

# HOUSE BILL No. 4172

February 11, 2003, Introduced by Reps. Meyer, Taub, Vander Veen, Stakoe and Brandenburg and referred to the Committee on Health Policy.

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, 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  
21 conditions of release pending trial shall distribute to the  
22 individual the information on venereal disease and HIV  
23 transmission required to be distributed by county clerks under  
24 section 5119(1) and shall recommend that the individual obtain  
25 additional information and counseling at a local health  
26 department testing and counseling center regarding venereal  
27 disease, hepatitis B infection, HIV infection, and acquired

1 immunodeficiency syndrome. Counseling under this subsection  
2 shall be voluntary on 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  
17 department of ~~public~~ **community** health, or a local health  
18 department. The court also shall order the defendant to receive  
19 counseling regarding venereal disease, hepatitis B infection, HIV  
20 infection, and acquired immunodeficiency syndrome including, at a  
21 minimum, information regarding treatment, transmission, and  
22 protective measures.

23 (4) Except as otherwise provided in this section, upon  
24 conviction of a defendant or the issuance by the probate court of  
25 an 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  
 11 intravenously using a controlled substance, or a local ordinance  
 12 prohibiting prostitution, solicitation, gross indecency, or the  
 13 intravenous use of a controlled substance, the court having  
 14 jurisdiction of the criminal prosecution or juvenile hearing  
 15 shall order the defendant or child to be examined or tested for  
 16 venereal disease and hepatitis B infection and for the presence  
 17 of HIV or an antibody to HIV. Except as provided in subsection  
 18 (5), (6), or (7), or as otherwise provided by law, the  
 19 examinations and tests shall be confidentially administered by a  
 20 licensed physician, the department of ~~public~~ **community** health,  
 21 or a local health department. The court also shall order the  
 22 defendant or child to receive counseling regarding venereal  
 23 disease, hepatitis B infection, HIV infection, and acquired  
 24 immunodeficiency syndrome including, at a minimum, information  
 25 regarding treatment, transmission, and protective 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  
12 penetration during the course of the crime is a minor or  
13 otherwise incapacitated, the victim's or person's parent,  
14 guardian, or person in loco parentis may give consent for  
15 purposes of this subsection. After the defendant or child is  
16 examined or tested as to the presence of venereal disease, of  
17 hepatitis B infection, or of HIV or an antibody to HIV, the  
18 person or agency conducting the examinations or administering the  
19 tests shall immediately provide the examination or test results  
20 to the victim or person with whom the defendant or child found to  
21 be within the provisions of section 2(a)(1) of chapter XIIIA of  
22 ~~Act No. 288 of the Public Acts of 1939~~ **the probate code of**  
23 **1939, 1939 PA 288, MCL 712A.2**, engaged in sexual penetration or  
24 sexual contact or who was exposed to a body fluid during the  
25 course of the crime, and shall refer the victim or other person  
26 for appropriate counseling.

27 (6) The examination or test results and any other medical

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

10 (a) The defendant or child.

11 (b) The local health department.

12 (c) The department.

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

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

23 (f) As otherwise provided by law.

24 (7) If the defendant is placed in the custody of the  
 25 department of corrections, the court shall transmit a copy of the  
 26 defendant's examination and test results and other medical  
 27 information to the department of corrections. If the child found

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

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

26 (9) The requirements for the distribution of information  
27 concerning venereal disease, counseling concerning venereal

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

7       (10) The court may, upon conviction, order an individual who  
8 is examined or tested under this section to pay the actual and  
9 reasonable costs of that examination or test.

10       (11) An individual who is ordered to pay the costs of an  
11 examination or test under subsection (10) shall pay those costs  
12 within 30 days after the order issued or as otherwise provided by  
13 the court. An individual who fails to pay the costs within the  
14 30-day period or as otherwise ordered by the court is guilty of a  
15 misdemeanor punishable by imprisonment for not more than 90 days  
16 or a fine of not more than \$100.00, or both.

17       (12) ~~—(10)—~~ As used in this section:

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

24       (b) "Sexual penetration" means sexual intercourse,  
25 cunnilingus, fellatio, anal intercourse, or any other intrusion,  
26 however slight, of any part of a person's body or of any object  
27 into the genital or anal openings of another person's body, but



1 emission of semen is not required.

2 (c) "Victim" includes, but is not limited to, a person  
3 subjected to criminal sexual conduct in violation of section  
4 520b, 520c, 520d, 520e, or 520g of the Michigan penal code, ~~Act~~  
5 ~~No. 328 of the Public Acts of 1931, being sections 750.520b,~~  
6 ~~750.520c, 750.520d, 750.520e, and 750.520g of the Michigan~~  
7 ~~Compiled Laws 1931 PA 328, MCL 750.520b, 750.520c, 750.520d,~~  
8 **750.520e, and 750.520g.**