

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.

1 (f) As otherwise provided by law.

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

22 (8) If an individual receives counseling or is examined or
23 tested under this section and is found to be infected with a
24 venereal disease, ~~or~~ hepatitis B, **or hepatitis C** or to be HIV
25 infected, the individual shall be referred by the agency
26 providing the counseling or testing for appropriate medical
27 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 XIIIA 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.