



# HOUSE BILL No. 4362

February 9, 1995, Introduced by Reps. Mathieu, DeMars, DeHart, Goschka, Voorhees, Baade, LaForge, Agee, Hanley, Pitoniak and Oxender and referred to the Committee on Health Policy.

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

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 or tested to determine whether the individual has vene-  
5 real disease, hepatitis B infection, HIV infection, or acquired  
6 immunodeficiency syndrome. Examination or test results that  
7 indicate the presence of venereal disease, hepatitis B infection,  
8 HIV infection, or acquired immunodeficiency syndrome shall be  
9 reported to the defendant and, PURSUANT TO SECTIONS 5114 AND  
10 5114A, to the department and the APPROPRIATE local health depart-  
11 ment for partner notification.

12 (2) Except as otherwise provided in this section, if an  
13 individual is arrested and charged with violating section 145A,  
14 338, 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 750.145A, 750.338, 750.338a,  
17 750.338b, 750.448, 750.449, 750.449a, 750.450, 750.452, 750.455,  
18 750.520b, 750.520c, 750.520d, 750.520e, and 750.520g of the  
19 Michigan Compiled Laws, ~~or a local ordinance prohibiting prosti-~~  
20 ~~tution, solicitation, or gross indecency,~~ or section 7404 by  
21 intravenously using a controlled substance, OR A LOCAL ORDINANCE  
22 PROHIBITING PROSTITUTION, SOLICITATION, GROSS INDECENCY, OR THE  
23 INTRAVENOUS USE OF A CONTROLLED SUBSTANCE, the judge or magis-  
24 trate responsible for setting the individual's conditions of  
25 release pending trial shall distribute to the individual the  
26 information on venereal disease and HIV transmission required to  
27 be distributed by county clerks under section 5119(1) and shall

1 recommend that the individual obtain additional information and  
2 counseling at a local health department testing and counseling  
3 center regarding venereal disease, hepatitis B infection, HIV  
4 infection, and acquired immunodeficiency syndrome. Counseling  
5 under this subsection shall be voluntary on the part of the  
6 individual.

7 (3) If a defendant is bound over to circuit court or  
8 recorder's court for a violation of section 145A, 338, 338a,  
9 338b, 450, 452, 455, 520b, 520c, 520d, 520e, or 520g of Act  
10 No. 328 of the Public Acts of 1931 and the district court deter-  
11 mines there is reason to believe the violation involved sexual  
12 penetration or exposure to a body fluid of the defendant, the  
13 district court shall order the defendant to be examined or tested  
14 for venereal disease and hepatitis B infection and for the pres-  
15 ence of HIV or an antibody to HIV. Except as provided in  
16 subsection (5), ~~or~~ (6), OR (7), or as otherwise provided by  
17 law, the examinations and tests shall be confidentially adminis-  
18 tered by a licensed physician, the department of public health,  
19 or a local health department. The court also shall order the  
20 defendant to receive counseling regarding venereal disease,  
21 hepatitis B infection, HIV infection, and acquired immunodefi-  
22 ciency syndrome including, at a minimum, information regarding  
23 treatment, transmission, and protective measures.

24 (4) Except as otherwise provided in this section, upon con-  
25 viction of a defendant or the issuance by the probate court of an  
26 order adjudicating a child to be within the provisions of  
27 section 2(a)(1) of chapter XIIIA of Act No. 288 of the Public Acts

1 of 1939, being section 712A.2 of the Michigan Compiled Laws, for  
2 ~~a violation of~~ VIOLATING section 145A, 338, 338a, 338b, 448,  
3 449, 449a, 450, 452, 455, 520b, 520c, 520d, 520e, or 520g of Act  
4 No. 328 of the Public Acts of 1931, being sections 750.145A,  
5 750.338, 750.338a, 750.338b, 750.448, 750.449, 750.449a, 750.450,  
6 750.452, 750.455, 750.520b, 750.520c, 750.520d, 750.520e, and  
7 750.520g of the Michigan Compiled Laws, or ~~a crime involving the~~  
8 ~~intravenous use of a controlled substance in violation of~~  
9 section 7404 BY INTRAVENOUSLY USING A CONTROLLED SUBSTANCE, OR A  
10 LOCAL ORDINANCE PROHIBITING PROSTITUTION, SOLICITATION, GROSS  
11 INDECENCY, OR THE INTRAVENOUS USE OF A CONTROLLED SUBSTANCE, the  
12 court having jurisdiction of the criminal prosecution or juvenile  
13 hearing shall order the defendant or child ~~found to be within~~  
14 ~~the provisions of section 2(a)(1) of chapter XIIIA of Act No. 288~~  
15 ~~of the Public Acts of 1939~~ to be examined or tested for venereal  
16 disease and hepatitis B infection and for the presence of HIV or  
17 an antibody to HIV. Except as provided in subsection (5), ~~or~~  
18 (6), OR (7), or as otherwise provided by law, the examinations  
19 and tests shall be confidentially administered by a licensed phy-  
20 sician, the department of public health, or a local health  
21 department. The court also shall order the defendant or child  
22 ~~found to be within the provisions of section 2(a)(1) of chapter~~  
23 ~~XIIIA of Act No. 288 of the Public Acts of 1939~~ to receive coun-  
24 seling regarding venereal disease, hepatitis B infection, HIV  
25 infection, and acquired immunodeficiency syndrome including, at a  
26 minimum, information regarding treatment, transmission, and  
27 protective measures.

1 (5) If the victim or person with whom the defendant or child  
2 found to be within the provisions of section 2(a)(1) of chapter  
3 XIIIA of Act No. 288 of the Public Acts of 1939 engaged in sexual  
4 penetration or sexual contact or who was exposed to a body fluid  
5 during the course of the crime consents, the court or probate  
6 court shall provide the person or agency conducting the examina-  
7 tions or administering the tests under subsection (3) or (4) with  
8 the name, address, and telephone number of the victim or person  
9 with whom the defendant or child ~~found to be within the provi-~~  
10 ~~sions of section 2(a)(1) of chapter XIIIA of Act No. 288 of the~~  
11 ~~Public Acts of 1939~~ engaged in sexual penetration or sexual con-  
12 tact or who was exposed to a body fluid of the defendant during  
13 the course of the crime. IF THE VICTIM OR PERSON WITH WHOM THE  
14 DEFENDANT OR CHILD ENGAGED IN SEXUAL PENETRATION DURING THE  
15 COURSE OF THE CRIME IS A MINOR OR OTHERWISE INCAPACITATED, THE  
16 VICTIM'S OR PERSON'S PARENT, GUARDIAN, OR PERSON IN LOCO PARENTIS  
17 MAY GIVE CONSENT FOR PURPOSES OF THIS SUBSECTION. 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 examined or tested as to the presence of venereal  
21 disease, of hepatitis B infection, or of HIV or an antibody to  
22 HIV, the person or agency conducting the examinations or adminis-  
23 tering the tests shall immediately provide the examination or  
24 test results to the victim or person with whom the defendant or  
25 child found to be within the provisions of section 2(a)(1) of  
26 chapter XIIIA of Act No. 288 of the Public Acts of 1939 engaged in  
27 sexual penetration or sexual contact or who was exposed to a body

1 fluid during the course of the crime, and shall refer the victim  
2 or other person for appropriate counseling.

3 (6) The examination or test results and any other medical  
4 information obtained from the defendant or child found to be  
5 within the provisions of section 2(a)(1) of chapter XIIIA of Act  
6 No. 288 of the Public Acts of 1939 by the person or agency con-  
7 ducting the examinations or administering the tests under  
8 subsection (3) or (4) shall be transmitted to the court or pro-  
9 bate court and, after the defendant or child ~~found to be within~~  
10 ~~the provisions of section 2(a)(1) of chapter XIIIA of Act No. 288~~  
11 ~~of the Public Acts of 1939~~ is sentenced or an order of disposi-  
12 tion is entered, made part of the court record, but are confiden-  
13 tial and shall be disclosed only to 1 OR MORE OF the FOLLOWING:

14 (A) THE defendant or child. ~~found to be within the provi-~~  
15 ~~sions of section 2(a)(1) of chapter XIIIA of Act No. 288 of the~~  
16 ~~Public Acts of 1939, the~~

17 (B) THE local health department. ~~the~~

18 (C) THE department. ~~the~~

19 (D) THE victim ~~or~~ other person required to be informed  
20 of the results under this subsection or subsection (5) ~~upon~~  
21 OR, IF THE VICTIM OR OTHER PERSON IS A MINOR OR OTHERWISE INCA-  
22 PACITATED, TO THE VICTIM'S OR OTHER PERSON'S PARENT, GUARDIAN, OR  
23 PERSON LOCO PARENTIS.

24 (E) UPON written authorization of the defendant or child  
25 found to be within the provisions of section 2(a)(1) of chapter  
26 XIIIA of Act No. 288 of the Public Acts of 1939 or the child's  
27 parent, ~~or legal~~ guardian, or ~~as~~ PERSON IN LOCO PARENTIS.

1 (F) AS otherwise provided by law.

2 (7) If the defendant is placed in the custody of the depart-  
3 ment of corrections, the court shall transmit a copy of the  
4 defendant's examination and test results and other medical infor-  
5 mation to the department of corrections. If the child found to  
6 be within the provisions of section 2(a)(1) of chapter XIIA of  
7 Act No. 288 of the Public Acts of 1939 is placed by the probate  
8 court in the custody of a person related to the child or a public  
9 or private agency, institution, or facility, the probate court  
10 shall transmit a copy of the child's examination or test results  
11 to the person related to the child or the director of the agency,  
12 institution, or facility. A person or agency that discloses  
13 information in compliance with this subsection OR SUBSECTION (6)  
14 is not civilly or criminally liable for making the disclosure. A  
15 person or agency that receives test results or other medical  
16 information PERTAINING TO HIV INFECTION OR ACQUIRED IMMUNODEFI-  
17 CIENCY SYNDROME under this subsection OR SUBSECTION (6) is  
18 subject to section 5131 and shall not disclose the test results  
19 or other medical information except as specifically permitted  
20 under that section.

21 (8) ~~(7)~~ If an individual receives counseling or is  
22 examined or tested under this section and is found to be infected  
23 with a venereal disease or hepatitis B or to be HIV infected, the  
24 individual shall be referred by the agency providing the counsel-  
25 ing or testing for appropriate medical care. The department, the  
26 local health department, or any other agency providing counseling  
27 or testing under this section is not financially responsible for

1 medical care received by an individual as a result of a referral  
2 made under this subsection.

3 (9) ~~(8)~~ The requirements for the distribution of informa-  
4 tion concerning venereal disease, counseling concerning venereal  
5 disease, and examining or testing for venereal disease under  
6 subsections (2), (3), and (4) do not apply to an individual  
7 charged with or convicted of violating section 7404 by intrave-  
8 nously using a controlled substance OR VIOLATING A LOCAL ORDI-  
9 NANCE PROHIBITING THE INTRAVENOUS USE OF A CONTROLLED SUBSTANCE.

10 (10) ~~(9)~~ As used in this section:

11 (a) "Sexual contact" includes the intentional touching of  
12 the victim's or actor's intimate parts or the intentional touch-  
13 ing of the clothing covering the immediate area of the victim's  
14 or actor's intimate parts, if that intentional touching can rea-  
15 sonably be construed as being for the purpose of sexual arousal  
16 or gratification.

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

22 (c) "Victim" includes, but is not limited to, ~~including,~~ a  
23 person subjected to criminal sexual conduct in violation of sec-  
24 tion 520b, 520c, 520d, 520e, or 520g of the Michigan penal code,  
25 Act No. 328 of the Public Acts of 1931, being sections 750.520b,  
26 750.520c, 750.520d, 750.520e, and 750.520g of the Michigan  
27 Compiled Laws.