



# HOUSE BILL No. 5820

September 20, 1994, Introduced by Rep Llewellyn 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 amended by Act No 200 of the Public Acts of 1994, 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 amended by Act No 200 of the Public Acts of 1994,  
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 upon order of the court be  
3 examined or tested to determine whether the individual has vene-  
4 real disease hepatitis B infection HIV infection or acquired  
5 immunodeficiency syndrome Examination or test results that  
6 indicate the presence of venereal disease hepatitis B infection  
7 HIV infection or acquired immunodeficiency syndrome shall be  
8 reported to the defendant and to the department and the local  
9 health department for partner notification

10 (2) Except as otherwise provided in this section if an  
11 individual is arrested and charged with violating section 338  
12 338a 338b, 448, 449 449a 450, 452, 455, 520b, 520c, 520d,  
13 520e or 520g of the Michigan penal code Act No 328 of the  
14 Public Acts of 1931 being sections 750 338 750 338a 750 338b,  
15 750 448, 750 449 750 449a, 750 450 750 452 750 455 750 520b,  
16 750 520c 750 520d 750 520e, and 750 520g of the Michigan  
17 Compiled Laws a local ordinance prohibiting prostitution, solici-  
18 tation or gross indecency or section 7404 by intravenously  
19 using a controlled substance the judge or magistrate responsible  
20 for setting the individual s conditions of release pending trial  
21 shall distribute to the individual the information on venereal  
22 disease and HIV transmission required to be distributed by county  
23 clerks under section 5119(1) and shall recommend that the indi-  
24 vidual obtain additional information and counseling at a local  
25 health department testing and counseling center regarding vene-  
26 real disease hepatitis B infection, HIV infection, and acquired

1 immunodeficiency syndrome     Counseling under this subsection  
2 shall be voluntary on the part of the individual

3        (3) If a defendant is bound over to circuit court or  
4 recorder s court for a violation of section 338 338a 338b 450  
5 452 455 520b, 520c 520d, 520e or 520g of Act No 328 of the  
6 Public Acts of 1931 and the district court determines there is  
7 reason to believe the violation involved sexual penetration or  
8 exposure to a body fluid of the defendant, the district court  
9 shall order the defendant to be examined or tested for venereal  
10 disease and hepatitis B infection and for the presence of HIV or  
11 an antibody to HIV     Except as provided in subsection (5) or (6),  
12 or as otherwise provided by law, the examinations and tests shall  
13 be confidentially administered by a licensed physician, the  
14 department of public health, or a local health department     The  
15 court also shall order the defendant to receive counseling  
16 regarding venereal disease, hepatitis B infection, HIV infection  
17 and acquired immunodeficiency syndrome including, at a minimum,  
18 information regarding treatment transmission, and protective  
19 measures

20        (4) Except as otherwise provided in this section upon con-  
21 viction of a defendant or the issuance by the probate court of an  
22 order adjudicating a child to be within the provisions of  
23 section 2(a)(1) of chapter XIIA of Act No 288 of the Public Acts  
24 of 1939 being section 712A 2 of the Michigan Compiled Laws for  
25 a violation of section 338, 338a, 338b, 448, 449, 449a, 450, 452  
26 455 520b 520c 520d 520e or 520g of Act No 328 of the Public  
27 Acts of 1931 being sections 750 338 750 338a 750 338b

1 /50 448 /50 449 /50 449a 750 450 750 452 750 455 750 520b  
2 /50 520c 750 520d 750 520e and 750 520g of the Michigan  
3 Compiled Laws, or a crime involving the intravenous use of a con-  
4 trolled substance in violation of section 7404, the court having  
5 jurisdiction of the criminal prosecution or juvenile hearing  
6 shall order the defendant or child found to be within the provi-  
7 sions of section 2(a)(1) of chapter XIIA of Act No 288 of the  
8 Public Acts of 1939 to be examined or tested for venereal disease  
9 and hepatitis B infection and for the presence of HIV or an anti-  
10 body to HIV Except as provided in subsection (5) or (6), or as  
11 otherwise provided by law, the examinations and tests shall be  
12 confidentially administered by a licensed physician, the depart-  
13 ment of public health or a local health department The court  
14 also shall order the defendant or child found to be within the  
15 provisions of section 2(a)(1) of chapter XIIA of Act No 288 of  
16 the Public Acts of 1939 to receive counseling regarding venereal  
17 disease hepatitis B infection HIV infection and acquired immu-  
18 nodeficiency syndrome including at a minimum, information  
19 regarding treatment transmission and protective measures  
20 (5) If the victim or person with whom the defendant or child  
21 found to be within the provisions of section 2(a)(1) of chapter  
22 XIIA of Act No 288 of the Public Acts of 1939 engaged in sexual  
23 penetration or sexual contact or who was exposed to a body fluid  
24 during the course of the crime consents, the court or probate  
25 court shall provide the person or agency conducting the examina-  
26 tions or administering the tests under subsection (3) or (4) with  
27 the name address and telephone number of the victim or person

1 with whom the defendant or child found to be within the  
2 provisions of section 2(a)(1) of chapter XIIA of Act No 288 of  
3 the Public Acts of 1939 engaged in sexual penetration or sexual  
4 contact or who was exposed to a body fluid of the defendant  
5 during the course of the crime After the defendant or child  
6 found to be within the provisions of section 2(a)(1) of chapter  
7 XIIA of Act No 288 of the Public Acts of 1939 is examined or  
8 tested as to the presence of venereal disease, of hepatitis B  
9 infection, or of HIV or an antibody to HIV, the person or agency  
10 conducting the examinations or administering the tests shall  
11 immediately provide the examination or test results to the victim  
12 or person with whom the defendant or child found to be within the  
13 provisions of section 2(a)(1) of chapter XIIA of Act No 288 of  
14 the Public Acts of 1939 engaged in sexual penetration or sexual  
15 contact or who was exposed to a body fluid during the course of  
16 the crime and shall refer the victim or other person for appro-  
17 priate counseling

18 (6) The examination or test results and any other medical  
19 information obtained from the defendant or child found to be  
20 within the provisions of section 2(a)(1) of chapter XIIA of Act  
21 No 288 of the Public Acts of 1939 by the person or agency con-  
22 ducting the examinations or administering the tests under  
23 subsection (3) or (4) shall be transmitted to the court or pro-  
24 bate court AND THE COUNTY JAIL IN WHICH THE DEFENDANT IS BEING  
25 HELD PRIOR TO SENTENCING and after the defendant or child found  
26 to be within the provisions of section 2(a)(1) of chapter XIIA of  
27 Act No 288 of the Public Acts of 1939 is sentenced or an order

1 of disposition is entered SHALL BE made part of the court  
2 record but are confidential and shall be disclosed only to the  
3 defendant or child found to be within the provisions of  
4 section 2(a)(1) of chapter XIIA of Act No 288 of the Public Acts  
5 of 1939, the local health department, the department, the victim  
6 or ~~other~~ ANOTHER person required to be informed of the results  
7 under this subsection or subsection (5) ~~, upon written authori-~~  
8 ~~zation of 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 or the child's parent or legal guardian, or~~  
11 ~~as otherwise provided by law~~ If the defendant is placed in the  
12 custody of the department of corrections, the court shall trans-  
13 mit a copy of the defendant's examination and test results and  
14 other medical information to the department of corrections If  
15 the 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 is placed  
17 by the probate court in the custody of a person related to the  
18 child or a public or private agency institution, or facility  
19 the probate court shall transmit a copy of the child's examina-  
20 tion or test results to the person related to the child or the  
21 director of the agency institution or facility A person or  
22 agency that discloses information in compliance with this subsec-  
23 tion is not civilly or criminally liable for making the  
24 disclosure A person or agency that receives test results or  
25 other medical information under this subsection is subject to  
26 section 5131 and shall not disclose the test results or other

1 medical information except as specifically permitted under that  
2 section

3       (7) If an individual receives counseling or is examined or  
4 tested under this section and is found to be infected with a  
5 venereal disease or hepatitis B or to be HIV infected the indi-  
6 vidual shall be referred by the agency providing the counseling  
7 or testing for appropriate medical care The department the  
8 local health department or any other agency providing counseling  
9 or testing under this section is not financially responsible for  
10 medical care received by an individual as a result of a referral  
11 made under this subsection

12       (8) The requirements for the distribution of information  
13 concerning venereal disease counseling concerning venereal dis-  
14 ease and examining or testing for venereal disease under  
15 subsections (2) (3) and (4) do not apply to an individual  
16 charged with or convicted of violating section 7404 by intrave-  
17 nously using a controlled substance

18       (9) As used in this section

19       (a) "Sexual contact includes the intentional touching of  
20 the victim s or actor s intimate parts or the intentional touch-  
21 ing of the clothing covering the immediate area of the victim s  
22 or actor s intimate parts if that intentional touching can rea-  
23 sonably be construed as being for the purpose of sexual arousal  
24 or gratification

25       (b) Sexual penetration means sexual intercourse cunnilin-  
26 gus fellatio anal intercourse, or any other intrusion, however  
27 slight of any part of a person s body or of any object into the

1 genital or anal openings of another person's body but emission  
2 of semen is not required

3 (c) Victim includes but is not limited to including a  
4 person subjected to criminal sexual conduct in violation of sec-  
5 tion 520b 520c 520d 520e or 520g of the Michigan penal code  
6 Act No 328 of the Public Acts of 1931 being sections 750 520b,  
7 750 520c 750 520d 750 520e and 750 520g of the Michigan  
8 Compiled Laws