

# SENATE BILL No. 381

June 4, 2015, Introduced by Senators YOUNG, HERTEL, GREGORY, WARREN and MARLEAU 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 2014 PA 321.

**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,~~ **SEXUALLY TRANSMITTED**  
8 **INFECTION**, hepatitis B infection, hepatitis C infection, HIV  
9 infection, or acquired immunodeficiency syndrome. Examination or  
10 test results that indicate the presence of ~~venereal disease,~~  
11 **SEXUALLY TRANSMITTED INFECTION**, hepatitis B infection, hepatitis C

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1 infection, HIV infection, or acquired immunodeficiency syndrome  
2 must be reported to the defendant and, pursuant to sections 5114  
3 and 5114a, to the department and the appropriate local health  
4 department for partner notification.

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

25 (3) If a defendant is bound over to circuit court ~~or~~  
26 ~~recorder's court for a violation of~~ **VIOLATING** section 145a, 338,  
27 338a, 338b, 450, 452, 455, 520b, 520c, 520d, 520e, or 520g of the

1 Michigan penal code, 1931 PA 328, MCL 750.145a, 750.338, 750.338a,  
2 750.338b, 750.450, 750.452, 750.455, 750.520b, 750.520c, 750.520d,  
3 750.520e, and 750.520g, and the district court determines there is  
4 reason to believe the violation involved sexual penetration or  
5 exposure to a body fluid of the defendant, the district court shall  
6 order the defendant to be examined or tested for ~~venereal disease,~~  
7 **SEXUALLY TRANSMITTED INFECTION**, hepatitis B infection, and  
8 hepatitis C infection and for the presence of HIV or an antibody to  
9 HIV. The circuit court shall order the examination or testing if  
10 the defendant is brought before it by way of indictment for any of  
11 the violations described in this subsection. If a defendant is  
12 bound over to or brought before the circuit court for ~~a violation~~  
13 ~~of~~ **VIOLATING** section 520b, 520c, 520d, 520e, or 520g of the  
14 Michigan penal code, 1931 PA 328, MCL 750.520b, 750.520c, 750.520d,  
15 750.520e, and 750.520g, the court shall, upon the victim's request,  
16 order the examination or testing to be done not later than 48 hours  
17 after the date that the information or indictment is presented and  
18 the defendant is in custody or has been served with the information  
19 or indictment. The court shall include in its order for expedited  
20 examination or testing at the victim's request under this  
21 subsection a provision that requires follow-up examination or  
22 testing that is considered medically appropriate based on the  
23 results of the initial examination or testing. Except as provided  
24 in subsection (5), (6), or (7), or as otherwise provided by law,  
25 the examinations and tests must be confidentially administered by a  
26 licensed physician, the department, or a local health department.  
27 The court also shall order the defendant to receive counseling

1 regarding ~~venereal disease~~, **SEXUALLY TRANSMITTED INFECTION**,  
2 hepatitis B infection, hepatitis C infection, HIV infection, and  
3 acquired immunodeficiency syndrome, including, at a minimum,  
4 information regarding treatment, transmission, and protective  
5 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 XIIIA 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 that has jurisdiction of the criminal prosecution or juvenile  
19 hearing shall order the defendant or child to be examined or tested  
20 for ~~venereal disease~~, **SEXUALLY TRANSMITTED INFECTION**, hepatitis B  
21 infection, and hepatitis C infection and for the presence of HIV or  
22 an antibody to HIV. Except as provided in subsection (5), (6), or  
23 (7), or as otherwise provided by law, the examinations and tests  
24 must be confidentially administered by a licensed physician, the  
25 department, or a local health department. The court also shall  
26 order the defendant or child to receive counseling regarding  
27 ~~venereal disease~~, **SEXUALLY TRANSMITTED INFECTION**, hepatitis B

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

4 (5) If the victim or individual with whom the defendant or  
5 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 individual with whom the defendant or child engaged in sexual  
13 penetration or sexual contact or who was exposed to a body fluid of  
14 the defendant during the course of the crime. If the victim or  
15 individual with whom the defendant or child engaged in sexual  
16 penetration during the course of the crime is a minor or otherwise  
17 incapacitated, the victim's or individual's parent, guardian, or  
18 person in loco parentis may give consent for purposes of this  
19 subsection. After the defendant or child is examined or tested as  
20 to the presence of ~~venereal disease, of~~ **SEXUALLY TRANSMITTED**  
21 **INFECTION**, hepatitis B infection, ~~of~~ hepatitis C infection, or ~~of~~  
22 HIV or an antibody to HIV, or if the defendant or child receives  
23 appropriate follow-up testing for the presence of HIV, the person  
24 or agency conducting the examinations or administering the tests  
25 shall immediately provide the examination or test results to the  
26 victim or 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 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) must be transmitted to the court or probate  
11 court and, after the defendant or child is sentenced or an order of  
12 disposition is entered, made part of the court record. The  
13 examination or test results and any other medical information  
14 described in this subsection are confidential and may be disclosed  
15 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 individual required to be informed of  
20 the results under this subsection or subsection (5) or, if the  
21 victim or other individual is a minor or otherwise incapacitated,  
22 to the victim's or other individual's parent, guardian, or person  
23 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 XIIA of the  
7 probate code of 1939, 1939 PA 288, MCL 712A.2, is placed by the  
8 probate court in the custody of an individual related to the child  
9 or a public or private agency, institution, or facility, the  
10 probate court shall transmit a copy of the child's examination or  
11 test results to the individual related to the child or the director  
12 of the agency, institution, or facility. A person or agency that  
13 discloses information in compliance with this subsection or  
14 subsection (6) is not civilly or criminally liable for making the  
15 disclosure. A person or agency that receives test results or other  
16 medical information pertaining to HIV infection or acquired  
17 immunodeficiency syndrome under this subsection or subsection (6)  
18 is subject to section 5131 and shall not disclose the test results  
19 or other medical information except as specifically permitted under  
20 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,~~ **SEXUALLY TRANSMITTED INFECTION**, hepatitis B, or  
24 hepatitis C or to be HIV infected, the individual must be referred  
25 by the agency providing the counseling or testing for appropriate  
26 medical care. The department, the local health department, or any  
27 other agency providing counseling or testing under this section is

1 not financially responsible for medical care received by an  
2 individual as a result of a referral made under this subsection.

3 (9) The requirements for the distribution of information  
4 concerning ~~venereal disease, SEXUALLY TRANSMITTED INFECTION,~~  
5 counseling concerning ~~venereal disease, SEXUALLY TRANSMITTED~~  
6 **INFECTION**, and examining or testing for ~~venereal disease~~ **SEXUALLY**  
7 **TRANSMITTED INFECTION** under subsections (2), (3), and (4) do not  
8 apply to an individual charged with or convicted of violating  
9 section 7404 by intravenously using a controlled substance or  
10 violating a local ordinance prohibiting the intravenous use of a  
11 controlled 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 the  
19 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 is issued or as otherwise provided  
23 by the court. The amount ordered to be paid under subsection (10)  
24 must 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 or

1 parole supervision fees, or other payments upon conviction in  
2 addition to the costs ordered under subsection (10), the payments  
3 must be allocated as provided under the probate code of 1939, 1939  
4 PA 288, MCL 710.21 to 712B.41, the code of criminal procedure, 1927  
5 PA 175, MCL 760.1 to 777.69, and the William Van Regenmorter 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) As used in this section:

12 (a) "Sexual contact" means that term as defined in section  
13 520a of the Michigan penal code, 1931 PA 328, MCL 750.520a.

14 (b) "Sexual penetration" means that term as defined in section  
15 520a of the Michigan penal code, 1931 PA 328, MCL 750.520a.

16 (c) "Victim" includes, but is not limited to, a victim as that  
17 term is defined in section 520a of the Michigan penal code, 1931 PA  
18 328, MCL 750.520a.

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

21 Enacting section 2. This amendatory act does not take effect  
22 unless all of the following bills of the 98th Legislature are  
23 enacted into law:

24 (a) Senate Bill No. 374.

25

26 (b) Senate Bill No. 375.

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1 (c) Senate Bill No. 376.

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3 (d) Senate Bill No. 377.

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5 (e) Senate Bill No. 378.

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7 (f) Senate Bill No. 379.

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9 (g) Senate Bill No. 380.

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