



HOUSE BILL No. 4049

February 2, 1993, Introduced by Rep. Clack 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

1 750.455 of the Michigan Compiled Laws, or a local ordinance
2 prohibiting prostitution or engaging or offering to engage the
3 services of a prostitute may, UPON ORDER OF THE COURT, be
4 examined ~~at the discretion of the local health department~~ OR
5 TESTED to determine whether the individual has venereal disease,
6 HIV INFECTION, ACQUIRED IMMUNODEFICIENCY SYNDROME, OR IMMUNODEFI-
7 CIENCY RELATED COMPLEX. EXAMINATION OR TEST RESULTS THAT INDI-
8 CATE THE PRESENCE OF VENERAL DISEASE, HIV INFECTION, ACQUIRED
9 IMMUNODEFICIENCY SYNDROME, OR IMMUNODEFICIENCY RELATED COMPLEX
10 SHALL BE REPORTED TO THE DEFENDANT AND TO THE DEPARTMENT AND THE
11 LOCAL HEALTH DEPARTMENT FOR PARTNER NOTIFICATION.

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

1 VENEREAL DISEASE, HIV infection, acquired immunodeficiency
2 syndrome, and acquired immunodeficiency syndrome related
3 complex. Counseling under this subsection shall be voluntary on
4 the part of the individual.

5 (3) IF A DEFENDANT IS BOUND OVER TO CIRCUIT COURT FOR A VIO-
6 LATION OF SECTION 338, 338A, 338B, 520B, 520C, 520D, OR 520G OF
7 ACT NO. 328 OF THE PUBLIC ACTS OF 1931 AND THE DISTRICT COURT
8 DETERMINES THERE IS PROBABLE CAUSE TO BELIEVE THE VIOLATION
9 INVOLVED SEXUAL PENETRATION, THE DISTRICT COURT SHALL ORDER THE
10 DEFENDANT TO BE EXAMINED OR TESTED FOR VENEREAL DISEASE AND FOR
11 THE PRESENCE OF HIV OR AN ANTIBODY TO HIV. IF A DEFENDANT IS
12 BOUND OVER TO CIRCUIT COURT FOR A VIOLATION OF SECTION 452 OR 455
13 OF ACT NO. 328 OF THE PUBLIC ACTS OF 1931 AND THE DISTRICT COURT
14 DETERMINES THERE IS PROBABLE CAUSE TO BELIEVE THE VIOLATION
15 INVOLVED SEXUAL PENETRATION, THE DISTRICT COURT SHALL ORDER THE
16 DEFENDANT TO BE EXAMINED OR TESTED FOR VENEREAL DISEASE AND FOR
17 THE PRESENCE OF HIV OR AN ANTIBODY TO HIV, UNLESS THE COURT
18 DETERMINES EXAMINING OR TESTING THE DEFENDANT WOULD BE INAPPRO-
19 PRIATE AND DOCUMENTS THE REASONS FOR THAT DETERMINATION IN THE
20 COURT RECORD. EXCEPT AS PROVIDED IN SUBSECTION (5) OR (6), OR AS
21 OTHERWISE PROVIDED BY LAW, THE EXAMINATIONS AND TESTS SHALL BE
22 CONFIDENTIALLY ADMINISTERED BY A LICENSED PHYSICIAN, THE DEPART-
23 MENT OF PUBLIC HEALTH, OR A LOCAL HEALTH DEPARTMENT. THE COURT
24 ALSO SHALL ORDER THE DEFENDANT TO RECEIVE COUNSELING REGARDING
25 VENEREAL DISEASE AND HIV INFECTION, ACQUIRED IMMUNODEFICIENCY
26 SYNDROME, AND ACQUIRED IMMUNODEFICIENCY SYNDROME RELATED COMPLEX

1 INCLUDING, AT A MINIMUM, INFORMATION REGARDING TREATMENT,
2 TRANSMISSION, AND PROTECTIVE MEASURES.

3 (4) ~~(3)~~ Upon conviction of a defendant for a violation of
4 section 338, 338a, 338b, 448, 449, 449a, 520b, 520c, 520d, 520e,
5 or 520g of Act No. 328 of the Public Acts of 1931 ~~, being sec-~~
6 ~~tions 750.338, 750.338a, 750.338b, 750.448, 750.449, 750.449a,~~
7 ~~750.520b, 750.520c, 750.520d, 750.520e, and 750.520g of the~~
8 ~~Michigan Compiled Laws,~~ or a crime involving the intravenous use
9 of a controlled substance in violation of section 7404, the court
10 having jurisdiction of the criminal prosecution shall order the
11 defendant to be EXAMINED OR tested for VENEREAL DISEASE AND FOR
12 the presence of HIV or an antibody to HIV. Upon conviction of a
13 defendant for a violation of section 450, 452, or 455 of Act
14 No. 328 of the Public Acts of 1931, ~~being sections 750.450,~~
15 ~~750.452, and 750.455 of the Michigan Compiled Laws,~~ the court
16 having jurisdiction of the criminal prosecution shall order the
17 defendant to be EXAMINED OR tested for VENEREAL DISEASE AND FOR
18 the presence of HIV or an antibody to HIV, unless the court
19 determines that EXAMINING OR testing the defendant would be inap-
20 propriate and documents the reasons for that determination in the
21 court record. EXCEPT AS PROVIDED IN SUBSECTION (5) OR (6), OR AS
22 OTHERWISE PROVIDED BY LAW, THE ~~The test~~ EXAMINATIONS AND TESTS
23 shall be confidentially administered by a licensed physician, the
24 department of public health, or a local health department. The
25 court also shall order the defendant to receive counseling
26 regarding VENEREAL DISEASE AND HIV infection, acquired
27 immunodeficiency syndrome, and acquired immunodeficiency syndrome

1 related complex including, at a minimum, information regarding
2 treatment, transmission, and protective measures.

3 (5) ~~(4)~~ If the victim or person with whom the defendant
4 engaged in sexual penetration during the course of the crime con-
5 sents, the court shall provide the person or agency CONDUCTING
6 THE EXAMINATIONS OR administering the ~~test~~ TESTS under
7 subsection (3) OR (4) with the name, address, and telephone
8 number of the victim or person with whom the defendant engaged in
9 sexual penetration during the course of the crime. After the
10 defendant is EXAMINED OR tested as to the presence of VENEREAL
11 DISEASE OR OF HIV or an antibody to HIV, the person or agency
12 CONDUCTING THE EXAMINATIONS OR administering the ~~test~~ TESTS
13 shall immediately provide the EXAMINATION OR test results to the
14 victim or person with whom the defendant engaged in sexual pene-
15 tration during the course of the crime, and shall refer the
16 victim or other person for appropriate counseling.

17 (6) ~~(5)~~ The EXAMINATION OR test results and any other med-
18 ical information obtained from the defendant by the person or
19 agency CONDUCTING THE EXAMINATIONS OR administering the ~~test~~
20 TESTS under subsection (3) OR (4) shall be transmitted to the
21 court and, after the defendant is sentenced, made part of the
22 court record. THE EXAMINATION OR TEST RESULTS ARE CONFIDENTIAL,
23 BUT SHALL BE DISCLOSED TO THE DEFENDANT, THE LOCAL HEALTH DEPART-
24 MENT, AND THE DEPARTMENT, AND TO THE VICTIM ~~, but are confiden-~~
25 ~~tial and shall be disclosed only to the defendant, the local~~
26 ~~health department, the department, the victim, or other person~~
27 ~~required~~ WHO HAS REQUESTED to be informed of the results under

1 subsection ~~(4)~~ (5); ~~—~~ upon written authorization of the
2 defendant; ~~—~~ or ~~except~~ as otherwise provided by law. If the
3 defendant is placed in the custody of the department of correc-
4 tions, the court shall transmit a copy of the defendant's
5 EXAMINATION AND test results and other medical information to the
6 department of corrections. A person or agency that discloses
7 information in compliance with this subsection shall not be civ-
8 ily or criminally liable for making the disclosure.

9 (7) ~~(6)~~ If an individual receives counseling or is
10 EXAMINED OR tested under this section, and is found to be
11 INFECTED WITH A VENEREAL DISEASE OR TO BE HIV infected, the indi-
12 vidual shall be referred by the agency providing the counseling
13 or testing for appropriate medical care. The department, the
14 local health department, or any other agency providing counseling
15 or testing under this section shall not be financially responsi-
16 ble for medical care received by an individual as a result of a
17 referral made under this subsection.

18 (8) THE REQUIREMENTS FOR THE DISTRIBUTION OF INFORMATION
19 CONCERNING VENEREAL DISEASE, COUNSELING CONCERNING VENEREAL DIS-
20 EASE, AND EXAMINING OR TESTING FOR VENEREAL DISEASE UNDER
21 SUBSECTIONS (2), (3), AND (4) DO NOT APPLY TO AN INDIVIDUAL
22 CHARGED WITH OR CONVICTED OF VIOLATING SECTION 7404 BY INTRAVE-
23 NOUSLY USING A CONTROLLED SUBSTANCE.

24 (9) ~~(7)~~ As used in this section, "sexual penetration"
25 means sexual intercourse, cunnilingus, fellatio, anal inter-
26 course, or any other intrusion, however slight, of any part of a

1 person's body or of any object into the genital or anal openings
2 of another person's body, but emission of semen is not required.