



HOUSE BILL No. 4629

April 21, 1993, Introduced by Rep. Mathieu 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 145A, 338, 338a, 338b, 448, 449, 449a, 450, 452, 455,
7 520b, 520c, 520d, 520e, or 520g of the Michigan penal code, Act
8 No. 328 of the Public Acts of 1931, being sections 750.145A,
9 750.338, 750.338a, 750.338b, 750.448, 750.449, 750.449a, 750.450,
10 750.452, 750.455, 750.520b, 750.520c, 750.520d, 750.520e, and
11 750.520g of the Michigan Compiled Laws; a local ordinance prohib-
12 iting prostitution, solicitation, or gross indecency; or
13 section 7404 by intravenously using a controlled substance, the
14 judge or magistrate responsible for setting the individual's con-
15 ditions of release pending trial shall distribute to the individ-
16 ual the information on HIV transmission required to be distrib-
17 uted by county clerks under section 5119(1) and shall recommend
18 that the individual obtain additional information and counseling
19 at a local health department testing and counseling center
20 regarding HIV infection, acquired immunodeficiency syndrome, and
21 acquired immunodeficiency syndrome related complex. Counseling
22 under this subsection ~~shall be~~ IS voluntary on the part of the
23 individual.

24 (3) Upon conviction of a defendant for a violation of
25 section 145A, 338, 338a, 338b, 448, 449, 449a, 520b, 520c, 520d,
26 520e, or 520g of Act No. 328 of the Public Acts of 1931, being
27 sections 750.145A, 750.338, 750.338a, 750.338b, 750.448, 750.449,

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

21 (4) If the victim or person with whom the defendant engaged
22 in sexual penetration during the course of the crime consents,
23 the court shall provide the person or agency administering the
24 test under subsection (3) with the name, address, and telephone
25 number of the victim or person with whom the defendant engaged in
26 sexual penetration during the course of the crime. IF THE VICTIM
27 OR PERSON WITH WHOM THE DEFENDANT ENGAGED IN SEXUAL PENETRATION

1 DURING THE COURSE OF THE CRIME IS A MINOR OR OTHERWISE
2 INCAPACITATED, THE VICTIM'S OR PERSON'S PARENT, GUARDIAN, OR
3 PERSON IN LOCO PARENTIS MAY GIVE CONSENT FOR PURPOSES OF THIS
4 SUBSECTION. After the defendant is tested as to the presence of
5 HIV or an antibody to HIV, the person or agency administering the
6 test shall immediately provide the test results to the victim or
7 person with whom the defendant engaged in sexual penetration
8 during the course of the crime, and shall refer the victim or
9 other person for appropriate counseling.

10 (5) The test results and any other medical information
11 obtained from the defendant by the person or agency administering
12 the test under subsection (3) shall be transmitted to the court
13 and, after the defendant is sentenced, made part of the court
14 record, but are confidential and shall be disclosed only to the
15 defendant, the local health department, the department, the
16 victim ~~—~~ or other person required to be informed of the results
17 under subsection (4) OR IF THE VICTIM OR PERSON IS A MINOR OR
18 OTHERWISE INCAPACITATED, TO THE VICTIM'S OR PERSON'S PARENT,
19 GUARDIAN, OR PERSON IN LOCO PARENTIS, upon written authorization
20 of the defendant, or except as otherwise provided by law. If the
21 defendant is placed in the custody of the department of correc-
22 tions, the court shall transmit a copy of the defendant's test
23 results and other medical information to the department of
24 corrections. A person or agency that discloses information in
25 compliance with this subsection ~~shall~~ IS not ~~be~~ civilly or
26 criminally liable for making the disclosure.

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

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