

SUBSTITUTE FOR  
HOUSE BILL NO. 4172

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  
2 violating section 448, 449, 449a, 450, 452, or 455 of the  
3 Michigan penal code, ~~Act No. 328 of the Public Acts of 1931,~~  
4 ~~being sections 750.448, 750.449, 750.449a, 750.450, 750.452, and~~  
5 ~~750.455 of the Michigan Compiled Laws~~ **1931 PA 328, MCL 750.448,**  
6 **750.449, 750.449a, 750.450, 750.452, and 750.455,** or a local  
7 ordinance prohibiting prostitution or engaging or offering to  
8 engage the services of a prostitute may, upon order of the court,  
9 be examined or tested to determine whether the individual has  
10 venereal disease, hepatitis B infection, **hepatitis C infection,**

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

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

1 disease, hepatitis B infection, **hepatitis C infection**, HIV  
2 infection, and acquired immunodeficiency syndrome. Counseling  
3 under this subsection shall be voluntary on the part of the  
4 individual.

5 (3) If a defendant is bound over to circuit court or  
6 recorder's court for a violation of section 145a, 338, 338a,  
7 338b, 450, 452, 455, 520b, 520c, 520d, 520e, or 520g of ~~Act~~  
8 ~~No. 328 of the Public Acts of 1931~~ **the Michigan penal code, 1931**  
9 **PA 328, MCL 750.145a, 750.338, 750.338a, 750.338b, 750.450,**  
10 **750.452, 750.455, 750.520b, 750.520c, 750.520d, 750.520e, and**  
11 **750.520g**, and the district court determines there is reason to  
12 believe the violation involved sexual penetration or exposure to  
13 a body fluid of the defendant, the district court shall order the  
14 defendant to be examined or tested for venereal disease, ~~and~~  
15 hepatitis B infection, **and hepatitis C infection** and for the  
16 presence of HIV or an antibody to HIV. Except as provided in  
17 subsection (5), (6), or (7), or as otherwise provided by law, the  
18 examinations and tests shall be confidentially administered by a  
19 licensed physician, the department of ~~public~~ **community** health,  
20 or a local health department. The court also shall order the  
21 defendant to receive counseling regarding venereal disease,  
22 hepatitis B infection, **hepatitis C infection**, HIV infection, and  
23 acquired immunodeficiency syndrome, including, at a minimum,  
24 information regarding treatment, transmission, and protective  
25 measures.

26 (4) Except as otherwise provided in this section, upon  
27 conviction of a defendant or the issuance by the probate court of

1 an order adjudicating a child to be within the provisions of  
 2 section 2(a)(1) of chapter XIIIA of ~~Act No. 288 of the Public~~  
 3 ~~Acts of 1939, being section 712A.2 of the Michigan Compiled Laws~~  
 4 **the probate code of 1939, 1939 PA 288, MCL 712A.2**, for violating  
 5 section 145a, 338, 338a, 338b, 448, 449, 449a, 450, 452, 455,  
 6 520b, 520c, 520d, 520e, or 520g of ~~Act No. 328 of the Public~~  
 7 ~~Acts of 1931, being sections 750.145a, 750.338, 750.338a,~~  
 8 ~~750.338b, 750.448, 750.449, 750.449a, 750.450, 750.452, 750.455,~~  
 9 ~~750.520b, 750.520c, 750.520d, 750.520e, and 750.520g of the~~  
 10 ~~Michigan Compiled Laws~~ **the Michigan penal code, 1931 PA 328,**  
 11 **MCL 750.145a, 750.338, 750.338a, 750.338b, 750.448, 750.449,**  
 12 **750.449a, 750.450, 750.452, 750.455, 750.520b, 750.520c,**  
 13 **750.520d, 750.520e, and 750.520g**, or section 7404 by  
 14 intravenously using a controlled substance, or a local ordinance  
 15 prohibiting prostitution, solicitation, gross indecency, or the  
 16 intravenous use of a controlled substance, the court having  
 17 jurisdiction of the criminal prosecution or juvenile hearing  
 18 shall order the defendant or child to be examined or tested for  
 19 venereal disease, ~~and~~ hepatitis B infection, **and hepatitis C**  
 20 **infection** and for the presence of HIV or an antibody to HIV.  
 21 Except as provided in subsection (5), (6), or (7), or as  
 22 otherwise provided by law, the examinations and tests shall be  
 23 confidentially administered by a licensed physician, the  
 24 department of ~~public~~ **community** health, or a local health  
 25 department. The court also shall order the defendant or child to  
 26 receive counseling regarding venereal disease, hepatitis B  
 27 infection, **hepatitis C infection**, HIV infection, and acquired

1 immunodeficiency syndrome, including, at a minimum, information  
2 regarding treatment, transmission, and protective measures.

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

1 engaged in sexual penetration or sexual contact or who was  
2 exposed to a body fluid during the course of the crime — and  
3 shall refer the victim or other person for appropriate  
4 counseling.

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

15 (a) The defendant or child.

16 (b) The local health department.

17 (c) The department.

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

23 (e) Upon written authorization of the defendant or child  
24 found to be within the provisions of section 2(a)(1) of chapter  
25 XIIIA of ~~Act No. 288 of the Public Acts of 1939~~ **the probate code**  
26 **of 1939, 1939 PA 288, MCL 712A.2,** or the child's parent,  
27 guardian, or person in loco parentis.

(f) As otherwise provided by law.

(7) If the defendant is placed in the custody of the department of corrections, the court shall transmit a copy of the defendant's examination and test results and other medical information to the department of corrections. If the child found to be within the provisions of section 2(a)(1) of chapter XIIIA of ~~Act No. 288 of the Public Acts of 1939~~ **the probate code of 1939, 1939 PA 288, MCL 712A.2**, is placed by the probate court in the custody of a person related to the child or a public or private agency, institution, or facility, the probate court shall transmit a copy of the child's examination or test results to the person related to the child or the director of the agency, institution, or facility. A person or agency that discloses information in compliance with this subsection or subsection (6) is not civilly or criminally liable for making the disclosure. A person or agency that receives test results or other medical information pertaining to HIV infection or acquired immunodeficiency syndrome under this subsection or subsection (6) is subject to section 5131 and shall not disclose the test results or other medical information except as specifically permitted under that section.

(8) If an individual receives counseling or is examined or tested under this section and is found to be infected with a venereal disease, ~~or~~ hepatitis B, **or hepatitis C** or to be HIV infected, the individual shall be referred by the agency providing the counseling or testing for appropriate medical care. The department, the local health department, or any other

1 agency providing counseling or testing under this section is not  
2 financially responsible for medical care received by an  
3 individual as a result of a referral made under this subsection.

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

12 (10) The court may, upon conviction or the issuance by the  
13 probate court of an order adjudicating a child to be within the  
14 provisions of section 2(a)(1) of chapter XIIA of the probate code  
15 of 1939, 1939 PA 288, MCL 712A.2, order an individual who is  
16 examined or tested under this section to pay the actual and  
17 reasonable costs of that examination or test incurred by the  
18 licensed physician or local health department that administered  
19 the examination or test.

20 (11) An individual who is ordered to pay the costs of an  
21 examination or test under subsection (10) shall pay those costs  
22 within 30 days after the order issued or as otherwise provided by  
23 the court. The amount ordered to be paid under subsection (10)  
24 shall be paid to the clerk of the court, who shall transmit the  
25 appropriate amount to the physician or local health department  
26 named in the order. If an individual is ordered to pay a  
27 combination of fines, costs, restitution, assessments, probation



1 or parole supervision fees, or other payments upon conviction in  
 2 addition to the costs ordered under subsection (10), the payments  
 3 shall be allocated as provided under the probate code of 1939,  
 4 1939 PA 288, MCL 710.21 to 712A.32, the code of criminal  
 5 procedure, 1927 PA 175, MCL 760.1 to 777.69, and the crime  
 6 victim's rights act, 1985 PA 87, MCL 780.751 to 780.834. An  
 7 individual who fails to pay the costs within the 30-day period or  
 8 as otherwise ordered by the court is guilty of a misdemeanor  
 9 punishable by imprisonment for not more than 90 days or a fine of  
 10 not more than \$100.00, or both.

11 (12) ~~-(10)-~~ As used in this section:

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

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

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

1 ~~Compiled Laws~~ 1931 PA 328, MCL 750.520b, 750.520c, 750.520d,  
2 750.520e, and 750.520g.