an affirmative duty upon a physician
2 or local health officer to disclose information pertaining to an
3 individual who has a communicable disease or a serious communica-
4 ble disease or infection to an individual who is known by the
5 physician or local health officer to be a contact of the individ-
6 ual who has a communicable disease or a serious communicable dis-
7 ease or infection.

8 (c) Information pertaining to an individual who has a commu-
9 nicable disease or a serious communicable disease or infection,
10 if the information is disclosed by an authorized representative
11 of the department or a local health officer to an employee of a
12 school district, if the department representative or local health
13 officer determines that the disclosure is necessary to prevent a
14 reasonably foreseeable risk of transmission of the communicable
15 disease or serious communicable disease or infection to pupils in
16 the school district. An employee of a school district to whom
17 information is disclosed under this subdivision is subject to
18 subsection (1).

19 (d) Information pertaining to an individual who has a commu-
20 nicable disease or a serious communicable disease or infection,
21 if the disclosure is expressly authorized in writing by the indi-
22 vidual, but only if the written authorization is specific to the
23 communicable disease or serious communicable disease or
24 infection.

25 (e) Information disclosed under section 5114, 5114a, 5129,
26 {5130,} or 20191(1).

1 (6) A person who releases the results of an HIV test in
2 compliance with subsection (5) is immune from civil or criminal
3 liability or administrative penalties including, but not limited
4 to, licensure sanctions, for the release of that information.

5 (7) Information disclosed under subsection (5) shall not
6 contain information that identifies the individual to whom the
7 information pertains, unless the identifying information is
8 determined by the person making the disclosure to be reasonably
9 necessary to prevent a foreseeable risk of transmission of the
10 communicable disease or serious communicable disease or
11 infection. This subsection does not apply to information dis-
12 closed under subsection (5)(d).

13 (8) A person who violates this section by disclosing infor-
14 mation pertaining to an individual who has a communicable disease
15 that is not a serious communicable disease or infection is guilty
16 of a misdemeanor, punishable by imprisonment for not more than 90
17 days, or a fine of not more than \$500.00, or both.

18 (9) A person who is not a governmental entity or employed by
19 or under contract to a governmental entity and who violates this
20 section by disclosing information pertaining to an individual who
21 has a serious communicable disease or infection is liable in a
22 civil action for actual damages or \$1,000.00, whichever is great-
23 er, and costs and reasonable attorney fees. This subsection also
24 applies to the employer of a person who violates this section,
25 unless the employer had in effect at the time of the violation
26 reasonable precautions designed to prevent the unlawful
27 disclosure by employees of information pertaining to an

1 individual who has a serious communicable disease or infection
2 that is confidential under subsection (1).

3 (10) A person who is employed by or under contract to a gov-
4 ernmental entity and who violates this section by disclosing
5 information pertaining to an individual who has a serious commu-
6 nicable disease or infection is guilty of a felony, punishable by
7 imprisonment for not more than 3 years, a fine of not more than
8 \$5,000.00, or both.