



# SENATE BILL No. 1028

February 22, 1994, Introduced by Senator WELBORN and  
referred to the Committee on Health Policy and Senior  
Citizens

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 XIIIA 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 XIIIA 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 XIIIA 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 XIIIA 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

1 counseling AND, UPON REQUEST OF THE VICTIM OR OTHER PERSON FOR  
2 TESTING FOR THE PRESENCE OF HIV OR AN ANTIBODY TO HIV

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

1 SHALL TRANSMIT A COPY OF THE CHILD'S TEST RESULTS TO THE PERSON  
2 RELATED TO THE CHILD OR THE DIRECTOR OF THE AGENCY, INSTITUTION,  
3 OR FACILITY A person or agency that discloses information in  
4 compliance with this subsection ~~shall~~ IS not ~~be~~ civilly or  
5 criminally liable for making the disclosure

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

14 (7) As used in this section ~~—,"sexual"~~

15 (A) "CONVICTION" MEANS A JUDGMENT ENTERED BY A COURT UPON A  
16 PLEA OF GUILTY, GUILTY BUT MENTALLY ILL, OR NOLO CONTENDERE OR  
17 UPON A JURY VERDICT OR COURT FINDING THAT A DEFENDANT IS GUILTY  
18 OR GUILTY BUT MENTALLY ILL

19 (B) "SEXUAL penetration" means sexual intercourse, cunnilin-  
20 gus, fellatio, anal intercourse, or any other intrusion, however  
21 slight, of any part of a person's body or of any object into the  
22 genital or anal openings of another person's body, but emission  
23 of semen is not required