



HOUSE BILL No. 5578

February 14, 1996, Introduced by Rep. Jaye 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. 253 of the Public Acts of 1995, 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. 253 of the Public Acts of 1995,
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, pursuant to sections 5114 and
9 5114a, to the department and the appropriate local health depart-
10 ment for partner notification.

11 (2) Except as otherwise provided in this section, if an
12 individual is arrested and charged with violating section 145a,
13 338, 338a, 338b, 448, 449, 449a, 450, 452, 455, 520b, 520c, 520d,
14 520e, or 520g of the Michigan penal code, Act No. 328 of the
15 Public Acts of 1931, being sections 750.145a, 750.338, 750.338a,
16 750.338b, 750.448, 750.449, 750.449a, 750.450, 750.452, 750.455,
17 750.520b, 750.520c, 750.520d, 750.520e, and 750.520g of the
18 Michigan Compiled Laws, or section 7404 by intravenously using a
19 controlled substance, or a local ordinance prohibiting prostitu-
20 tion, solicitation, gross indecency, or the intravenous use of a
21 controlled substance, the judge or magistrate responsible for
22 setting the individual's conditions of release pending trial
23 shall distribute to the individual the information on venereal
24 disease and HIV transmission required to be distributed by county
25 clerks under section 5119(1) and shall recommend that the indi-
26 vidual obtain additional information and counseling at a local
27 health department testing and counseling center regarding

1 venereal disease, hepatitis B infection, HIV infection, and
2 acquired immunodeficiency syndrome. Counseling under this sub-
3 section shall be voluntary on the part of the individual.

4 (3) If a defendant is bound over to circuit court or
5 recorder's court for a violation of section 145a, 338, 338a,
6 338b, 450, 452, 455, 520b, 520c, 520d, 520e, or 520g of Act
7 No. 328 of the Public Acts of 1931 and the district court deter-
8 mines there is reason to believe the violation involved sexual
9 penetration or exposure to a body fluid of the defendant, the
10 district court shall order the defendant to be examined or tested
11 for venereal disease and hepatitis B infection and for the pres-
12 ence of HIV or an antibody to HIV. Except as provided in
13 subsection (5), (6), or (7), or as otherwise provided by law, the
14 examinations and tests shall be confidentially administered by a
15 licensed physician, the department of public health, or a local
16 health department. The court also shall order the defendant to
17 receive counseling regarding venereal disease, hepatitis B infec-
18 tion, HIV infection, and acquired immunodeficiency syndrome
19 including, at a minimum, information regarding treatment, trans-
20 mission, and protective 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 violating section 145a, 338, 338a, 338b, 448, 449, 449a, 450,
27 452, 455, 520b, 520c, 520d, 520e, or 520g of Act No. 328 of the

1 Public Acts of 1931, being sections 750.145a, 750.338, 750.338a,
2 750.338b, 750.448, 750.449, 750.449a, 750.450, 750.452, 750.455,
3 750.520b, 750.520c, 750.520d, 750.520e, and 750.520g of the
4 Michigan Compiled Laws, or section 7404 by intravenously using a
5 controlled substance, or a local ordinance prohibiting prostitu-
6 tion, solicitation, gross indecency, or the intravenous use of a
7 controlled substance, the court having jurisdiction of the crimi-
8 nal prosecution or juvenile hearing shall order the defendant or
9 child to be examined or tested for venereal disease and
10 hepatitis B infection and for the presence of HIV or an antibody
11 to HIV. Except as provided in subsection (5), (6), or (7), or as
12 otherwise provided by law, the examinations and tests shall be
13 confidentially administered by a licensed physician, the depart-
14 ment of public health, or a local health department. The court
15 also shall order the defendant or child 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 (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 XIIIA 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 engaged in sexual penetration or
2 sexual contact or who was exposed to a body fluid of the
3 defendant during the course of the crime. If the victim or
4 person with whom the defendant or child engaged in sexual pene-
5 tration during the course of the crime is a minor or otherwise
6 incapacitated, the victim's or person's parent, guardian, or
7 person in loco parentis may give consent for purposes of this
8 subsection. After the defendant or child is examined or tested
9 as to the presence of venereal disease, of hepatitis B infection,
10 or of HIV or an antibody to HIV, the person or agency conducting
11 the examinations or administering the tests shall immediately
12 provide the examination or test results to the victim or person
13 with whom the defendant or child found to be within the provi-
14 sions of section 2(a)(1) of chapter XIIA of Act No. 288 of the
15 Public Acts of 1939 engaged in sexual penetration or sexual con-
16 tact or who was exposed to a body fluid during the course of the
17 crime, and shall refer the victim or other person for appropriate
18 counseling.

19 (6) The examination or test results and any other medical
20 information obtained from the defendant or child found to be
21 within the provisions of section 2(a)(1) of chapter XIIA of Act
22 No. 288 of the Public Acts of 1939 by the person or agency con-
23 ducting the examinations or administering the tests under
24 subsection (3) or (4) shall be transmitted to the court or pro-
25 bate court and, after the defendant or child is sentenced or an
26 order of disposition is entered, made part of the court record,

1 but are confidential and shall be disclosed only to 1 or more of
2 the following:

3 (a) The defendant or child.

4 (b) The local health department.

5 (c) The department.

6 (d) The victim or other person required to be informed of
7 the results under this subsection or subsection (5) or, if the
8 victim or other person is a minor or otherwise incapacitated, to
9 the victim's or other person's parent, guardian, or person in
10 loco parentis.

11 (e) Upon written authorization of the defendant or child
12 found to be within the provisions of section 2(a)(1) of chapter
13 XIIIA of Act No. 288 of the Public Acts of 1939 or the child's
14 parent, guardian, or person in loco parentis.

15 (f) As otherwise provided by law.

16 (7) If the defendant is placed in the custody of the depart-
17 ment of corrections, the court shall transmit a copy of the
18 defendant's examination and test results and other medical infor-
19 mation to the department of corrections. IF THE DEFENDANT IS
20 COMMITTED TO A COUNTY JAIL, THE COURT SHALL TRANSMIT A COPY OF
21 THE DEFENDANT'S EXAMINATION AND TEST RESULTS AND OTHER MEDICAL
22 INFORMATION TO THE COUNTY SHERIFF IN CHARGE OF THAT COUNTY JAIL
23 AND EACH LOCAL CORRECTIONAL OFFICER EMPLOYED IN THE JAIL. If the
24 child found to be within the provisions of section 2(a)(1) of
25 chapter XIIIA of Act No. 288 of the Public Acts of 1939 is placed
26 by the probate court in the custody of a person related to the
27 child or a public or private agency, institution, or facility,

1 the probate court shall transmit a copy of the child's
2 examination or test results to the person related to the child or
3 the director of the agency, institution, or facility. A person
4 or agency that discloses information in compliance with this sub-
5 section or subsection (6) is not civilly or criminally liable for
6 making the disclosure. A person or agency that receives test
7 results or other medical information pertaining to HIV infection
8 or acquired immunodeficiency syndrome under this subsection or
9 subsection (6) is subject to section 5131 and shall not disclose
10 the test results or other medical information except as specifi-
11 cally permitted under that section.

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

21 (9) The requirements for the distribution of information
22 concerning venereal disease, counseling concerning venereal dis-
23 ease, and examining or testing for venereal disease under
24 subsections (2), (3), and (4) do not apply to an individual
25 charged with or convicted of violating section 7404 by intrave-
26 nously using a controlled substance or violating a local

1 ordinance prohibiting the intravenous use of a controlled
2 substance.

3 (10) As used in this section:

4 (a) "Sexual contact" includes the intentional touching of
5 the victim's or actor's intimate parts or the intentional touch-
6 ing of the clothing covering the immediate area of the victim's
7 or actor's intimate parts, if that intentional touching can rea-
8 sonably be construed as being for the purpose of sexual arousal
9 or gratification.

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

15 (c) "Victim" includes, but is not limited to, a person sub-
16 jected to criminal sexual conduct in violation of section 520b,
17 520c, 520d, 520e, or 520g of the Michigan penal code, Act No. 328
18 of the Public Acts of 1931, being sections 750.520b, 750.520c,
19 750.520d, 750.520e, and 750.520g of the Michigan Compiled Laws.