

HOUSE BILL No. 6149

September 30, 1992, Introduced by Reps. Oxender, McNutt, Allen, Bandstra, Walberg, Yokich, DeLange, Gernaat, Nye, Brackenridge, Gnodtke, Horton, Dalman, Jaye, Bodem, Bryant, Rocca, Wozniak, Palamara, Porreca and Jamian 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 at the discretion of the
3 local health department to determine whether the individual has
4 venereal disease.

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

23 (3) Upon conviction of a defendant OR THE ISSUANCE BY THE
24 PROBATE COURT OF AN ORDER OF DISPOSITION FOR A CHILD FOUND TO BE
25 WITHIN THE PROVISIONS OF SECTION 2(A)(1) OF CHAPTER XIIA OF ACT
26 NO. 288 OF THE PUBLIC ACTS OF 1939, BEING SECTION 712A.2 OF THE
27 MICHIGAN COMPILED LAWS, for a violation of section 338, 338a,

1 338b, 448, 449, 449a, 520b, 520c, 520d, 520e, or 520g of Act
2 No. 328 of the Public Acts of 1931, being sections 750.338,
3 750.338a, 750.338b, 750.448, 750.449, 750.449a, 750.520b,
4 750.520c, 750.520d, 750.520e, and 750.520g of the Michigan
5 Compiled Laws, or a crime involving the intravenous use of a con-
6 trolled substance in violation of section 7404, the court having
7 jurisdiction of the criminal prosecution OR JUVENILE HEARING
8 shall order the defendant OR CHILD FOUND TO BE WITHIN THE PROVI-
9 SIONS OF SECTION 2(A)(1) OF CHAPTER XIIA OF ACT NO. 288 OF THE
10 PUBLIC ACTS OF 1939 to be tested for the presence of HIV or an
11 antibody to HIV. Upon conviction of a defendant OR THE ISSUANCE
12 BY THE PROBATE COURT OF AN ORDER OF DISPOSITION FOR A CHILD FOUND
13 TO BE WITHIN THE PROVISIONS OF SECTION 2(A)(1) OF CHAPTER XIIA OF
14 ACT NO. 288 OF THE PUBLIC ACTS OF 1939 for a violation of section
15 450, 452, or 455 of Act No. 328 of the Public Acts of 1931, being
16 sections 750.450, 750.452, and 750.455 of the Michigan Compiled
17 Laws, the court having jurisdiction of the criminal prosecution
18 OR JUVENILE HEARING shall order the defendant OR CHILD FOUND TO
19 BE WITHIN THE PROVISIONS OF SECTION 2(A)(1) OF CHAPTER XIIA OF
20 ACT NO. 288 OF THE PUBLIC ACTS OF 1939 to be tested for the pres-
21 ence of HIV or an antibody to HIV, unless the court determines
22 that testing the defendant OR CHILD FOUND TO BE WITHIN THE PROVI-
23 SIONS OF SECTION 2(A)(1) OF CHAPTER XIIA OF ACT NO. 288 OF THE
24 PUBLIC ACTS OF 1939 would be inappropriate and documents the rea-
25 sons for that determination in the court record. The test shall
26 be confidentially administered by a licensed physician, the
27 department of public health, or a local health department. The

1 court also shall order the defendant OR CHILD FOUND TO BE WITHIN
2 THE PROVISIONS OF SECTION 2(A)(1) OF CHAPTER XIIA OF ACT NO. 288
3 OF THE PUBLIC ACTS OF 1939 to receive counseling regarding HIV
4 infection, acquired immunodeficiency syndrome, and acquired immu-
5 nodeficiency syndrome related complex including, at a minimum,
6 information regarding treatment, transmission, and protective
7 measures.

8 (4) If the victim or person with whom the defendant OR CHILD
9 FOUND TO BE WITHIN THE PROVISIONS OF SECTION 2(A)(1) OF CHAPTER
10 XIIA OF ACT NO. 288 OF THE PUBLIC ACTS OF 1939 engaged in sexual
11 penetration during the course of the crime consents, the court OR
12 PROBATE COURT shall provide the person or agency administering
13 the test under subsection (3) with the name, address, and tele-
14 phone number of the victim or person with whom the defendant OR
15 CHILD FOUND TO BE WITHIN THE PROVISIONS OF SECTION 2(A)(1) OF
16 CHAPTER XIIA OF ACT NO. 288 OF THE PUBLIC ACTS OF 1939 engaged in
17 sexual penetration during the course of the crime. After the
18 defendant OR CHILD FOUND TO BE WITHIN THE PROVISIONS OF
19 SECTION 2(A)(1) OF CHAPTER XIIA OF ACT NO. 288 OF THE PUBLIC ACTS
20 OF 1939 is tested as to the presence of HIV or an antibody to
21 HIV, the person or agency administering the test shall immedi-
22 ately provide the test results to the victim or person with whom
23 the defendant OR CHILD FOUND TO BE WITHIN THE PROVISIONS OF
24 SECTION 2(A)(1) OF CHAPTER XIIA OF ACT NO. 288 OF THE PUBLIC ACTS
25 OF 1939 engaged in sexual penetration during the course of the
26 crime, and shall refer the victim or other person for appropriate
27 counseling.

1 (5) The test results and any other medical information
2 obtained from the defendant OR CHILD FOUND TO BE WITHIN THE PRO-
3 VISIONS OF SECTION 2(A)(1) OF CHAPTER XIIA OF ACT NO. 288 OF THE
4 PUBLIC ACTS OF 1939 by the person or agency administering the
5 test under subsection (3) shall be transmitted to the court OR
6 PROBATE COURT and, after the defendant OR CHILD FOUND TO BE
7 WITHIN THE PROVISIONS OF SECTION 2(A)(1) OF CHAPTER XIIA OF ACT
8 NO. 288 OF THE PUBLIC ACTS OF 1939 is sentenced, made part of the
9 court record, but are confidential and shall be disclosed only to
10 the defendant OR CHILD FOUND TO BE WITHIN THE PROVISIONS OF
11 SECTION 2(A)(1) OF CHAPTER XIIA OF ACT NO. 288 OF THE PUBLIC ACTS
12 OF 1939, the local health department, the department, the victim,
13 or other person required to be informed of the results under THIS
14 SUBSECTION OR subsection (4), upon written authorization of the
15 defendant OR CHILD FOUND TO BE WITHIN THE PROVISIONS OF
16 SECTION 2(A)(1) OF CHAPTER XIIA OF ACT NO. 288 OF THE PUBLIC ACTS
17 OF 1939 OR THE CHILD'S PARENT OR LEGAL GUARDIAN, or except as
18 otherwise provided by law. If the defendant is placed in the
19 custody of the department of corrections, the court shall trans-
20 mit a copy of the defendant's test results and other medical
21 information to the department of corrections. IF THE CHILD FOUND
22 TO BE WITHIN THE PROVISIONS OF SECTION 2(A)(1) OF CHAPTER XIIA OF
23 ACT NO. 288 OF THE PUBLIC ACTS OF 1939 IS PLACED BY THE PROBATE
24 COURT IN THE CUSTODY OF A PERSON RELATED TO THE CHILD OR A PUBLIC
25 OR PRIVATE AGENCY, INSTITUTION, OR FACILITY, THE PROBATE COURT
26 SHALL TRANSMIT A COPY OF THE CHILD'S TEST RESULTS TO THE PERSON
27 RELATED TO THE CHILD OR THE DIRECTOR OF THE AGENCY, INSTITUTION,

1 OR FACILITY. A person or agency that discloses information in
2 compliance with this subsection ~~shall~~ IS not ~~be~~ civilly or
3 criminally liable for making the disclosure.

4 (6) If an individual receives counseling or is tested under
5 this section ~~—~~ and is found to be HIV infected, the individual
6 shall be referred by the agency providing the counseling or test-
7 ing for appropriate medical care. The department, the local
8 health department, or any other agency providing counseling or
9 testing under this section ~~shall~~ IS not ~~be~~ financially
10 responsible for medical care received by an individual as a
11 result of a referral made under this subsection.

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