

# HOUSE BILL No. 6243

July 3, 2002, Introduced by Rep. Meyer and referred to the Committee on Civil Law and the Judiciary.

A bill to amend 1978 PA 368, entitled  
"Public health code,"  
by amending section 5129 (MCL 333.5129), as amended by 1995  
PA 253.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Sec. 5129. (1) An individual arrested and charged with vio-  
2       lating section 448, 449, 449a, 450, 452, or 455 of the Michigan  
3       penal code, ~~Act No. 328 of the Public Acts of 1931, being sec-~~  
4       ~~tions 750.448, 750.449, 750.449a, 750.450, 750.452, and 750.455~~  
5       ~~of the Michigan Compiled Laws~~ 1931 PA 328, MCL 750.448, 750.449,  
6       750.449A, 750.450, 750.452, AND 750.455, or a local ordinance  
7       prohibiting prostitution or engaging or offering to engage the  
8       services of a prostitute may, upon order of the court, be  
9       examined or tested to determine whether the individual has  
10      venereal disease, hepatitis B infection, HIV infection, or

1 acquired immunodeficiency syndrome. Examination or test results  
2 that indicate the presence of venereal disease, hepatitis B  
3 infection, HIV infection, or acquired immunodeficiency syndrome  
4 shall be reported to the defendant and, pursuant to sections 5114  
5 and 5114a, to the department and the appropriate local health  
6 department for partner notification.

7 (2) Except as otherwise provided in this section, if an  
8 individual is arrested and charged with violating section 145a,  
9 338, 338a, 338b, 448, 449, 449a, 450, 452, 455, 520b, 520c, 520d,  
10 520e, or 520g of the Michigan penal code, ~~Act No. 328 of the~~  
11 ~~Public Acts of 1931, being sections 750.145a, 750.338, 750.338a,~~  
12 ~~750.338b, 750.448, 750.449, 750.449a, 750.450, 750.452, 750.455,~~  
13 ~~750.520b, 750.520c, 750.520d, 750.520e, and 750.520g of the~~  
14 ~~Michigan Compiled Laws~~ 1931 PA 328, MCL 750.145A, 750.338,  
15 750.338A, 750.338B, 750.448, 750.449, 750.449A, 750.450, 750.452,  
16 750.455, 750.520B, 750.520C, 750.520D, 750.520E, AND 750.520G, or  
17 section 7404 by intravenously using a controlled substance, or a  
18 local ordinance prohibiting prostitution, solicitation, gross  
19 indecency, or the intravenous use of a controlled substance, the  
20 judge or magistrate responsible for setting the individual's con-  
21 ditions of release pending trial shall distribute to the individ-  
22 ual the information on venereal disease and HIV transmission  
23 required to be distributed by county clerks under section 5119(1)  
24 and shall recommend that the individual obtain additional infor-  
25 mation and counseling at a local health department testing and  
26 counseling center regarding venereal disease, hepatitis B  
27 infection, HIV infection, and acquired immunodeficiency

1 syndrome. Counseling under this subsection shall be voluntary on  
2 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 145a, 338, 338a,  
5 338b, 450, 452, 455, 520b, 520c, 520d, 520e, or 520g of ~~Act~~  
6 ~~No. 328 of the Public Acts of 1931~~ THE MICHIGAN PENAL CODE, 1931  
7 PA 328, MCL 750.145A, 750.338, 750.338A, 750.338B, 750.450,  
8 750.452, 750.455, 750.520B, 750.520C, 750.520D, 750.520E, AND  
9 750.520G, and the district court determines there is reason to  
10 believe the violation involved sexual penetration or exposure to  
11 a body fluid of the defendant, the district court shall order the  
12 defendant to be examined or tested for venereal disease and  
13 hepatitis B infection and for the presence of HIV or an antibody  
14 to HIV. Except as provided in subsection (5), (6), or (7), or as  
15 otherwise provided by law, the examinations and tests shall be  
16 confidentially administered by a licensed physician, the depart-  
17 ment of public health, or a local health department. The court  
18 also shall order the defendant to receive counseling regarding  
19 venereal disease, hepatitis B infection, HIV infection, and  
20 acquired immunodeficiency syndrome including, at a minimum,  
21 information regarding treatment, transmission, and protective  
22 measures.

23 (4) Except as otherwise provided in this section, upon con-  
24 viction of a defendant or the issuance by the probate court of an  
25 order adjudicating a child to be within the provisions of  
26 section 2(a)(1) of chapter XIIIA of ~~Act No. 288 of the Public~~  
27 ~~Acts of 1939, being section 712A.2 of the Michigan Compiled Laws~~

1 THE PROBATE CODE OF 1939, 1939 PA 288, MCL 712A.2, for violating  
2 section 145a, 338, 338a, 338b, 448, 449, 449a, 450, 452, 455,  
3 520b, 520c, 520d, 520e, or 520g of ~~Act No. 328 of the Public~~  
4 ~~Acts of 1931, being sections 750.145a, 750.338, 750.338a,~~  
5 ~~750.338b, 750.448, 750.449, 750.449a, 750.450, 750.452, 750.455,~~  
6 ~~750.520b, 750.520c, 750.520d, 750.520e, and 750.520g of the~~  
7 ~~Michigan Compiled Laws~~ THE MICHIGAN PENAL CODE, 1931 PA 328,  
8 MCL 750.145A, 750.338, 750.338A, 750.338B, 750.448, 750.449,  
9 750.449A, 750.450, 750.452, 750.455, 750.520B, 750.520C,  
10 750.520D, 750.520E, AND 750.520G, or section 7404 by intrave-  
11 nously using a controlled substance, or a local ordinance prohib-  
12 iting prostitution, solicitation, gross indecency, or the intra-  
13 venous use of a controlled substance, the court having jurisdic-  
14 tion of the criminal prosecution or juvenile hearing shall order  
15 the defendant or child to be examined or tested for venereal dis-  
16 ease and hepatitis B infection and for the presence of HIV or an  
17 antibody to HIV. Except as provided in subsection (5), (6), or  
18 (7), or as otherwise provided by law, the examinations and tests  
19 shall be confidentially administered by a licensed physician, the  
20 department of public health, or a local health department. The  
21 court also shall order the defendant or child to receive counsel-  
22 ing regarding venereal disease, hepatitis B infection, HIV infec-  
23 tion, and acquired immunodeficiency syndrome including, at a min-  
24 imum, information regarding treatment, transmission, and protec-  
25 tive measures.

26 (5) If the victim or person with whom the defendant or child  
27 found to be within the provisions of section 2(a)(1) of chapter

1 XIIIA of ~~Act No. 288 of the Public Acts of 1939~~ THE PROBATE CODE  
2 OF 1939, 1939 PA 288, MCL 712A.2, engaged in sexual penetration  
3 or sexual contact or who was exposed to a body fluid during the  
4 course of the crime consents, the court or probate court shall  
5 provide the person or agency conducting the examinations or  
6 administering the tests under subsection (3) or (4) with the  
7 name, address, and telephone number of the victim or person with  
8 whom the defendant or child engaged in sexual penetration or  
9 sexual contact or who was exposed to a body fluid of the  
10 defendant during the course of the crime. If the victim or  
11 person with whom the defendant or child engaged in sexual pene-  
12 tration during the course of the crime is a minor or otherwise  
13 incapacitated, the victim's or person's parent, guardian, or  
14 person in loco parentis may give consent for purposes of this  
15 subsection. After the defendant or child is examined or tested  
16 as to the presence of venereal disease, of hepatitis B infection,  
17 or of HIV or an antibody to HIV, the person or agency conducting  
18 the examinations or administering the tests shall immediately  
19 provide the examination or test results to the victim or person  
20 with whom the defendant or child found to be within the provi-  
21 sions of section 2(a)(1) of chapter XIIIA of ~~Act No. 288 of the~~  
22 ~~Public Acts of 1939~~ THE PROBATE CODE OF 1939, 1939 PA 288,  
23 MCL 712A.2, engaged in sexual penetration or sexual contact or  
24 who was exposed to a body fluid during the course of the crime,  
25 and shall refer the victim or other person for appropriate  
26 counseling.

1           (6) The examination or test results and any other medical  
2 information obtained from the defendant or child found to be  
3 within the provisions of section 2(a)(1) of chapter XIIIA of ~~Act~~  
4 ~~No. 288 of the Public Acts of 1939~~ THE PROBATE CODE OF 1939,  
5 1939 PA 288, MCL 712A.2, by the person or agency conducting the  
6 examinations or administering the tests under subsection (3) or  
7 (4) shall be transmitted to the court or probate court and, after  
8 the defendant or child is sentenced or an order of disposition is  
9 entered, made part of the court record, but are confidential and  
10 shall be disclosed only to 1 or more of the following:

11           (a) The defendant or child.

12           (b) The local health department.

13           (c) The department.

14           (d) The victim or other person required to be informed of  
15 the results under this subsection or subsection (5) or, if the  
16 victim or other person is a minor or otherwise incapacitated, to  
17 the victim's or other person's parent, guardian, or person in  
18 loco parentis.

19           (e) Upon written authorization of the defendant or child  
20 found to be within the provisions of section 2(a)(1) of chapter  
21 XIIIA of ~~Act No. 288 of the Public Acts of 1939~~ THE PROBATE CODE  
22 OF 1939, 1939 PA 288, MCL 712A.2, or the child's parent, guardi-  
23 an, or person in loco parentis.

24           (f) As otherwise provided by law.

25           (7) If the defendant is placed in the custody of the depart-  
26 ment of corrections, the court shall transmit a copy of the  
27 defendant's examination and test results and other medical

1 information to the department of corrections. If the child found  
2 to be within the provisions of section 2(a)(1) of chapter XIIIA of  
3 ~~Act No. 288 of the Public Acts of 1939~~ THE PROBATE CODE OF  
4 1939, 1939 PA 288, MCL 712A.2, is placed by the probate court in  
5 the custody of a person related to the child or a public or pri-  
6 vate agency, institution, or facility, the probate court shall  
7 transmit a copy of the child's examination or test results to the  
8 person related to the child or the director of the agency, insti-  
9 tution, or facility. A person or agency that discloses informa-  
10 tion in compliance with this subsection or subsection (6) is not  
11 civilly or criminally liable for making the disclosure. A person  
12 or agency that receives test results or other medical information  
13 pertaining to HIV infection or acquired immunodeficiency syndrome  
14 under this subsection or subsection (6) is subject to  
15 section 5131 and shall not disclose the test results or other  
16 medical information except as specifically permitted under that  
17 section.

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

(9) The requirements for the distribution of information concerning venereal disease, counseling concerning venereal disease, and examining or testing for venereal disease under subsections (2), (3), and (4) do not apply to an individual charged with or convicted of violating section 7404 by intravenously using a controlled substance or violating a local ordinance prohibiting the intravenous use of a controlled substance.

(10) THE COURT MAY, UPON CONVICTION, ORDER AN INDIVIDUAL WHO IS EXAMINED OR TESTED UNDER THIS SECTION TO PAY THE ACTUAL AND REASONABLE COSTS OF THAT EXAMINATION OR TEST.

(11) AN INDIVIDUAL WHO IS ORDERED TO PAY THE COSTS OF AN EXAMINATION OR TEST UNDER SUBSECTION (10) SHALL PAY THOSE COSTS WITHIN 30 DAYS AFTER THE ORDER ISSUED OR AS OTHERWISE PROVIDED BY THE COURT. AN INDIVIDUAL WHO FAILS TO PAY THE COSTS WITHIN THE 30-DAY PERIOD OR AS OTHERWISE ORDERED BY THE COURT IS GUILTY OF A MISDEMEANOR PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 90 DAYS OR A FINE OF NOT MORE THAN \$100.00, OR BOTH.

(12) ~~-(10)-~~ As used in this section:

(a) "Sexual contact" includes the intentional touching of the victim's or actor's intimate parts or the intentional touching of the clothing covering the immediate area of the victim's or actor's intimate parts, if that intentional touching can reasonably be construed as being for the purpose of sexual arousal or gratification.

(b) "Sexual penetration" means sexual intercourse, cunnilingus, fellatio, anal intercourse, or any other intrusion, however 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, a person sub-  
4 jected to criminal sexual conduct in violation of section 520b,  
5 520c, 520d, 520e, or 520g of the Michigan penal code, ~~Act~~  
6 ~~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~~ 1931 PA 328, MCL 750.520B, 750.520C, 750.520D,  
9 750.520E, AND 750.520G.