



HOUSE BILL No. 4750

April 27, 1995, Introduced by Reps. Llewellyn, Bush, Geiger, Hill, McBryde, Hammerstrom, Bobier, Goschka, Horton, Rhead, Jaye, Voorhees and Dalman and referred to the Committee on Judiciary and Civil Rights.

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 OR A LOCAL ORDINANCE
19 THAT IS SUBSTANTIALLY SIMILAR TO SECTION 7404 by intravenously
20 using a controlled substance, the judge or magistrate responsible
21 for setting the individual's conditions of release pending trial
22 shall distribute to the individual the information on venereal
23 disease and HIV transmission required to be distributed by county
24 clerks under section 5119(1) and shall recommend that the indi-
25 vidual obtain additional information and counseling at a local
26 health department testing and counseling center regarding
27 venereal disease, hepatitis B infection, HIV infection, and

1 acquired immunodeficiency syndrome. Counseling under this
2 subsection ~~shall be~~ IS voluntary on the part of the
3 individual.

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

21 (4) Except as otherwise provided in this section, upon con-
22 viction of a defendant or the issuance by the probate court of an
23 order adjudicating a child 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, being section 712A.2 of the Michigan Compiled Laws, for
26 a violation of section 338, 338a, 338b, 448, 449, 449a, 450, 452,
27 455, 520b, 520c, 520d, 520e, or 520g of Act No. 328 of the Public

1 Acts of 1931, being sections 750.338, 750.338a, 750.338b,
2 750.448, 750.449, 750.449a, 750.450, 750.452, 750.455, 750.520b,
3 750.520c, 750.520d, 750.520e, and 750.520g of the Michigan
4 Compiled Laws; A LOCAL ORDINANCE PROHIBITING PROSTITUTION, SOLIC-
5 ITATION, OR GROSS INDECENCY; or a crime involving the intravenous
6 use of a controlled substance in violation of section 7404 OR A
7 LOCAL ORDINANCE THAT IS SUBSTANTIALLY SIMILAR TO SECTION 7404,
8 the court having jurisdiction of the criminal prosecution or
9 juvenile hearing shall order the defendant or child ~~found to be~~
10 ~~within the provisions of section 2(a)(1) of chapter XIIIA of Act~~
11 ~~No. 288 of the Public Acts of 1939~~ to be examined or tested for
12 venereal disease and hepatitis B infection and for the presence
13 of HIV or an antibody to HIV. Except as provided in subsection
14 (5) or (6), or as otherwise provided by law, the examinations and
15 tests shall be confidentially administered by a licensed physi-
16 cian, the department of public health, or a local health
17 department. The court also shall order the defendant or child
18 ~~found to be within the provisions of section 2(a)(1) of chapter~~
19 ~~XIIIA of Act No. 288 of the Public Acts of 1939~~ to receive coun-
20 seling regarding venereal disease, hepatitis B infection, HIV
21 infection, and acquired immunodeficiency syndrome including, at a
22 minimum, information regarding treatment, transmission, and pro-
23 tective measures.

24 (5) If the victim or person with whom 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 engaged in sexual
27 penetration or sexual contact or who was exposed to a body fluid

1 during the course of the crime consents, the court or probate
2 court shall provide the person or agency conducting the examina-
3 tions or administering the tests under subsection (3) or (4) with
4 the name, address, and telephone number of the victim or person
5 with whom the defendant or child ~~found to be within the provi-~~
6 ~~sions of section 2(a)(1) of chapter XIIIA of Act No. 288 of the~~
7 ~~Public Acts of 1939~~ engaged in sexual penetration or sexual con-
8 tact or who was exposed to a body fluid of the defendant OR CHILD
9 during the course of the crime. After the defendant or child
10 ~~found to be within the provisions of section 2(a)(1) of chapter~~
11 ~~XIIIA of Act No. 288 of the Public Acts of 1939~~ is examined or
12 tested as to the presence of venereal disease, of hepatitis B
13 infection, ~~or~~ AND of HIV or an antibody to HIV, the person or
14 agency conducting the examinations or administering the tests
15 shall immediately provide the examination ~~or~~ AND test results
16 to the victim or person with whom the defendant or child ~~found~~
17 ~~to be within the provisions of section 2(a)(1) of chapter XIIIA of~~
18 ~~Act No. 288 of the Public Acts of 1939~~ engaged in sexual pene-
19 tration or sexual contact or who was exposed to a body fluid
20 during the course of the crime, and shall refer the victim or
21 other person for appropriate counseling.

22 (6) The examination or test results and any other RELATED
23 medical information obtained from the defendant or child found to
24 be within the provisions of section 2(a)(1) of chapter XIIIA of
25 Act No. 288 of the Public Acts of 1939 by the person or agency
26 conducting the examinations or administering the tests under
27 subsection (3) or (4) shall be transmitted to the court or

1 probate court and, after the defendant or child ~~found to be~~
2 ~~within the provisions of section 2(a)(1) of chapter XIII A of Act~~
3 ~~No. 288 of the Public Acts of 1939~~ is sentenced or an order of
4 disposition is entered, made part of the court record, but are
5 confidential and shall be disclosed only to the defendant or
6 child, ~~found to be within the provisions of section 2(a)(1) of~~
7 ~~chapter XIII A of Act No. 288 of the Public Acts of 1939,~~ the
8 local health department, the department, the victim ~~,~~ or other
9 person required to be informed of the results under this subsec-
10 tion or subsection (5), upon written authorization of the
11 defendant or child ~~found to be within the provisions of~~
12 ~~section 2(a)(1) of chapter XIII A of Act No. 288 of the Public Acts~~
13 ~~of 1939~~ or the child's parent or legal guardian, or as otherwise
14 provided by law. If the defendant is placed ~~in~~ UNDER the
15 ~~custody~~ JURISDICTION of the department of corrections OR A COR-
16 RECTIONAL FACILITY OPERATED BY A LOCAL UNIT OF GOVERNMENT, the
17 court shall transmit a copy of the defendant's examination and
18 test results and other RELATED medical information to the depart-
19 ment of corrections OR TO THE LOCAL CORRECTIONAL FACILITY. If
20 the child ~~found to be within the provisions of section 2(a)(1)~~
21 ~~of chapter XIII A of Act No. 288 of the Public Acts of 1939~~ is
22 placed by the probate court in the custody of a person related to
23 the child or IN THE CUSTODY OF a public or private agency, insti-
24 tution, or facility, the probate court shall transmit a copy of
25 the child's examination ~~or~~ AND test results AND OTHER RELATED
26 MEDICAL INFORMATION to the person related to the child or the
27 director of the agency, institution, or facility. A person or

1 agency that discloses information in compliance with this
2 subsection is not civilly or criminally liable for making the
3 disclosure. A person or agency that receives EXAMINATION AND
4 test results or other RELATED medical information under this sub-
5 section is subject to section 5131 and shall not disclose the
6 EXAMINATION AND test results or other RELATED medical information
7 except as specifically permitted under that section.

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

17 (8) The requirements for the distribution of information
18 concerning venereal disease, counseling concerning venereal dis-
19 ease, and examining or testing for venereal disease under
20 subsections (2), (3), and (4) do not apply to an individual
21 charged with or convicted of violating section 7404 OR A LOCAL
22 ORDINANCE THAT IS SUBSTANTIALLY SIMILAR TO SECTION 7404 by intra-
23 venously using a controlled substance.

24 (9) As used in this section:

25 (a) "Sexual contact" includes the intentional touching of
26 the victim's or actor's intimate parts or the intentional
27 touching of the clothing covering the immediate area of the

1 victim's or actor's intimate parts, if that intentional touching
2 can reasonably be construed as being for the purpose of sexual
3 arousal or gratification.

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

9 (c) "Victim" includes, but is not limited to including, a
10 person subjected to criminal sexual conduct in violation of sec-
11 tion 520b, 520c, 520d, 520e, or 520g of the Michigan penal code,
12 Act No. 328 of the Public Acts of 1931, being sections 750.520b,
13 750.520c, 750.520d, 750.520e, and 750.520g of the Michigan
14 Compiled Laws.