

**SUBSTITUTE FOR
SENATE BILL NO. 1036**

A bill to amend 1978 PA 368, entitled
"Public health code,"
by amending section 5129 (MCL 333.5129), as amended by 2004 PA 98.

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 Michigan
3 penal code, 1931 PA 328, MCL 750.448, 750.449, 750.449a, 750.450,
4 750.452, and 750.455, or a local ordinance prohibiting prostitution
5 or engaging or offering to engage the services of a prostitute may,
6 upon order of the court, be examined or tested to determine whether
7 the individual has venereal disease, hepatitis B infection,
8 hepatitis C infection, HIV infection, or acquired immunodeficiency
9 syndrome. Examination or test results that indicate the presence of

1 venereal disease, hepatitis B infection, hepatitis C infection, HIV
2 infection, or acquired immunodeficiency syndrome ~~shall~~**MUST** be
3 reported to the defendant and, pursuant to sections 5114 and 5114a,
4 to the department and the appropriate local health department for
5 partner notification.

6 (2) Except as otherwise provided in this section, if an
7 individual is arrested and charged with violating section 145a,
8 338, 338a, 338b, 448, 449, 449a, 450, 452, 455, 520b, 520c, 520d,
9 520e, or 520g of the Michigan penal code, 1931 PA 328, MCL
10 750.145a, 750.338, 750.338a, 750.338b, 750.448, 750.449, 750.449a,
11 750.450, 750.452, 750.455, 750.520b, 750.520c, 750.520d, 750.520e,
12 and 750.520g, or section 7404 by intravenously using a controlled
13 substance, or a local ordinance prohibiting prostitution,
14 solicitation, gross indecency, or the intravenous use of a
15 controlled substance, the judge or magistrate responsible for
16 setting the individual's conditions of release pending trial shall
17 distribute to the individual the information on venereal disease
18 and HIV ~~transmission~~**INFECTION** required to be distributed by county
19 clerks under section 5119(1) and shall recommend that the
20 individual obtain additional information and counseling at a local
21 health department testing and counseling center regarding venereal
22 disease, hepatitis B infection, hepatitis C infection, HIV
23 infection, and acquired immunodeficiency syndrome. Counseling under
24 this subsection ~~shall be~~**IS** voluntary on the part of the
25 individual.

26 (3) If a defendant is bound over to circuit court or
27 recorder's court for a violation of section 145a, 338, 338a, 338b,

1 450, 452, 455, 520b, 520c, 520d, 520e, or 520g of the Michigan
2 penal code, 1931 PA 328, MCL 750.145a, 750.338, 750.338a, 750.338b,
3 750.450, 750.452, 750.455, 750.520b, 750.520c, 750.520d, 750.520e,
4 and 750.520g, and the district court determines there is reason to
5 believe the violation involved sexual penetration or exposure to a
6 body fluid of the defendant, the district court shall order the
7 defendant to be examined or tested for venereal disease, hepatitis
8 B infection, and hepatitis C infection and for the presence of HIV
9 or an antibody to HIV. **THE CIRCUIT COURT SHALL ORDER THE**
10 **EXAMINATION OR TESTING IF THE DEFENDANT IS BROUGHT BEFORE IT BY WAY**
11 **OF INDICTMENT FOR ANY OF THE VIOLATIONS DESCRIBED IN THIS**
12 **SUBSECTION. IF A DEFENDANT IS BOUND OVER TO OR BROUGHT BEFORE THE**
13 **CIRCUIT COURT FOR A VIOLATION OF SECTION 520B, 520C, 520D, 520E, OR**
14 **520G OF THE MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.520B,**
15 **750.520C, 750.520D, 750.520E, AND 750.520G, THE COURT SHALL, UPON**
16 **THE VICTIM'S REQUEST, ORDER THE EXAMINATION OR TESTING TO BE DONE**
17 **NOT LATER THAN 48 HOURS AFTER THE DATE THAT THE INFORMATION OR**
18 **INDICTMENT IS PRESENTED AND THE DEFENDANT IS IN CUSTODY OR HAS BEEN**
19 **SERVED WITH THE INFORMATION OR INDICTMENT. THE COURT SHALL INCLUDE**
20 **IN ITS ORDER FOR EXPEDITED EXAMINATION OR TESTING AT THE VICTIM'S**
21 **REQUEST UNDER THIS SUBSECTION A PROVISION THAT REQUIRES FOLLOW-UP**
22 **EXAMINATION OR TESTING THAT IS CONSIDERED MEDICALLY APPROPRIATE**
23 **BASED ON THE RESULTS OF THE INITIAL EXAMINATION OR TESTING.** Except
24 as provided in subsection (5), (6), or (7), or as otherwise
25 provided by law, the examinations and tests ~~shall~~ **MUST** be
26 confidentially administered by a licensed physician, the
27 department, ~~of community health,~~ or a local health department. The

1 court also shall order the defendant to receive counseling
2 regarding venereal disease, hepatitis B infection, hepatitis C
3 infection, HIV infection, and acquired immunodeficiency syndrome,
4 including, at a minimum, information regarding treatment,
5 transmission, and protective measures.

6 (4) Except as otherwise provided in this section, upon
7 conviction of a defendant or the issuance by the probate court of
8 an order adjudicating a child to be within the provisions of
9 section 2(a)(1) of chapter XIIA of the probate code of 1939, 1939
10 PA 288, MCL 712A.2, for violating section 145a, 338, 338a, 338b,
11 448, 449, 449a, 450, 452, 455, 520b, 520c, 520d, 520e, or 520g of
12 the Michigan penal code, 1931 PA 328, MCL 750.145a, 750.338,
13 750.338a, 750.338b, 750.448, 750.449, 750.449a, 750.450, 750.452,
14 750.455, 750.520b, 750.520c, 750.520d, 750.520e, and 750.520g, or
15 section 7404 by intravenously using a controlled substance, or a
16 local ordinance prohibiting prostitution, solicitation, gross
17 indecency, or the intravenous use of a controlled substance, the
18 court ~~having~~**THAT HAS** jurisdiction of the criminal prosecution or
19 juvenile hearing shall order the defendant or child to be examined
20 or tested for venereal disease, hepatitis B infection, and
21 hepatitis C infection and for the presence of HIV or an antibody to
22 HIV. Except as provided in subsection (5), (6), or (7), or as
23 otherwise provided by law, the examinations and tests ~~shall~~**MUST** be
24 confidentially administered by a licensed physician, the
25 department, ~~of community health,~~ or a local health department. The
26 court also shall order the defendant or child to receive counseling
27 regarding venereal disease, hepatitis B infection, hepatitis C

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

4 (5) If the victim or ~~person~~**INDIVIDUAL** with whom the defendant
5 or child found to be within the provisions of section 2(a)(1) of
6 chapter XIIIA of the probate code of 1939, 1939 PA 288, MCL 712A.2,
7 engaged in sexual penetration or sexual contact or who was exposed
8 to a body fluid during the course of the crime consents, the court
9 or probate court shall provide the person or agency conducting the
10 examinations or administering the tests under subsection (3) or (4)
11 with the name, address, and telephone number of the victim or
12 ~~person~~**INDIVIDUAL** with whom the defendant or child engaged in
13 sexual penetration or sexual contact or who was exposed to a body
14 fluid of the defendant during the course of the crime. If the
15 victim or ~~person~~**INDIVIDUAL** with whom the defendant or child
16 engaged in sexual penetration during the course of the crime is a
17 minor or otherwise incapacitated, the victim's or ~~person's~~
18 **INDIVIDUAL'S** parent, guardian, or person in loco parentis may give
19 consent for purposes of this subsection. After the defendant or
20 child is examined or tested as to the presence of venereal disease,
21 of hepatitis B infection, of hepatitis C infection, or of HIV or an
22 antibody to HIV, **OR IF THE DEFENDANT OR CHILD RECEIVES APPROPRIATE**
23 **FOLLOW UP TESTING FOR THE PRESENCE OF HIV**, the person or agency
24 conducting the examinations or administering the tests shall
25 immediately provide the examination or test results to the victim
26 or ~~person~~**INDIVIDUAL** with whom the defendant or child found to be
27 within the provisions of section 2(a)(1) of chapter XIIIA of the

1 probate code of 1939, 1939 PA 288, MCL 712A.2, engaged in sexual
 2 penetration or sexual contact or who was exposed to a body fluid
 3 during the course of the crime and shall refer the victim or other
 4 ~~person~~**INDIVIDUAL** for appropriate counseling.

5 (6) The examination or test results and any other medical
 6 information obtained from the defendant or child found to be within
 7 the provisions of section 2(a)(1) of chapter XIIIA of the probate
 8 code of 1939, 1939 PA 288, MCL 712A.2, by the person or agency
 9 conducting the examinations or administering the tests under
 10 subsection (3) or (4) ~~shall~~**MUST** be transmitted to the court or
 11 probate court and, after the defendant or child is sentenced or an
 12 order of disposition is entered, made part of the court record. 7

13 ~~but~~**THE EXAMINATION OR TEST RESULTS AND ANY OTHER MEDICAL**
 14 **INFORMATION DESCRIBED IN THIS SUBSECTION** are confidential and ~~shall~~
 15 **MAY** be disclosed only to 1 or more of the following:

16 (a) The defendant or child.

17 (b) The local health department.

18 (c) The department.

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

24 (e) Upon written authorization of the defendant or child found
 25 to be within the provisions of section 2(a)(1) of chapter XIIIA of
 26 the probate code of 1939, 1939 PA 288, MCL 712A.2, or the child's
 27 parent, 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 to
6 be within the provisions of section 2(a)(1) of chapter XIIIA of the
7 probate code of 1939, 1939 PA 288, MCL 712A.2, is placed by the
8 probate court in the custody of a ~~person~~**AN INDIVIDUAL** related to
9 the child or a public or private agency, institution, or facility,
10 the probate court shall transmit a copy of the child's examination
11 or test results to the ~~person~~**INDIVIDUAL** related to the child or
12 the director of the agency, institution, or facility. A person or
13 agency that discloses information in compliance with this
14 subsection or subsection (6) is not civilly or criminally liable
15 for making the disclosure. A person or agency that receives test
16 results or other medical information pertaining to HIV infection or
17 acquired immunodeficiency syndrome under this subsection or
18 subsection (6) is subject to section 5131 and shall not disclose
19 the test results or other medical information except as
20 specifically permitted under that section.

21 (8) If an individual receives counseling or is examined or
22 tested under this section and is found to be infected with a
23 venereal disease, hepatitis B, or hepatitis C or to be HIV
24 infected, the individual ~~shall~~**MUST** be referred by the agency
25 providing the counseling or testing for appropriate medical care.
26 The department, the local health department, or any other agency
27 providing counseling or testing under this section is not

1 financially responsible for medical care received by an individual
2 as a result of a referral made under this subsection.

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

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

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

1 ~~shall~~**MUST** be allocated as provided under the probate code of 1939,
2 1939 PA 288, MCL 710.21 to ~~712A.32,~~**712B.41**, the code of criminal
3 procedure, 1927 PA 175, MCL 760.1 to 777.69, and the **WILLIAM VAN**
4 **REGENMORTER** crime victim's rights act, 1985 PA 87, MCL 780.751 to
5 780.834. An individual who fails to pay the costs within the 30-day
6 period or as otherwise ordered by the court is guilty of a
7 misdemeanor punishable by imprisonment for not more than 90 days or
8 a fine of not more than \$100.00, or both.

9 (12) As used in this section:

10 (a) "Sexual contact" ~~includes the intentional touching of the~~
11 ~~victim's or actor's intimate parts or the intentional touching of~~
12 ~~the clothing covering the immediate area of the victim's or actor's~~
13 ~~intimate parts, if that intentional touching can reasonably be~~
14 ~~construed as being for the purpose of sexual arousal or~~
15 ~~gratification.~~**MEANS THAT TERM AS DEFINED IN SECTION 520A OF THE**
16 **MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.520A.**

17 (b) "Sexual penetration" means ~~sexual intercourse,~~
18 ~~cunnilingus, fellatio, anal intercourse, or any other intrusion,~~
19 ~~however slight, of any part of a person's body or of any object~~
20 ~~into the genital or anal openings of another person's body, but~~
21 ~~emission of semen is not required.~~**THAT TERM AS DEFINED IN SECTION**
22 **520A OF THE MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.520A.**

23 (c) "Victim" includes, but is not limited to, a ~~person~~
24 ~~subjected to criminal sexual conduct in violation of section 520b,~~
25 ~~520c, 520d, 520e, or 520g of the Michigan penal code, 1931 PA 328,~~
26 ~~MCL 750.520b, 750.520c, 750.520d, 750.520e, and 750.520g.~~**VICTIM AS**
27 **THAT TERM IS DEFINED IN SECTION 520A OF THE MICHIGAN PENAL CODE,**

1 1931 PA 328, MCL 750.520A.

2 Enacting section 1. This amendatory act takes effect 90 days
3 after the date it is enacted into law.