

HOUSE BILL No. 4732

May 1, 1989, Introduced by Reps. Clack, DeMars, Munsell, Walberg and Pitoniak and referred to the Committee on Public Health.

A bill to amend section 5129 of Act No. 368 of the Public Acts of 1978, entitled as amended

"Public health code,"

as added by Act No. 471 of the Public Acts of 1988, being section 333.5129 of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Section 5129 of Act No. 368 of the Public Acts
2 of 1978, as added by Act No. 471 of the Public Acts of 1988,
3 being section 333.5129 of the Michigan Compiled Laws, is amended
4 to read as follows:

5 Sec. 5129. (1) An individual arrested and charged with vio-
6 lating section 448, 449, 449a, 450, 452, or 455 of the Michigan
7 penal code, Act No. 328 of the Public Acts of 1931, being
8 sections 750.448, 750.449, 750.449a, 750.450, 750.452, and
9 750.455 of the Michigan Compiled Laws, or a local ordinance

1 prohibiting prostitution or engaging or offering to engage the
2 services of a prostitute may be ~~examined~~ TESTED at the discre-
3 tion of the local health department to determine whether the
4 individual has venereal disease.

5 (2) ~~if~~ EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, IF an
6 individual is arrested and charged with violating section 338,
7 338a, 338b, 448, 449, 449a, 450, 452, 455, 520b, 520c, 520d,
8 520e, or 520g of the Michigan penal code, Act No. 328 of the
9 Public Acts of 1931, being sections 750.338, 750.338a, 750.338b,
10 750.448, 750.449, 750.449a, 750.450, 750.452, 750.455, 750.520b,
11 750.520c, 750.520d, 750.520e, and 750.520g of the Michigan
12 Compiled Laws; a local ordinance prohibiting prostitution, solici-
13 tation, or gross indecency; or section 7404 by intravenously
14 using a controlled substance, the judge or magistrate responsible
15 for setting the individual's conditions of release pending trial
16 shall distribute to the individual the information on VENEREAL
17 DISEASE AND HIV transmission required to be distributed by county
18 clerks under section 5119(1) and shall recommend that the indi-
19 vidual obtain additional information and counseling at a local
20 health department testing and counseling center regarding
21 VENEREAL DISEASE, HIV infection, acquired immunodeficiency syn-
22 drome, and acquired immunodeficiency syndrome related complex.
23 Counseling under this subsection shall be voluntary on the part
24 of the individual.

25 (3) Upon conviction of a defendant for a violation of sec-
26 tion 338, 338a, 338b, 448, 449, 449a, 520b, 520c, 520d, 520e, or
27 520g of Act No. 328 of the Public Acts of 1931, being sections

1 750.338, 750.338a, 750.338b, 750.448, 750.449, 750.449a,
2 750.520b, 750.520c, 750.520d, 750.520e, and 750.520g of the
3 Michigan Compiled Laws, or a crime involving the intravenous use
4 of a controlled substance in violation of section 7404, the court
5 having jurisdiction of the criminal prosecution shall order the
6 defendant to be tested for VENEREAL DISEASE AND FOR the presence
7 of HIV or an antibody to HIV. Upon conviction of a defendant for
8 a violation of section 450, 452, or 455 of Act No. 328 of the
9 Public Acts of 1931, being sections 750.450, 750.452, and 750.455
10 of the Michigan Compiled Laws, the court having jurisdiction of
11 the criminal prosecution shall order the defendant to be tested
12 for VENEREAL DISEASE AND FOR the presence of HIV or an antibody
13 to HIV, unless the court determines that testing the defendant
14 would be inappropriate and documents the reasons for that deter-
15 mination in the court record. The ~~test~~ TESTS shall be confi-
16 dentially administered by a licensed physician, the department of
17 public health, or a local health department. The court also
18 shall order the defendant to receive counseling regarding
19 VENEREAL DISEASE AND HIV infection, acquired immunodeficiency
20 syndrome, and acquired immunodeficiency syndrome related complex
21 including, at a minimum, information regarding treatment, trans-
22 mission, and protective measures.

23 (4) If the victim or person with whom the defendant engaged
24 in sexual penetration during the course of the crime consents,
25 the court shall provide the person or agency administering the
26 ~~test~~ TESTS under subsection (3) with the name, address, and
27 telephone number of the victim or person with whom the defendant

1 engaged in sexual penetration during the course of the crime.
2 After the defendant is tested as to the presence of VENEREAL DIS-
3 EASE OR OF HIV or an antibody to HIV, the person or agency admin-
4 istering the ~~test~~ TESTS shall immediately provide the test
5 results to the victim or person with whom the defendant engaged
6 in sexual penetration during the course of the crime, and shall
7 refer the victim or other person for appropriate counseling.

8 (5) The test results and any other medical information
9 obtained from the defendant by the person or agency administering
10 the ~~test~~ TESTS under subsection (3) shall be transmitted to the
11 court and, after the defendant is sentenced, made part of the
12 court record, but are confidential and shall be disclosed only to
13 the defendant, the local health department, the department, the
14 victim, or other person required to be informed of the results
15 under subsection (4); ~~—~~ upon written authorization of the
16 defendant; ~~—~~ or ~~except~~ as otherwise provided by law. If the
17 defendant is placed in the custody of the department of correc-
18 tions, the court shall transmit a copy of the defendant's test
19 results and other medical information to the department of
20 corrections. A person or agency that discloses information in
21 compliance with this subsection shall not be civilly or crimi-
22 nally liable for making the disclosure.

23 (6) If an individual receives counseling or is tested under
24 this section, and is found to be INFECTED WITH A VENEREAL DISEASE
25 OR TO BE HIV infected, the individual shall be referred by the
26 agency providing the counseling or testing for appropriate
27 medical care. The department, the local health department, or

1 any other agency providing counseling or testing under this
2 section shall not be financially responsible for medical care
3 received by an individual as a result of a referral made under
4 this subsection.

5 (7) THE REQUIREMENTS FOR THE DISTRIBUTION OF INFORMATION
6 CONCERNING VENEREAL DISEASE, COUNSELING CONCERNING VENEREAL DIS-
7 EASE, AND TESTING FOR VENEREAL DISEASE UNDER SUBSECTIONS (2) AND
8 (3) SHALL NOT APPLY TO AN INDIVIDUAL CHARGED WITH OR CONVICTED OF
9 VIOLATING SECTION 7404 BY INTRAVENOUSLY USING A CONTROLLED
10 SUBSTANCE.

11 (8) ~~(7)~~ As used in this section, "sexual penetration"
12 means sexual intercourse, cunnilingus, fellatio, anal inter-
13 course, or any other intrusion, however slight, of any part of a
14 person's body or of any object into the genital or anal openings
15 of another person's body, but emission of semen is not required.