

Act No. 98
Public Acts of 2004
Approved by the Governor
May 13, 2004
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May 13, 2004
EFFECTIVE DATE: May 13, 2004

**STATE OF MICHIGAN
92ND LEGISLATURE
REGULAR SESSION OF 2004**

Introduced by Reps. Meyer, Taub, Vander Veen, Stakoe and Brandenburg

ENROLLED HOUSE BILL No. 4172

AN ACT to amend 1978 PA 368, entitled "An act to protect and promote the public health; to codify, revise, consolidate, classify, and add to the laws relating to public health; to provide for the prevention and control of diseases and disabilities; to provide for the classification, administration, regulation, financing, and maintenance of personal, environmental, and other health services and activities; to create or continue, and prescribe the powers and duties of, departments, boards, commissions, councils, committees, task forces, and other agencies; to prescribe the powers and duties of governmental entities and officials; to regulate occupations, facilities, and agencies affecting the public health; to regulate health maintenance organizations and certain third party administrators and insurers; to provide for the imposition of a regulatory fee; to provide for the levy of taxes against certain health facilities or agencies; to promote the efficient and economical delivery of health care services, to provide for the appropriate utilization of health care facilities and services, and to provide for the closure of hospitals or consolidation of hospitals or services; to provide for the collection and use of data and information; to provide for the transfer of property; to provide certain immunity from liability; to regulate and prohibit the sale and offering for sale of drug paraphernalia under certain circumstances; to provide for the implementation of federal law; to provide for penalties and remedies; to provide for sanctions for violations of this act and local ordinances; to provide for an appropriation and supplements; to repeal certain acts and parts of acts; to repeal certain parts of this act; and to repeal certain parts of this act on specific dates," by amending section 5129 (MCL 333.5129), as amended by 1995 PA 253.

The People of the State of Michigan enact:

Sec. 5129. (1) An individual arrested and charged with violating section 448, 449, 449a, 450, 452, or 455 of the Michigan penal code, 1931 PA 328, MCL 750.448, 750.449, 750.449a, 750.450, 750.452, and 750.455, or a local ordinance prohibiting prostitution or engaging or offering to engage the services of a prostitute may, upon order of the court, be examined or tested to determine whether the individual has venereal disease, hepatitis B infection, hepatitis C infection, HIV infection, or acquired immunodeficiency syndrome. Examination or test results that indicate the presence of venereal disease, hepatitis B infection, hepatitis C infection, HIV infection, or acquired immunodeficiency syndrome shall be reported to the defendant and, pursuant to sections 5114 and 5114a, to the department and the appropriate local health department for partner notification.

(2) Except as otherwise provided in this section, if an individual is arrested and charged with violating section 145a, 338, 338a, 338b, 448, 449, 449a, 450, 452, 455, 520b, 520c, 520d, 520e, or 520g of the Michigan penal code, 1931 PA 328, MCL 750.145a, 750.338, 750.338a, 750.338b, 750.448, 750.449, 750.449a, 750.450, 750.452, 750.455, 750.520b, 750.520c, 750.520d, 750.520e, and 750.520g, or section 7404 by intravenously using a controlled substance, or a local ordinance prohibiting prostitution, solicitation, gross indecency, or the intravenous use of a controlled substance, the judge or magistrate responsible for setting the individual's conditions of release pending trial shall distribute to the individual the information on venereal disease and HIV transmission required to be distributed by county clerks under section 5119(1) and shall recommend that the individual obtain additional information and counseling at a local health department testing and counseling center regarding venereal disease, hepatitis B infection, hepatitis C infection,

HIV infection, and acquired immunodeficiency syndrome. Counseling under this subsection shall be voluntary on the part of the individual.

(3) If a defendant is bound over to circuit court or recorder's court for a violation of section 145a, 338, 338a, 338b, 450, 452, 455, 520b, 520c, 520d, 520e, or 520g of the Michigan penal code, 1931 PA 328, MCL 750.145a, 750.338, 750.338a, 750.338b, 750.450, 750.452, 750.455, 750.520b, 750.520c, 750.520d, 750.520e, and 750.520g, and the district court determines there is reason to believe the violation involved sexual penetration or exposure to a body fluid of the defendant, the district court shall order the defendant to be examined or tested for venereal disease, hepatitis B infection, and hepatitis C infection and for the presence of HIV or an antibody to HIV. Except as provided in subsection (5), (6), or (7), or as otherwise provided by law, the examinations and tests shall be confidentially administered by a licensed physician, the department of community health, or a local health department. The court also shall order the defendant to receive counseling regarding venereal disease, hepatitis B infection, hepatitis C infection, HIV infection, and acquired immunodeficiency syndrome, including, at a minimum, information regarding treatment, transmission, and protective measures.

(4) Except as otherwise provided in this section, upon conviction of a defendant or the issuance by the probate court of an order adjudicating a child to be within the provisions of section 2(a)(1) of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.2, for violating section 145a, 338, 338a, 338b, 448, 449, 449a, 450, 452, 455, 520b, 520c, 520d, 520e, or 520g of the Michigan penal code, 1931 PA 328, MCL 750.145a, 750.338, 750.338a, 750.338b, 750.448, 750.449, 750.449a, 750.450, 750.452, 750.455, 750.520b, 750.520c, 750.520d, 750.520e, and 750.520g, or section 7404 by intravenously using a controlled substance, or a local ordinance prohibiting prostitution, solicitation, gross indecency, or the intravenous use of a controlled substance, the court having jurisdiction of the criminal prosecution or juvenile hearing shall order the defendant or child to be examined or tested for venereal disease, hepatitis B infection, and hepatitis C infection and for the presence of HIV or an antibody to HIV. Except as provided in subsection (5), (6), or (7), or as otherwise provided by law, the examinations and tests shall be confidentially administered by a licensed physician, the department of community health, or a local health department. The court also shall order the defendant or child to receive counseling regarding venereal disease, hepatitis B infection, hepatitis C infection, HIV infection, and acquired immunodeficiency syndrome, including, at a minimum, information regarding treatment, transmission, and protective measures.

(5) If the victim or person with whom the defendant or child found to be within the provisions of section 2(a)(1) of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.2, engaged in sexual penetration or sexual contact or who was exposed to a body fluid during the course of the crime consents, the court or probate court shall provide the person or agency conducting the examinations or administering the tests under subsection (3) or (4) with the name, address, and telephone number of the victim or person with whom the defendant or child engaged in sexual penetration or sexual contact or who was exposed to a body fluid of the defendant during the course of the crime. If the victim or person with whom the defendant or child engaged in sexual penetration during the course of the crime is a minor or otherwise incapacitated, the victim's or person's parent, guardian, or person in loco parentis may give consent for purposes of this subsection. After the defendant or child is examined or tested as to the presence of venereal disease, of hepatitis B infection, of hepatitis C infection, or of HIV or an antibody to HIV, the person or agency conducting the examinations or administering the tests shall immediately provide the examination or test results to the victim or person with whom the defendant or child found to be within the provisions of section 2(a)(1) of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.2, engaged in sexual penetration or sexual contact or who was exposed to a body fluid during the course of the crime and shall refer the victim or other person for appropriate counseling.

(6) The examination or test results and any other medical information obtained from the defendant or child found to be within the provisions of section 2(a)(1) of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.2, by the person or agency conducting the examinations or administering the tests under subsection (3) or (4) shall be transmitted to the court or probate court and, after the defendant or child is sentenced or an order of disposition is entered, made part of the court record, but are confidential and shall be disclosed only to 1 or more of the following:

(a) The defendant or child.

(b) The local health department.

(c) The department.

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

(e) Upon written authorization of the defendant or child found to be within the provisions of section 2(a)(1) of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.2, or the child's parent, 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 XIIA of 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, 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 agency providing counseling or testing under this section is not financially responsible for medical care received by an individual as a result of a referral 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 or the issuance by the probate court of an order adjudicating a child to be within the provisions of section 2(a)(1) of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.2, order an individual who is examined or tested under this section to pay the actual and reasonable costs of that examination or test incurred by the licensed physician or local health department that administered the 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 is issued or as otherwise provided by the court. The amount ordered to be paid under subsection (10) shall be paid to the clerk of the court, who shall transmit the appropriate amount to the physician or local health department named in the order. If an individual is ordered to pay a combination of fines, costs, restitution, assessments, probation or parole supervision fees, or other payments upon conviction in addition to the costs ordered under subsection (10), the payments shall be allocated as provided under the probate code of 1939, 1939 PA 288, MCL 710.21 to 712A.32, the code of criminal procedure, 1927 PA 175, MCL 760.1 to 777.69, and the crime victim's rights act, 1985 PA 87, MCL 780.751 to 780.834. 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.

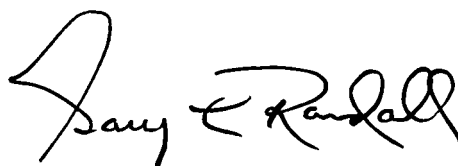
(12) As used in this section:

(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.

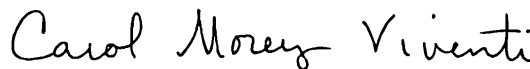
(b) "Sexual penetration" means sexual intercourse, cunnilingus, fellatio, anal intercourse, or any other intrusion, however slight, of any part of a person's body or of any object into the genital or anal openings of another person's body, but emission of semen is not required.

(c) "Victim" includes, but is not limited to, a person subjected to criminal sexual conduct in violation of section 520b, 520c, 520d, 520e, or 520g of the Michigan penal code, 1931 PA 328, MCL 750.520b, 750.520c, 750.520d, 750.520e, and 750.520g.

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved

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Governor