



# HOUSE BILL No. 4734

May 6, 1993, Introduced by Reps. Oxender, Jamian, Bodem, Rocca, Crissman, McNutt and Porreca 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 XIIIA 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 XIIIA 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 XIIIA 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 XIIIA 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 XIIIA 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.

(5) The test results and any other medical information obtained from the defendant OR CHILD FOUND TO BE WITHIN THE PROVISIONS OF SECTION 2(A)(1) OF CHAPTER XIIA OF ACT NO. 288 OF THE PUBLIC ACTS OF 1939 by the person or agency administering the test under subsection (3) shall be transmitted to the court OR PROBATE COURT and, after the defendant OR CHILD FOUND TO BE WITHIN THE PROVISIONS OF SECTION 2(A)(1) OF CHAPTER XIIA OF ACT NO. 288 OF THE PUBLIC ACTS OF 1939 is sentenced, made part of the court record, but are confidential and shall be disclosed only to the defendant OR CHILD FOUND TO BE WITHIN THE PROVISIONS OF SECTION 2(A)(1) OF CHAPTER XIIA OF ACT NO. 288 OF THE PUBLIC ACTS OF 1939, the local health department, the department, the victim, or other person required to be informed of the results under THIS SUBSECTION OR subsection (4), upon written authorization of the defendant OR CHILD FOUND TO BE WITHIN THE PROVISIONS OF SECTION 2(A)(1) OF CHAPTER XIIA OF ACT NO. 288 OF THE PUBLIC ACTS OF 1939 OR THE CHILD'S PARENT OR LEGAL GUARDIAN, or except as otherwise provided by law. If the defendant is placed in the custody of the department of corrections, the court shall transmit a copy of the defendant's test results and other medical information to the department of corrections. IF THE CHILD FOUND TO BE WITHIN THE PROVISIONS OF SECTION 2(A)(1) OF CHAPTER XIIA OF ACT NO. 288 OF THE PUBLIC ACTS OF 1939 IS PLACED BY THE PROBATE COURT IN THE CUSTODY OF A PERSON RELATED TO THE CHILD OR A PUBLIC OR PRIVATE AGENCY, INSTITUTION, OR FACILITY, THE PROBATE COURT SHALL TRANSMIT A COPY OF THE CHILD'S TEST RESULTS TO THE PERSON 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.