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TOC: Michigan Compiled Laws Service, Constitution, Court Rules & ALS, Combined > /. . . / > PART 52. HEALTH THREATS TO OTHERS > **§ 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.**
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MCLS § 333.5205

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CHAPTER 333 HEALTH
PUBLIC HEALTH CODE
ARTICLE 5. PREVENTION AND CONTROL OF DISEASES, INFECTIONS, AND DISABILITIES

PART 52. HEALTH THREATS TO OTHERS

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MCLS § 333.5205 (2004)

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§ 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: Act 368, 1978, p 865; eff September 30, 1978.

Pub Acts 1978, No. 368, § 5205, as added by Pub Acts 1988, No. 490, eff March 30, 1989 (see 1988 note below).

Amended by Pub Acts 1997, No. 57, imd eff July 7, 1997, by enacting § 1 eff January 1, 1998; 2000, No. 37, imd eff March 17, 2000.

NOTES:

Editor's notes:

Pub Acts 1988, No. 490, § 2, eff March 30, 1989, provides:

"Section 2. This amendatory act shall not take effect unless all of the following bills of the 84th Legislature are enacted into law:

"(a) House Bill No. 4008 [Act No. 471 of 1988].

"(b) House Bill No. 4103 [Act No. 489 of 1988].

"(c) House Bill No. 5189 [Act No. 488 of 1988].

"(d) Senate Bill No. 1041 [Act No. 491 of 1988]."

Effect of amendment notes:

The 1997 amendment added subsections (3), (4), (7), (9); and made other changes throughout the remainder of the section.

The 2000 amendment in subsection (3), added "or the appropriate district court" after "located"; in subparagraph (4)(b), added "all or"; in subsection (5) deleted "or (3)", "or the proposed test subject under section 5204", deleted "or proposed test subject's" after "individual's", substituted "(12)" for "(13)", deleted "or the proposed test subject" after "individual", added "circuit" before "court"; added the last four sentences; in subsection (7), added "or the district court" after "circuit court", added "circuit court or the district" before "court", added "or a combination of the" before "3", and deleted "subject to subsection (9)."; deleted subsection (9) and redesignated former subsections (10) through (15) as (9) through (14); in subsection (10), substituted "(9)" for "(10)"; in subsection (13), substituted "subsection (6)" for "this section "; added the last six sentences; in subsection (14), added "or a combination of the" before "3".

Statutory references:

Sections 5203, 5204 and 5207, above referred to, are §§ 333.5203 , 333.5204 and 333.5207 .