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PUBLIC HEALTH CODE (EXCERPT)

Act 368 of 1978

PART 52

HAZARDOUS COMMUNICABLE DISEASES

333.5201 Definitions and principles of construction.

Sec. 5201. (1) As used in this part:

(a) "Carrier" means an individual who serves as a potential source of infection and who harbors or who the department reasonably believes to harbor a specific infectious agent or a serious communicable disease or infection, whether or not there is present discernible disease.

(b) "Health threat to others" means that an individual who is a carrier has demonstrated an inability or unwillingness to conduct himself or herself in such a manner as to not place others at risk of exposure to a serious communicable disease or infection. Health threat to others includes, but is not limited to, 1 or more of the following:

(i) Behavior by the carrier that has been demonstrated epidemiologically to transmit, or that evidences a careless disregard for transmission of, a serious communicable disease or infection to others.

(ii) A substantial likelihood that the carrier will transmit a serious communicable disease or infection to others, as evidenced by the carrier's past behavior or statements made by the carrier that are credible indicators of the carrier's intention to do so.

(iii) Affirmative misrepresentation by the carrier of his or her status as a carrier before engaging in behavior that has been demonstrated epidemiologically to transmit the serious communicable disease or infection.

(2) In addition, article 1 contains general definitions and principles of construction applicable to all articles in this code and part 51 contains definitions applicable to this part.

History: 1978, Act 368, Eff. Sept. 30, 1978;—Am. 1988, Act 490, Eff. Mar. 30, 1989.

Compiler's note: For transfer of certain powers and duties of the bureau of infectious disease control from the department of public health to the director of the department of community health, see E.R.O. No. 1996-1, compiled at § 330.3101 of the Michigan Compiled Laws.

Popular name: Act 368

333.5203 Warning notice generally.

Sec. 5203. (1) Upon a determination by a department representative or a local health officer that an individual is a carrier and is a health threat to others, the department representative or local health officer shall issue a warning notice to the individual requiring the individual to cooperate with the department or local health department in efforts to prevent or control transmission of serious communicable diseases or infections. The warning notice may also require the individual to participate in education, counseling, or treatment programs, and to undergo medical tests to verify the person's status as a carrier.

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

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

History: 1978, Act 368, Eff. Sept. 30, 1978;—Am. 1988, Act 490, Eff. Mar. 30, 1989.

Popular name: Act 368

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

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(2), 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(2) 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 guard act of 1968, 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.

History: Add. 1997, Act 57, Eff. Jan. 1, 1998.

Popular name: Act 368

333.5205 Failure or refusal to comply with warning notice; petition; hearing; notice; waiver; orders; recommendation and duties of commitment review panel and circuit court; appeal to circuit court; termination or continuation of commitment; cost of implementing order; right to counsel; appeal to court of appeals; leaving facility or refusal to undergo testing for certain infections as contempt.

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

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

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

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

- (c) The type of relief sought.
- (d) A request for a court hearing on the allegations set forth in the petition.
- (3) If a test subject refuses to undergo a test requested by an officer or employee or an arresting individual under section 5204, the officer's or employee's or arresting individual's employer may petition the circuit court for the county in which the employer is located or the appropriate district court for an order as described in subsection (7).
- (4) A petition filed under subsection (3) shall state all of the following:
 - (a) Substantially the same information contained in the request made to an officer's or employee's or arresting individual's employer under section 5204(2) and (3), except that the petition shall contain the name of the arrestee, correctional facility inmate, parolee, or probationer who is the proposed test subject.
 - (b) The reasons for the officer's or employee's or arresting individual's determination that the exposure described in the request made under section 5204(2) and (3) could have transmitted HIV, HBV, or HCV, or all or a combination of those viruses, along with the date and place the officer or employee or arresting individual received the training in the transmission of bloodborne diseases required under section 5204(1).
 - (c) The fact that the arrestee, correctional facility inmate, parolee, or probationer has refused to undergo the test or tests requested under section 5204(2) and (3).
 - (d) The type of relief sought.
 - (e) A request for a court hearing on the allegations set forth in the petition.
- (5) Upon receipt of a petition filed under subsection (1), the circuit court shall fix a date for hearing that shall be as soon as possible, but not later than 14 days after the date the petition is filed. Notice of the petition and the time and place of the hearing shall be served personally on the individual and on the petitioner not less than 3 days before the date of the hearing. Notice of the hearing shall include notice of the individual's right to appear at the hearing, the right to present and cross-examine witnesses, and the right to counsel as provided in subsection (12). The individual and the petitioner may waive notice of hearing, and upon filing of the waiver in writing, the circuit court may hear the petition immediately. Upon receipt of a petition filed under subsection (3), the circuit court or the district court shall fix a date for hearing that shall be as soon as possible, but not later than 24 hours after the time and date the petition is filed. Notice of the petition and the time and place of the hearing shall be served personally on both the proposed test subject under section 5204 and the petitioner within a time period that is reasonable under the circumstances. Notice of the hearing shall include notice of the proposed test subject's right to appear at the hearing, the right to present and cross-examine witnesses, and the right to counsel as provided in subsection (12). The proposed test subject and the petitioner may waive notice of the hearing, and upon filing of the waiver in writing, the circuit court or the district court may hear the petition filed under subsection (3) immediately.
- (6) Upon a finding by the circuit court that the department or local health department has proven the allegations set forth in a petition filed under subsection (1) by clear and convincing evidence, the circuit court may issue 1 or more of the following orders:
 - (a) An order that the individual participate in a designated education program.
 - (b) An order that the individual participate in a designated counseling program.
 - (c) An order that the individual participate in a designated treatment program.
 - (d) An order that the individual undergo medically accepted tests to verify the individual's status as a carrier or for diagnosis.
 - (e) An order that the individual notify or appear before designated health officials for verification of status, testing, or other purposes consistent with monitoring.
 - (f) An order that the individual cease and desist conduct that constitutes a health threat to others.
 - (g) An order that the individual live part-time or full-time in a supervised setting for the period and under the conditions set by the circuit court.
 - (h) Subject to subsection (8), an order that the individual be committed to an appropriate facility for the period and under the conditions set by the circuit court. A commitment ordered under this subdivision shall not be for more than 6 months, unless the director of the facility, upon motion, shows good cause for continued commitment.
 - (i) Any other order considered just by the circuit court.
- (7) Upon a finding by the circuit court or the district court that the officer's or employee's or arresting individual's employer has proven the allegations set forth in a petition filed under subsection (3), including, but not limited to, the requesting officer's or employee's or arresting individual's description of his or her exposure to the blood or body fluids of the proposed test subject, the circuit court or the district court may issue an order requiring the proposed test subject to undergo a test for HIV infection, HBV infection, or HCV infection, or all or a combination of the 3 infections.
- (8) The circuit court shall not issue an order authorized under subsection (6)(h) unless the court first considers the

recommendation of a commitment review panel appointed by the court under this subsection to review the need for commitment of the individual to a health facility. The commitment review panel shall consist of 3 physicians appointed by the court from a list of physicians submitted by the department. Not less than 2 of the physicians shall have training and experience in the diagnosis and treatment of serious communicable diseases and infections. However, upon the motion of the individual who is the subject of the order, the court shall appoint as 1 member of the commitment review panel a physician who is selected by the individual. The commitment review panel shall do all of the following:

(a) Review the record of the proceeding.

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

(c) Recommend either commitment or an alternative or alternatives to commitment, and document the reasons for the recommendation.

(9) An individual committed to a facility under subsection (6)(h) may appeal to the circuit court for a commitment review panel recommendation as to whether or not the patient's commitment should be terminated. Upon the filing of a claim of appeal under this subsection, the court shall reconvene the commitment review panel appointed under subsection (5) as soon as practicable, but not more than 14 days after the filing of the claim of appeal. Upon reconvening, the commitment review panel shall do all of the following:

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

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

(c) Recommend to the court either termination or continuation of the commitment, and document the reasons for the recommendation.

(10) Upon receipt of the recommendation of the commitment review panel under subsection (9), the circuit court may terminate or continue the commitment.

(11) The cost of implementing an order issued under subsection (6) shall be borne by the individual who is the subject of the order, unless the individual is unable to pay all or a part of the cost, as determined by the circuit court. If the court determines that the individual is unable to pay all or a part of the cost of implementing the order, then the state shall pay all of the cost or that part of the cost that the individual is unable to pay, upon the certification of the department. The cost of implementing an order issued under subsection (7) shall be borne by the arrestee, correctional facility inmate, parolee, or probationer who is tested under the order.

(12) An individual who is the subject of a petition filed under this section or an affidavit filed under section 5207 has the right to counsel at all stages of the proceedings. If the individual is unable to pay the cost of counsel, the circuit court shall appoint counsel for the individual.

(13) An order issued by the circuit court under subsection (6) may be appealed to the court of appeals. The court of appeals shall hear the appeal within 30 days after the date the claim of appeal is filed with the court of appeals. However, an order issued by the circuit court under subsection (6) shall not be stayed pending appeal, unless ordered by the court of appeals on motion for good cause. An order issued by the circuit court under subsection (7) may be appealed to the court of appeals. The court of appeals shall hear the appeal within 15 days after the date the claim of appeal is filed with the court of appeals. However, an order issued by the circuit court under subsection (7) shall not be stayed pending appeal, unless ordered by the court of appeals on motion for good cause. An order issued by a district court under subsection (7) may be appealed to the circuit court for the county in which the district court is located. The circuit court shall hear the appeal within 15 days after the date the claim of appeal is filed with the circuit court. However, an order issued by a district court under subsection (7) shall not be stayed pending appeal, unless ordered by the circuit court on motion for good cause.

(14) An individual committed to a facility under this section who leaves the facility before the date designated in the commitment order without the permission of the circuit court or who refuses to undergo a test for HIV infection, HBV infection, HCV infection, or all or a combination of the 3 infections is guilty of contempt.

History: Add. 1988, Act 490, Eff. Mar. 30, 1989;—Am. 1997, Act 57, Eff. Jan. 1, 1998;—Am. 2000, Act 37, Imd. Eff. Mar. 17, 2000.

Popular name: Act 368

333.5207 Protection of public health in emergency; affidavit; court order; taking individual into custody; transporting individual to emergency care or treatment facility; temporary detention; notice of hearing; continued temporary detention; petition.

Sec. 5207. (1) To protect the public health in an emergency, upon the filing of an affidavit by a department representative or a local health officer, the circuit court may order the department representative, local health officer, or a peace officer to take an individual whom the court has reasonable cause to believe is a carrier and is a health threat to others into custody and transport the individual to an appropriate emergency care or treatment

facility for observation, examination, testing, diagnosis, or treatment and, if determined necessary by the court, temporary detention. If the individual is already institutionalized in a facility, the court may order the facility to temporarily detain the individual. An order issued under this subsection may be issued in an ex parte proceeding upon an affidavit of a department representative or a local health officer. The court shall issue an order under this subsection upon a determination that reasonable cause exists to believe that there is a substantial likelihood that the individual is a carrier and a health threat to others. An order under this subsection may be executed on any day and at any time, and shall be served upon the individual who is the subject of the order immediately upon apprehension or detention.

(2) An affidavit filed by a department representative or a local health officer under subsection (1) shall set forth the specific facts upon which the order is sought including, but not limited to, the reasons why an emergency order is sought.

(3) An individual temporarily detained under subsection (1) shall not be detained longer than 72 hours, excluding Saturdays, Sundays, and legal holidays, without a court hearing to determine if the temporary detention should continue.

(4) Notice of a hearing under subsection (3) shall be served upon the individual not less than 24 hours before the hearing is held. The notice shall contain all of the following information:

(a) The time, date, and place of the hearing.

(b) The grounds and underlying facts upon which continued detention is sought.

(c) The individual's right to appear at the hearing.

(d) The individual's right to present and cross-examine witnesses.

(e) The individual's right to counsel, including the right to counsel designated by the circuit court, as described in section 5205(13).

(5) The circuit court may order that the individual continue to be temporarily detained if the court finds, by a preponderance of the evidence, that the individual would pose a health threat to others if released. An order under this subsection to continued temporary detention shall not continue longer than 5 days, unless a petition is filed under section 5205. If a petition is filed under section 5205, the temporary detention shall continue until a hearing on the petition is held under section 5205.

History: Add. 1988, Act 490, Eff. Mar. 30, 1989;—Am. 1997, Act 57, Eff. Jan. 1, 1998.

Popular name: Act 368

333.5209 Power not limited.

Sec. 5209. This part does not limit the power of the department, a local health department, or the probate court to deal with the prevention and control of communicable diseases and infections.

History: Add. 1988, Act 490, Eff. Mar. 30, 1989.

Popular name: Act 368

333.5210 Sexual penetration as felony; definition.

Sec. 5210. (1) A person who knows that he or she has or has been diagnosed as having acquired immunodeficiency syndrome or acquired immunodeficiency syndrome related complex, or who knows that he or she is HIV infected, and who engages in sexual penetration with another person without having first informed the other person that he or she has acquired immunodeficiency syndrome or acquired immunodeficiency syndrome related complex or is HIV infected, is guilty of a felony.

(2) As used in this section, "sexual penetration" means sexual intercourse, cunnilingus, fellatio, anal intercourse, or any other intrusion, however slight, of any part of a person's body or of any object into the genital or anal openings of another person's body, but emission of semen is not required.

History: Add. 1988, Act 490, Eff. Mar. 30, 1989.

Popular name: Act 368

333.5211—333.5269 Repealed. 1988, Act 491, Eff. Mar. 30, 1989.

Compiler's note: The repealed sections pertained to hazardous communicable diseases.

Popular name: Act 368