

Michigan HIV & STD Law Update Summary

Last updated January 2020

A series of HIV and STD related laws were enacted in December 2018¹. Below are key facts you should know about these changes

HIV Testing & Reporting

- Pre-HIV-test counseling requirement has been removed
- Before administering an HIV test, requires health care providers to:
 - Inform patients (or their representatives) that an HIV test will be performed;
 - Provide patients (or their representatives) with an opportunity to ask questions;
 - Provide patients (or their representatives) with an opportunity to decline testing.
- Patients can consent to an HIV test verbally or in writing
- If an HIV test is offered but declined, providers must document refusal of test in the patient's medical record.
- If a patient tests positive for HIV:
 - The health facility must provide post-HIV-test counseling to the patient and referrals to expedite HIV treatment and services.
- Providers must follow the approved test and testing algorithms and guidance from the Centers for Disease Control and Prevention or Michigan Department of Health and Human Services.
- The testing facility must report HIV positive test results to MDHHS within 24 hours of receipt of results.
- All medical information pertaining to patients are not to be disclosed, only HIV specific information (HIV test results, treatment, diagnosis etc.) may be disclosed in response to a court order, subpoena, to the local health department or other health care provider, for the purposes of protecting the health of the patient, to prevent further transmission of HIV and to diagnose and care for the patient. Only the minimum information necessary to accomplish the intended purpose can be shared. (MCL 333.5131)

([HCB- 6016](#), [HCB-6018](#), HCB-6019, [HCB-6023](#))

Partner Services

- MDHHS-approved testing sites must perform partner notification for patients who test positive for HIV.
- The local health department shall maintain individual case files via health departments server or paper files that are encoded to protect the identities of the patient. These records must be destroyed within 365 days after the date received.

([HCB- 6017](#), [HCB- 6019](#))

¹The bills updated statutes MCL 333.5101; 333.5114; 333.5114a; 333.5123; 333.5131; 333.5133; 333.5210; 777.13 k. Readers are strongly encouraged to review and familiarize themselves with these updated statutes.

Changes to HIV Criminal Laws

A series of laws passed updating Michigan’s HIV felony disclosure laws to require that “intent to infect” must be proven for an individual to be found guilty of a felony. Key areas for attention:

- A person who knows they have HIV:
 - Who has anal or vaginal intercourse with another person WITH THE SPECIFIC INTENT that the uninfected person contract HIV is guilty of a felony;
- Who, without first informing their sexual partner that they have HIV, CAUSES THE UNINFECTED PERSON TO BECOME HIV POSITIVE acts with reckless disregard and is guilty of a felony;
- Who, without informing their sexual partner that they have HIV, and who acts with reckless disregard but DOES NOT TRANSMIT HIV, is guilty of a misdemeanor;
- A person who knows that they have HIV and has been MEDICALLY SUPPRESSED PER ACCEPTED MEDICAL STANDARDS IS NOT ACTING WITH RECKLESS DISREGARD.

([HCB- 6020](#), [HCB- 6021](#))

Currently

Michigan Law requires you to tell your sexual partner that you have HIV before having vaginal or anal sex with them, unless you are medically suppressed and have no intent to spread the virus.

New Law

If positive HIV status is disclosed before anal or vaginal sex, the HIV positive partner cannot be prosecuted.

If the HIV positive partner is medically suppressed and has no intent to spread the virus, they may choose whether to disclose their status and cannot be prosecuted.

Michigan HIV Criminal Law Reference Table

IF	AND (BEFORE VAGINAL OR ANAL SEX)	AND	AND	THEN
IS NOT MEDICALLY SUPPRESSED- HAS A DETECTABLE VIRAL LOAD	Did not disclose HIV status	Did not transmit HIV	Did not intend to transmit HIV	1 year misdemeanor and or \$1,000 fine
IS NOT MEDICALLY SUPPRESSED- HAS A DETECTABLE VIRAL LOAD	Did not disclose HIV status	Transmitted HIV	Did not intend to transmit HIV	4 year felony
IS NOT MEDICALLY SUPPRESSED- HAS A DETECTABLE VIRAL LOAD	Did not disclose HIV status	Transmitted HIV	Intended to transmit HIV	4 year felony
IS MEDICALLY SUPPRESSED	Did not disclose HIV status	Did not transmit HIV	Intended to transmit HIV	4 year felony
IS MEDICALLY SUPPRESSED	Did not disclose HIV status	Did not transmit HIV	Did not intend to transmit HIV	Can not be prosecuted

Perinatal HIV/STD Testing

Michigan’s perinatal HIV and STD testing laws fall in accordance with Centers for Disease Control and Prevention Guidelines;

- Testing for HIV, Syphilis and Hepatitis B shall occur at the time of initial examination, typically in the first trimester of pregnancy.
- Additionally, testing shall occur during the third trimester for syphilis, HIV, and Hepatitis B on an opt out basis.
- Patients can consent to an HIV test verbally or in writing.
- If an HIV test is offered but declined, providers must document refusal of test in the patient’s medical record.

([HCB- 6022](#))