

Michigan

Analysis

Engaging in sexual intercourse without disclosing HIV status can lead to felony charges.

In Michigan, it is a felony punishable by up to four years in prison if a person living with HIV (PLHIV) knows their HIV status and engages in “sexual penetration” without disclosing their HIV status.¹ Neither the intent to transmit HIV nor actual transmission is required for prosecution. “Sexual penetration” includes anal, vaginal, and oral sex and “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.”² Ejaculation is not required.³

The only defense to prosecution is disclosure of HIV status to sexual partners before engaging in sexual penetration.⁴ However, the disclosure of HIV status during private, sexual activities may be difficult to prove without witnesses or documentation, and evidence often rests on parties’ conflicting testimony

For example, in *People v. Flynn*, a former lover of a man living with HIV testified that they had unprotected sex, and that the defendant did not disclose his HIV status.⁵ The man testified that he informed the complainant of his HIV status before they engaged in sexual intercourse and that he wore a condom.⁶ He further argued that the testimony of a second woman with whom he had sexual intercourse was inadmissible under the Michigan Rules of Evidence.⁷ The court of appeals upheld the trial court’s ruling that the second woman’s testimony was admissible as “it was relevant to show that

¹ MICH. COMP. LAWS ANN. § 333.5210(1) (2016). MICH. COMP. LAWS ANN. § 777.13k (2016) (categorizing sexual penetration with an uninformed partner as a Class F, person felony). See also §§ 777.21, 777.22 (2016) (outlining offense variables as they apply to different offense categories); §777.31-49a (2016) (providing a point system for each offense variable); § 777.67 (2016) (providing minimum sentences for Class F felonies). But see H.B. 6328, 95th Leg., 2010 Reg. Sess. (Mich. 2010) (proposing to require definite terms of imprisonment and repeal portions of Michigan’s sentencing guidelines; the bill is still under review) available at [http://www.legislature.mi.gov/\(S\(m2p3nnditxmhuzagspvpsqi2\)\)/mileg.aspx?page=getobject&objectname=2010-HB-6328&query=on](http://www.legislature.mi.gov/(S(m2p3nnditxmhuzagspvpsqi2))/mileg.aspx?page=getobject&objectname=2010-HB-6328&query=on). See also MICHIGAN SENTENCING GUIDELINES MANUAL (2015), available at https://sentencing.umn.edu/sites/sentencing.umn.edu/files/michigan_sentencing_guidelines_manual_sept_2015.pdf.

² MICH. COMP. LAWS ANN. § 333.5210(2) (2016).

³ *Id.*

⁴ *Id.*

⁵ *People v. Flynn*, No. 199753 LEXIS 533, at *1 (Mich. Ct. App. Sept. 25, 1998).

⁶ *Id.* at *3.

⁷ *Id.* at *2-4 (explaining defendant’s assertion that the testimony of the second woman constituted evidence of bad acts and that such evidence is inadmissible).

[the] defendant intentionally failed to disclose his HIV status as part of a scheme, plan, or system of doing an act.”⁸

PLHIV have been prosecuted for engaging in sexual intercourse without disclosing their status to partners:

- In February 2016, a 47-year-old man living with HIV was charged with three counts of sexual penetration with an uninformed partner after several years of sexual relationships with three women without disclosure of his HIV status.⁹
- In September 2012, a 53-year-old man living with HIV was charged with, among other criminal sexual conduct charges, two counts of sexual penetration with an uninformed partner for allegedly sexually assaulting two 15-year-olds.¹⁰
- In August 2012, a 25-year-old man living with HIV was charged with sexual penetration with an uninformed partner after allegedly having sex without disclosing his HIV status.¹¹
- In August 2012, a 32-year-old man living with HIV was arrested for allegedly lying to his partner about his HIV status.¹²
- In December 2011, a man living with HIV was arrested after telling police that he “had set out to intentionally infect as many people as he could.”¹³
- In November 2009, a 21-year-old man living with HIV was sentenced to nine months in jail, three years’ probation, and a \$1,250 fine after pleading guilty to sexual penetration with an uninformed partner.¹⁴
- In February 2009, a 25-year-old man living with HIV was sentenced to two months in prison after pleading guilty to two counts of sexual penetration with an uninformed partner.¹⁵
- In December 2008, a 36-year-old woman living with HIV was sentenced to time served of 68 days and five years’ probation after pleading guilty to one count of sexual penetration with an uninformed partner for having sex without disclosing her HIV status.¹⁶

⁸ *Id.*

⁹ Andy Hoag, *Saginaw County charges 2nd man with HIV-related felony in past month*, MLIVE.COM, Feb. 23, 2016, available at http://www.mlive.com/news/saginaw/index.ssf/2016/02/saginaw_county_sees_2nd_hiv-re.html.

¹⁰ John Counts, *HIV-Positive Ypsilanti Man Charged With Sexually Assaulting Two More Victims*, THE ANN ARBOR NEWS, Sept. 22, 2012, available at <http://www.annarbor.com/news/crime/hiv-positive-ypsilanti-man-charged-with-sexually-assaulting-two-more-victims/>.

¹¹ Mark Ranzenberger, *Clare-Area Man Accused of Failing to Inform Partner of HIV*, MORNING SUN NEWS, Aug. 27, 2012, available at <http://www.themorningsun.com/article/20120827/NEWS01/120829779/clare-%C2%AD%E2%80%90area-%C2%AD%E2%80%90man-%C2%AD%E2%80%90accused-%C2%AD%E2%80%90of-%C2%AD%E2%80%90failing-%C2%AD%E2%80%90to-%C2%AD%E2%80%90inform-%C2%AD%E2%80%90partner-%C2%AD%E2%80%90of-%C2%AD%E2%80%90hiv>.

¹² *Man with HIV charged with spreading virus*, WOODTV, Aug. 17, 2012, available at <https://www.youtube.com/watch?v=FMcXoaCRqTw>.

¹³ M. Alex Johnson, *Michigan Man May Have Intentionally Infected Hundreds with HIV*, NBC NEWS, Dec. 30, 2011, available at <http://usnews.nbcnews.com/news/2011/12/30/9833291-michigan-man-may-have-intentionally-infected-hundreds-with-hiv>.

¹⁴ Kelly Dame, *Man Charged in AIDS Case Sentenced*, MIDLAND DAILY NEWS, Nov. 18, 2009, available at http://www.ourmidland.com/police_and_courts/article_e2dc9201-86cc-51ae-beab-b61226b1f642.html.

¹⁵ Lynn Turner, *Kalamazoo man with HIV who had sex with unwitting partners gets jail*, MLive.com, Feb. 3, 2009, available at http://www.mlive.com/news/kalamazoo/index.ssf/2009/02/kalamazoo_man_with_hiv_who_had.html.

¹⁶ Rex Hall Jr., *Woman Spared More Jail Time in HIV Case*, MLIVE.COM, Dec. 10, 2008, available at http://www.mlive.com/news/kalamazoo/index.ssf/2008/12/woman_spared_more_jail_time_in.html.

- In September 2008, a man living with HIV was charged with four counts of engaging in sexual penetration with an uninformed partner when he allegedly had sex with two women without disclosing his HIV status.¹⁷
- In an unreported case prior to September 2002, a man living with HIV received 48 months to 15 years in prison after he allegedly engaged in unprotected anal and oral sex with a man without informing the man of his HIV status.¹⁸

Certain defendants may be subject to mandatory testing for STIs and test results may be admissible in subsequent prosecution.

A person's medical records may be subject to confidentiality exceptions by court order, and those records are not explicitly barred from use in a prosecution.¹⁹ Moreover, defendants in any prosecution for a range of prostitution- or solicitation-related charges are subject to mandatory testing for sexually transmitted infections (STIs), hepatitis B, hepatitis C, and HIV, and the results of those tests are not explicitly barred from use in a prosecution.²⁰ Thus, sex workers living with HIV charged with any of these crimes are always potentially at risk for an additional criminal charge of failing to disclose their HIV status. Further, any police officer, fire fighter, correctional officer, or other county employee, court employee, or individual making a lawful arrest who has received training in the transmission of bloodborne diseases, and who has sustained an open wound exposure to the body fluids of an arrestee, correctional facility inmate, parolee, or probationer, may request such person to submit to testing for HIV, hepatitis B, and hepatitis C.²¹ Such a request may be enforced by court order.²²

Michigan's uninformed partner law has survived legal challenges that it is unconstitutionally overbroad and lacks a specific intent requirement.

In *People v. Jensen*, the Court of Appeals of Michigan affirmed the conviction of a mentally-impaired woman living with HIV, and her sentence to three concurrent prison terms of two years and eight months to four years, for having unprotected sex with a man on three occasions.²³ Upon remand from the Supreme Court of Michigan for consideration of the law's constitutionality,²⁴ the Court of Appeals held that the law was, "neither unconstitutionally overbroad nor violative of defendant's rights to privacy or against compelled speech."²⁵

¹⁷ Pat Shellenbarger, *Montcalm County Man Faces Charge of Not Disclosing HIV Infection to Sex Partners*, *THE GRAND RAPIDS PRESS*, Sept. 5, 2008, available at http://www.mlive.com/news/grand-rapids/index.ssf/2008/09/montcalm_county_man_faces_char.html.

¹⁸ *People v. Clayton*, No. 245260, 2004 Mich. App. LEXIS 1091 (Mich. Ct. App. Apr. 27, 2004).

¹⁹ MICH. COMP. LAWS ANN. §§ 333.5131(3), 333.1111(2) (2016) "This code shall be liberally construed for the protection of the health, safety, and welfare of the people of this state."

²⁰ MICH. COMP. LAWS ANN. §§ 333.5129(1), 333.5101, 333.5111, 333.1111(2) (2016).

²¹ MICH. COMP. LAWS ANN. §§ 333.5204, 333.5205(3) (2016); See also § 333.5205(4) (2016) (listing factual requirements for petition filed to the court).

²² MICH. COMP. LAWS ANN. § 333.5205(7) (2016).

²³ *People v. Jensen*, 564 N.W.2d 192, 194 (Mich. Ct. App. 1997).

²⁴ *People v. Jensen*, 575 N.W.2d 552 (Mich. 1998).

²⁵ *People v. Jensen*, 586 N.W.2d 748 (Mich. Ct. App. 1998).

Rejecting the overbreadth challenge, based on a lack of an intent requirement, the Court first noted that very few states with “HIV exposure” criminal laws required a specific intent to harm.²⁶ Further, the Court held that it was, “likely that the Legislature intended to require some type of intent as a predicate to finding guilt under [the exposure law], but that here, the requisite intent is inherent in the HIV-infected person’s socially and morally irresponsible actions.”²⁷ Thus, the Court allowed strict liability without holding explicitly that was the Legislature’s intent.²⁸

Addressing the rights to privacy or against compelled speech, the Court held those rights are not absolute and must be balanced against, “the state’s ‘unqualified interest’ in preserving human life.”²⁹ Moreover, the Court framed the exposure law as “narrowly defined so as to further [the state’s overwhelming need to protect its citizens from an incurable, sexually transmissible disease],” because it, “neither forbids HIV-infected persons from engaging in sexual penetration nor requires general public disclosure of the person’s health status.”³⁰ As with the analysis of the overbreadth challenge, the Court failed to account for actual HIV transmission risk.

The Michigan Court of Appeals rejected another constitutional challenge to the state’s HIV disclosure laws in *People v. Flynn*, discussed above.³¹ The defendant argued that Michigan’s uninformed partner law was unconstitutionally overbroad because its definition of “sexual penetration” included activities that could not spread the virus.³² The court found that the defendant had no basis for challenging the scope of the law because the defendant had engaged in unprotected sexual intercourse, which was “clearly encompassed” by the statute’s language.³³ The defendant was sentenced to two concurrent terms of 32 to 48 months in prison.³⁴

PLHIV may be subject to bioterrorism laws.

Under Michigan’s bioterrorism laws, PLHIV may be prosecuted or receive enhanced sentences because of their HIV status.³⁵ Prosecutions and enhanced sentences for blood exposure may apply regardless of whether HIV infection was possible under the circumstances.

In *People v. Odom*, the Court of Appeals of Michigan affirmed the conviction, on three counts of assault, and sentence of an inmate living with HIV who allegedly punched and spat on corrections

²⁶ *Id.* at 752-53.

²⁷ *Id.* at 754.

²⁸ *Id.* at 754-55 (noting HIV is not like other hazardous communicable diseases because there is no cure, but failing to account for actual transmissions risk or the actions available to mitigate that risk, the latter of which also calls into question evidence of intent to harm.).

²⁹ *Id.* at 756.

³⁰ *Id.* at 757-58.

³¹ *Flynn*, 199753 LEXIS 533, at *4 (Mich. Ct. App. Sept. 25, 1998).

³² *Id.* at *3.

³³ *Id.*

³⁴ *Id.* at *1.

³⁵ MICH. COMP. LAWS ANN. §§ 750.543b(c); 750.200h(g) (2016) (“Harmful biological substance” means a bacteria, virus, or other microorganism or a toxic substance derived from or produced by an organism that can be used to cause death, injury, or disease in humans, animals, or plants.”).

officers during an altercation.³⁶ Because he was bleeding from the mouth during the assault, and because his saliva containing blood was deemed a “harmful biological substance” under state bioterrorism laws, the spitting incident led to an increased sentence of five to 15 years.³⁷ Relying on a statement from the Centers for Disease Control (“CDC”) that HIV can be transmitted via blood, the Court of Appeals concluded that a PLHIV’s blood is a “harmful biological substance.”³⁸

Because the Court in *Odom* failed to address how state sentencing laws could apply to PLHIV acting in self-defense during an altercation, or who have no knowledge or intention of exposing another to HIV, PLHIV could be prosecuted for unintentional blood exposures that occur when they are attacked by others or are victims of correctional officer misconduct. The defendant in *Odom* denied that he initiated the altercation or that he spit at the officers, and the court did not discuss how he received his injuries.³⁹

In 2010, another PLHIV was charged under Michigan’s bioterrorism law for allegedly biting his neighbor during an altercation, although there was no evidence that the defendant was bleeding from the mouth at the time of the bite, that he intended to transmit HIV, or that he exposed his neighbor to anything but saliva.⁴⁰

Relying on a statement from the CDC, the court acknowledged that contact with saliva, tears, or sweat has never been shown to result in HIV transmission, and it dismissed the bioterrorism charge as unfounded.⁴¹ However, the court also cited *Odom* and confirmed that blood from a PLHIV is a “harmful biological substance” under state bioterrorism laws.⁴² Thus, while *Allen* did nothing to remove the risk that a PLHIV can be arrested and charged under the bioterrorism law, it helped clarify the fallacies of prosecuting PLHIV for spitting and biting.

HIV status or STIs can be considered a factor in sentencing.

Under Michigan state law, a sentencing court may go beyond sentencing guidelines and impose a minimum sentence above what is recommended if there is a substantial and compelling reason to do

³⁶ *People v. Odom*, 740 N.W.2d 557, 560 (Mich. Ct. App. 2007) (stating that “HIV-infected blood is a ‘harmful biological substance,’ as defined by [Mich. Comp. Laws Ann. § 750.200h], because it is a substance produced by a human organism that contains a virus that can spread or cause disease in humans.”);

³⁷ *Id.* at 560-62; see also MICH. COMP. LAWS ANN. § 777.31(1)(b) (2016) (imposing 20 additional sentencing points for exposures to harmful biological substances).

³⁸ *Odom*, 740 N.W.2d at 561-62.

³⁹ *Id.* at 560-67.

⁴⁰ *People v. Allen*, No. 2009-4960, at *6 (Macomb County Ct. Mich. Cir. Ct. June 2, 2010), available at <http://www.hivlawandpolicy.org/resources/view/517>. The CDC has concluded there exists only a “remote” possibility of HIV transmission through a bite, and that spitting alone cannot transmit HIV. CTR. FOR DISEASE CONTROL & PREVENTION, *HIV Transmission Risk, Estimated Per-Act Probability of Acquiring HIV from an Infected Source, by Exposure Act*, (Dec. 4, 2015) available at <http://www.cdc.gov/hiv/policies/law/risk.html> (last visited Nov. 25, 2016); See also CTR. FOR DISEASE CONTROL & PREVENTION, *HIV Transmission, Can I get HIV from being spit on or scratched by an HIV-infected person?*, (Nov. 10, 2016) available at <http://www.cdc.gov/hiv/basics/transmission.html> (last visited Nov. 25, 2016).

⁴¹ *Allen*, No. 2009-4960 at *5, *7.

⁴² *Id.* at *4-5.

so.⁴³ This provision has led to increased sentences where sexual assault victims are exposed to or infected with STIs, such as HPV.⁴⁴

In *People v. Holder*, the Michigan Court of Appeals affirmed the conviction and 80 to 120 month sentence of a PLHIV for sexual penetration of an uninformed partner.⁴⁵ The court stated that, because the defendant did not tell his partner about his HIV status, which resulted in transmission of the virus without her knowledge, he risked both the “potential exposure . . . to other people through the innocent transmission by the victim” and infection to his partner’s then unborn child.⁴⁶ The court found these facts sufficient to uphold a sentence twice the standard range.⁴⁷

Donating blood or blood products is a criminal offense for PLHIV.

The Michigan Public Health Code prohibits PLHIV who know their HIV status from donating or selling blood or blood products.⁴⁸ Prosecutions require neither the intent to transmit HIV, nor actual transmission, and disclosure of HIV status before blood sales or donations is not a defense on the face of the statute.⁴⁹ PLHIV who violate this law may also be declared a health threat to others.⁵⁰

PLHIV may be required to undergo medical examination, treatment, or be subject to commitment by the Department of Health.

PLHIV may be required, by warning notice, to, “participate in education, counseling, or treatment programs, and to undergo medical tests to verify the person’s status as a carrier,” if the health department determines they are a health threat to others.⁵¹ To be considered a health threat to others, the person must have “demonstrated an inability or unwillingness to conduct [themselves] in such a manner as to not place others at risk of exposure to a serious communicable disease or infection.”⁵² This can include “[b]ehavior . . . that has been demonstrated epidemiologically to transmit, or that evidences a careless disregard for transmission of, a serious communicable disease or infection to others; a substantial likelihood that [the person] will transmit a serious communicable disease or infection to others, as evidenced by [the person’s] past behavior or statements made . . . that are credible indicators of [their] intention to do so; and affirmative misrepresentation by [the person] about [their status] before engaging in behavior that has been demonstrated epidemiologically to transmit the

⁴³ MICH. COMP. LAWS ANN. § 769.34(3) (2016).

⁴⁴ See, e.g., *People v. Grissom*, No. 251427, 2004 LEXIS 3178, at *2 (Mich. Ct. App. Nov. 18, 2004) (affirming departure from sentencing guidelines because, among other things, “the victim contracted Human Papilloma Virus (HPV), a disease that potentially may cause cervical cancer in the future.”); *People v. Castro-Isaquirre*, No. 242134, 2004 LEXIS 891, at *2 (Mich. Ct. App. Apr. 6, 2004) (“The trial court noted the communicable nature of the disease and the consequences of such a disease on a young victim. These circumstances are substantial and compelling and were not considered in scoring the guidelines.”).

⁴⁵ *People v. Holder*, No. 238501, 2003 Mich. App. LEXIS 2303, at *1 (Mich. Ct. App. 2003).

⁴⁶ *Id.* at *10.

⁴⁷ *Id.* .

⁴⁸ MICH. COMP. LAWS ANN. § 333.11101 (2016).

⁴⁹ *Id.*

⁵⁰ *Id.* See the following section.

⁵¹ MICH. COMP. LAWS ANN. § 333.5203(1) (2016)

⁵² MICH. COMP. LAWS ANN. § 333.5201(1)(b) (2016).

serious communicable disease or infection.”⁵³ Serious communicable diseases include HIV and STIs,⁵⁴ including but not limited to, syphilis, gonorrhea, chancroid, lymphogranuloma venereum, and granuloma inguinale.⁵⁵

If a person does not comply with a warning notice, the court may petition for a court order that the person submit to education, counseling, or medical testing and treatment; cease and desist conduct constituting a health threat to others; live part-time or full-time in a supervised setting; be committed to a facility for up to 6 months; or “any other order considered just by the circuit court.”⁵⁶ Certain procedural protections are in place, such as the rights to notice, to legal counsel, and to appeal.⁵⁷ However, persons who violate an order by the court to submit to commitment are guilty of contempt, punishable by a fine of up to \$7,500, imprisonment, and probation.⁵⁸

The Department of Health may also, by emergency order issued in an ex parte proceeding, require persons with a communicable disease to submit to “observation, examination, testing, diagnosis, or treatment and, if determined necessary by the court, temporary detention.”⁵⁹ Orders for detention may last no longer than 72 hours, or, alternatively, five days, if the circuit court finds by a preponderance of the evidence, that the individual would pose a health threat to others if released.⁶⁰ Respondents have procedural protections, such as the rights to notice and to counsel, at court hearings to determine duration of detention beyond 72 hours.⁶¹

Any violation of the public health code for which there is no other explicit penalty is considered a misdemeanor.⁶²

The Supreme Court of Michigan has upheld the Department of Health’s authority. In *Rock v. Carney*, the Court reversed a directed verdict granted in health authorities’ favor after a woman was detained and subjected to treatment for 12 weeks after testing positive for gonorrhea and syphilis.⁶³ The Court upheld the State’s broad authority to, “quarantine persons infected with [gonorrhea and syphilis] . . . and to make such examination as the nature of the disease requires to determine its presence.”⁶⁴

⁵³ *Id.* Note that behavior “that has been demonstrated epidemiologically to transmit” the communicable disease in question does not require there be a substantially likely risk of transmission; by the face of the statute, all that is required is any risk of transmission above zero.

⁵⁴ MICH. COMP. LAWS ANN. § 333.5101(1)(g) (2016); see also MICH. ADMIN. CODE r. 325.9031 (2016).

⁵⁵ MICH. COMP. LAWS ANN. § 333.5101(1)(h) (2016); see also MICH. ADMIN. CODE r. 325.171(2016).

⁵⁶ MICH. COMP. LAWS ANN. §§ 333.5205(1), (6), (8) (2016) (Orders for commitment require the circuit court to first consider the recommendation of a commitment review panel appointed by the court. The panel shall consist of three physicians, at least two of which, “shall have training and experience in the diagnosis and treatment of serious communicable diseases and infections.”). Any such petition must include the facts giving rise to the health threat, the department’s efforts to alleviate the health threat, the relief sought, and a request for a court hearing. MICH. COMP. LAWS ANN. §§ 333.5205(2) (2016).

⁵⁷ MICH. COMP. LAWS ANN. §§ 333.5205(5), (9), (12), (13) (2016).

⁵⁸ MICH. COMP. LAWS ANN. §§ 333.5205(14), 600.1715(1) (2016).

⁵⁹ MICH. COMP. LAWS ANN. §§ 333.5207(1), (3) (2016) (The department must show there is reasonable cause to believe there is a substantial likelihood, “that the individual is a carrier and a health threat to others.”).

⁶⁰ MICH. COMP. LAWS ANN. § 333.5207(5) (2016) (Detention may subsequently be extended by filing a petition under the “violation of warning notice” procedure set forth in § 333.5205 (2016)).

⁶¹ MICH. COMP. LAWS ANN. § 333.5207(4) (2016).

⁶² MICH. COMP. LAWS ANN. § 333.1299 (2016).

⁶³ *Rock v. Carney*, 185 N.W. 798, 800, 804 (Mich. 1921).

⁶⁴ *Id.* at 804.

However, the Court emphasized, [t]he object of the law is not punishment . . . but the well being of . . . the people. . . [I]f quarantining is found to be justifiable, such quarantine measures may be resorted to only as are reasonably necessary to protect the public health, remembering that the persons so affected are to be treated as patients, and not as criminals.”⁶⁵ Thus, the Court held the State failed to establish reasonable grounds to believe the woman was infected because the examining doctor did not, before examining her, have “any information with reference to plaintiff, her habits or her conduct, which would give him reasonable grounds to believe that she was infected . . .”⁶⁶

Although the Supreme Court of Michigan decided *Rock* almost a century ago, it is still good law. *Rock* illustrates the extent of the procedural protections available to persons under Department of Health petitions.

Important Note: *While we have made an effort to ensure that this information is current, the law is always changing and we cannot guarantee the accuracy of the information provided. This information may or may not be applicable to your specific situation and, as such, should not be used as a substitute for legal advice.*

⁶⁵ *Id.* (Citing *In re Dillon*, 186 P. 170 (Cal. Ct. App. 1919)).

⁶⁶ *Id.*

Michigan Compiled Laws Service

Michigan Statutes

*Note: Provisions imposing punitive restrictions or listing criminal sentences are denoted with ** and are generally listed first. Thereafter, provisions within a particular title are listed numerically.*

CHAPTER 333, HEALTH

MICH. COMP. LAWS ANN. § 333.5210 (2016) **

Sexual penetration as felony; definition.

(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.

MICH. COMP. LAWS ANN. § 333.11101 (2016) **

Donation or sale of blood or blood products; knowledge of positive HIV test

An individual shall not donate or sell his or her blood or blood products to a blood bank or storage facility or to an agency or organization that collects blood or blood products for a blood bank or storage facility knowing that he or she has tested positive for the presence of HIV or an antibody to HIV. A blood bank or other health facility to which blood or blood products is donated in violation of this section immediately shall notify the local health department of the violation. The local health facility will immediately proceed under part 52.

MICH. COMP. LAWS ANN. § 333.5101 (2016)

Definitions and principles of construction.

(1) As used in this article:

(b) "Communicable disease" means an illness due to a specific infectious agent or its toxic products that results from transmission of that infectious agent or its products from a reservoir to a susceptible host, directly as from an infected individual or animal, or indirectly through the agency of an intermediate plant or animal host, vector, or the inanimate environment.

(c) "HIV" means human immunodeficiency virus.

(d) "HIV infection" or "HIV infected" means the status of an individual who has tested positive for HIV, as evidenced by either a double positive enzyme-linked immunosorbent assay test, combined with a positive western blot assay test, or a positive result under an HIV test that is

considered reliable by the federal Centers for Disease Control and Prevention and is approved by the department.

(g) "Serious communicable disease or infection" means a communicable disease or infection that is designated as serious by the department pursuant to this part. Serious communicable disease or infection includes, but is not limited to, HIV infection, acquired immunodeficiency syndrome, sexually transmitted infection, and tuberculosis.

(h) "Sexually transmitted infection" means syphilis, gonorrhea, chancroid, lymphogranuloma venereum, granuloma inguinale, and other sexually transmitted infections that the department may designate and require to be reported under section 5111.

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

MICH. COMP. LAWS ANN. § 333.5111 (2016)

List of reportable diseases, infections, and disabilities; rules.

(1) In carrying out its authority under this article, the department shall maintain a list of reportable diseases, infections, and disabilities that designates and classifies communicable, serious communicable, chronic, or noncommunicable diseases, infections, and disabilities. The department shall review and revise the list under this subsection at least annually.

(2) In carrying out its authority under this article, the department may promulgate rules to do any of the following:

(c) Establish procedures for controlling diseases and infections, including, but not limited to, immunization and environmental controls.

(g) Designate communicable diseases or serious communicable diseases or infections for which local health departments are required to furnish care, including, but not limited to, tuberculosis and sexually transmitted infection.

(h) Implement this part and parts 52 and 53, including, but not limited to, rules for discovering, caring for, and reporting an individual having or suspected of having a communicable disease or a serious communicable disease or infection, and establishing approved tests under section 5123 and approved prophylaxes under section 5125.

MICH. COMP. LAWS ANN. § 333.5129 (2016)

Individuals arrested and charged, bound over, or convicted of certain crimes; examination or testing for certain diseases; expedited examination or testing; information and counseling; providing name, address, and telephone number of victim or individual; providing test results to victim or individual; transmitting test results and other medical information; confidentiality; referral of individual for appropriate medical care; financial responsibility; applicability of subsections (2), (3), and (4) to certain individuals; costs; definitions.

(1) An individual arrested and charged with violating section 448, 449, 449a, 450, 452, or 455 of the Michigan penal code, 1931 PA 328, MCL 750.448, 750.449, 750.449a, 750.450, 750.452, and 750.455, or a local ordinance prohibiting prostitution or engaging or offering to engage the services of a prostitute may, upon order of the court, be examined or tested to determine whether the individual has sexually

transmitted infection, hepatitis B infection, hepatitis C infection, HIV infection, or acquired immunodeficiency syndrome. Examination or test results that indicate the presence of sexually transmitted infection, hepatitis B infection, hepatitis C infection, HIV infection, or acquired immunodeficiency syndrome must be reported to the defendant and, pursuant to sections 5114 and 5114a, to the department and the appropriate local health department for partner notification.

MICH. COMP. LAWS ANN. § 333.5131 (2016)

Serious communicable diseases or infections of HIV infection and acquired immunodeficiency syndrome; confidentiality of reports, records, data, and information; test results; limitations and restrictions on disclosures in response to court order and subpoena; information released to legislative body; applicability of subsection (1); immunity; identification of individual; violation as misdemeanor; penalty.

(1) All reports, records, and data pertaining to testing, care, treatment, reporting, and research, and information pertaining to partner notification under section 5114a, that are associated with the serious communicable diseases or infections of HIV infection and acquired immunodeficiency syndrome are confidential. A person shall release reports, records, data, and information described in this subsection only pursuant to this section.

(3) The disclosure of information pertaining to HIV infection or acquired immunodeficiency syndrome in response to a court order and subpoena is limited to only the following cases and is subject to all of the following restrictions:

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

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

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

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

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

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

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

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

(a) Information pertaining to an individual who is HIV infected or has been diagnosed as having acquired immunodeficiency syndrome, if the information is disclosed to the department, a local health department, or other health care provider for 1 or more of the following purposes:

(i) To protect the health of an individual.

(ii) To prevent further transmission of HIV.

(iii) To diagnose and care for a patient.

(7) A person who discloses information under subsection (5) shall not include in the disclosure information that identifies the individual to whom the information pertains, unless the identifying information is determined by the person making the disclosure to be reasonably necessary to prevent a foreseeable risk of transmission of HIV. This subsection

MICH. COMP. LAWS SERV. § 333.5201 (2016)

Definitions and principles of Construction

(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.

MICH. COMP. LAWS ANN. § 333.5203 (2016)

Warning notice generally.

(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.

MICH. COMP. LAWS ANN. § 333.5204 (2016)

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

(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.

MICH. COMP. LAWS ANN. § 333.5205 (2016)

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.

(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.

MICH. COMP. LAWS ANN. § 333.5207 (2016)

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.

(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.

ARTICLE 1, PRELIMINARY PROVISIONS

Part 12, General Provisions

MICH. COMP. LAWS ANN. § 333.1299 (2016) **

Violation as misdemeanor; prosecution.

(1) A person who violates a provision of this code for which a penalty is not otherwise provided is guilty of a misdemeanor.

(2) A prosecuting attorney having jurisdiction and the attorney general knowing of a violation of this code, a rule promulgated under this code, or a local health department regulation the violation of which is punishable by a criminal penalty may prosecute the violator.

Michigan Administrative Code

DEPARTMENT OF HEALTH AND HUMAN SERVICES

MICH. ADMIN. CODE R. 325.9031 (2016)

Definition; "infectious agent."

For purposes of section 2843b of Act No. 368 of the Public Acts of 1978, as amended, being S333.2843b of the Michigan Compiled Laws, "infectious agent" means any of the following diseases or organisms:

- (a) Acquired immunodeficiency syndrome (AIDS) or human immunodeficiency virus (HIV) infection.
- (n) Hepatitis, viral, any type.
- (u) Syphilis, primary and secondary.

MICH. ADMIN. CODE R. 325.171 (2016)

Definitions.

(1) As used in these rules:

- (k) "Venereal disease" means any of the following:
 - (i) Syphilis.
 - (ii) Gonorrhea.
 - (iii) Chancroid.
 - (iv) Lymphogranuloma venereum.
 - (v) Granuloma inguinale.

(2) Unless the context requires otherwise or as further clarified in these rules, terms defined in the code have the same meanings when used in these rules.