



HOUSE BILL No. 4010

January 11, 1995, Introduced by Rep. Clack and referred to the Committee on Health Policy.

A bill to amend section 5129 of Act No. 368 of the Public Acts of 1978, entitled as amended
"Public health code,"
as amended by Act No. 200 of the Public Acts of 1994, being section 333.5129 of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1.. Section 5129 of Act No. 368 of the Public Acts
2 of 1978, as amended by Act No. 200 of the Public Acts of 1994,
3 being section 333.5129 of the Michigan Compiled Laws, is amended
4 to read as follows:

5 Sec. 5129. (1) An individual arrested and charged with vio-
6 lating section 448, 449, 449a, 450, 452, or 455 of the Michigan
7 penal code, Act No. 328 of the Public Acts of 1931, being
8 sections 750.448, 750.449, 750.449a, 750.450, 750.452, and

1 750.455 of the Michigan Compiled Laws, or a local ordinance
2 prohibiting prostitution or engaging or offering to engage the
3 services of a prostitute may, upon order of the court, be
4 examined or tested to determine whether the individual has vene-
5 real disease, hepatitis B infection, HIV infection, or acquired
6 immunodeficiency syndrome. Examination or test results that
7 indicate the presence of venereal disease, hepatitis B infection,
8 HIV infection, or acquired immunodeficiency syndrome shall be
9 reported to the defendant and, PURSUANT TO SECTIONS 5114 AND
10 5114A, to the department and the APPROPRIATE local health depart-
11 ment for partner notification.

12 (2) Except as otherwise provided in this section, if an
13 individual is arrested and charged with violating section 145A,
14 338, 338a, 338b, 448, 449, 449a, 450, 452, 455, 520b, 520c, 520d,
15 520e, or 520g of the Michigan penal code, Act No. 328 of the
16 Public Acts of 1931, being sections 750.145A, 750.338, 750.338a,
17 750.338b, 750.448, 750.449, 750.449a, 750.450, 750.452, 750.455,
18 750.520b, 750.520c, 750.520d, 750.520e, and 750.520g of the
19 Michigan Compiled Laws, ~~or a local ordinance prohibiting prosti-~~
20 ~~tution, solicitation, or gross indecency;~~ or section 7404 by
21 intravenously using a controlled substance, OR A LOCAL ORDINANCE
22 PROHIBITING PROSTITUTION, SOLICITATION, GROSS INDECENCY, OR THE
23 INTRAVENOUS USE OF A CONTROLLED SUBSTANCE, the judge or magis-
24 trate responsible for setting the individual's conditions of
25 release pending trial shall distribute to the individual the
26 information on venereal disease and HIV transmission required to
27 be distributed by county clerks under section 5119(1) and shall

1 recommend that the individual obtain additional information and
2 counseling at a local health department testing and counseling
3 center regarding venereal disease, hepatitis B infection, HIV
4 infection, and acquired immunodeficiency syndrome. Counseling
5 under this subsection shall be voluntary on the part of the
6 individual.

7 (3) If a defendant is bound over to circuit court or
8 recorder's court for a violation of section 145A, 338, 338a,
9 338b, 450, 452, 455, 520b, 520c, 520d, 520e, or 520g of Act
10 No. 328 of the Public Acts of 1931 and the district court deter-
11 mines there is reason to believe the violation involved sexual
12 penetration or exposure to a body fluid of the defendant, the
13 district court shall order the defendant to be examined or tested
14 for venereal disease and hepatitis B infection and for the pres-
15 ence of HIV or an antibody to HIV. Except as provided in
16 subsection (5), ~~or~~ (6), OR (7), or as otherwise provided by
17 law, the examinations and tests shall be confidentially adminis-
18 tered by a licensed physician, the department of public health,
19 or a local health department. The court also shall order the
20 defendant to receive counseling regarding venereal disease,
21 hepatitis B infection, HIV infection, and acquired immunodefi-
22 ciency syndrome including, at a minimum, information regarding
23 treatment, transmission, and protective measures.

24 (4) Except as otherwise provided in this section, upon con-
25 viction of a defendant or the issuance by the probate court of an
26 order adjudicating a child to be within the provisions of
27 section 2(a)(1) of chapter XIIA of Act No. 288 of the Public Acts

1 of 1939, being section 712A.2 of the Michigan Compiled Laws, for
2 ~~a violation of~~ VIOLATING section 145A, 338, 338a, 338b, 448,
3 449, 449a, 450, 452, 455, 520b, 520c, 520d, 520e, or 520g of Act
4 No. 328 of the Public Acts of 1931, being sections 750.145A,
5 750.338, 750.338a, 750.338b, 750.448, 750.449, 750.449a, 750.450,
6 750.452, 750.455, 750.520b, 750.520c, 750.520d, 750.520e, and
7 750.520g of the Michigan Compiled Laws, or ~~a crime involving the~~
8 ~~intravenous use of a controlled substance in violation of~~
9 section 7404 BY INTRAVENOUSLY USING A CONTROLLED SUBSTANCE, OR A
10 LOCAL ORDINANCE PROHIBITING PROSTITUTION, SOLICITATION, GROSS
11 INDECENCY, OR THE INTRAVENOUS USE OF A CONTROLLED SUBSTANCE, the
12 court having jurisdiction of the criminal prosecution or juvenile
13 hearing shall order the defendant or child ~~found to be within~~
14 ~~the provisions of section 2(a)(1) of chapter XIIA of Act No. 288~~
15 ~~of the Public Acts of 1939~~ to be examined or tested for venereal
16 disease and hepatitis B infection and for the presence of HIV or
17 an antibody to HIV. Except as provided in subsection (5), ~~or~~
18 (6), OR (7), or as otherwise provided by law, the examinations
19 and tests shall be confidentially administered by a licensed phy-
20 sician, the department of public health, or a local health
21 department. The court also shall order the defendant or child
22 ~~found to be within the provisions of section 2(a)(1) of chapter~~
23 ~~XIIA of Act No. 288 of the Public Acts of 1939~~ to receive coun-
24 seling regarding venereal disease, hepatitis B infection, HIV
25 infection, and acquired immunodeficiency syndrome including, at a
26 minimum, information regarding treatment, transmission, and
27 protective measures.

1 (5) If the victim or person with whom the defendant or child
2 found to be within the provisions of section 2(a)(1) of chapter
3 XIIA of Act No. 288 of the Public Acts of 1939 engaged in sexual
4 penetration or sexual contact or who was exposed to a body fluid
5 during the course of the crime consents, the court or probate
6 court shall provide the person or agency conducting the examina-
7 tions or administering the tests under subsection (3) or (4) with
8 the name, address, and telephone number of the victim or person
9 with whom the defendant or child ~~found to be within the provi-~~
10 ~~sions of section 2(a)(1) of chapter XIIA of Act No. 288 of the~~
11 ~~Public Acts of 1939~~ engaged in sexual penetration or sexual con-
12 tact or who was exposed to a body fluid of the defendant during
13 the course of the crime. After the defendant or child ~~found to~~
14 ~~be within the provisions of section 2(a)(1) of chapter XIIA of~~
15 ~~Act No. 288 of the Public Acts of 1939~~ is examined or tested as
16 to the presence of venereal disease, of hepatitis B infection, or
17 of HIV or an antibody to HIV, the person or agency conducting the
18 examinations or administering the tests shall immediately provide
19 the examination or test results to the victim or person with whom
20 the defendant or child found to be within the provisions of
21 section 2(a)(1) of chapter XIIA of Act No. 288 of the Public Acts
22 of 1939 engaged in sexual penetration or sexual contact or who
23 was exposed to a body fluid during the course of the crime, and
24 shall refer the victim or other person for appropriate
25 counseling.

26 (6) The examination or test results and any other medical
27 information obtained from the defendant or child found to be

1 within the provisions of section 2(a)(1) of chapter XIIIA of Act
 2 No. 288 of the Public Acts of 1939 by the person or agency con-
 3 ducting the examinations or administering the tests under
 4 subsection (3) or (4) shall be transmitted to the court or pro-
 5 bate court and, after the defendant or child ~~found to be within~~
 6 ~~the provisions of section 2(a)(1) of chapter XIIIA of Act No. 288~~
 7 ~~of the Public Acts of 1939~~ is sentenced or an order of disposi-
 8 tion is entered, made part of the court record, but are confiden-
 9 tial and shall be disclosed only to 1 OR MORE OF the FOLLOWING:

10 (A) THE defendant or child. ~~found to be within the provi-~~
 11 ~~sions of section 2(a)(1) of chapter XIIIA of Act No. 288 of the~~
 12 ~~Public Acts of 1939, the~~

13 (B) THE local health department. ~~, the~~

14 (C) THE department. ~~, the~~

15 (D) THE victim ~~, or~~ other person required to be informed
 16 of the results under this subsection or subsection (5). ~~, upon~~

17 (E) UPON written authorization of the defendant or child
 18 found to be within the provisions of section 2(a)(1) of chapter
 19 XIIIA of Act No. 288 of the Public Acts of 1939 or the child's
 20 parent, ~~or legal~~ guardian, or ~~as~~ PERSON IN LOCO PARENTIS.

21 (F) AS otherwise provided by law.

22 (7) If the defendant is placed in the custody of the depart-
 23 ment of corrections, the court shall transmit a copy of the
 24 defendant's examination and test results and other medical infor-
 25 mation to the department of corrections. If the child found to
 26 be within the provisions of section 2(a)(1) of chapter XIIIA of
 27 Act No. 288 of the Public Acts of 1939 is placed by the probate

1 court in the custody of a person related to the child or a public
2 or private agency, institution, or facility, the probate court
3 shall transmit a copy of the child's examination or test results
4 to the person related to the child or the director of the agency,
5 institution, or facility. A person or agency that discloses
6 information in compliance with this subsection OR SUBSECTION (6)
7 is not civilly or criminally liable for making the disclosure. A
8 person or agency that receives test results or other medical
9 information PERTAINING TO HIV INFECTION OR ACQUIRED IMMUNODEFI-
10 CIENCY SYNDROME under this subsection OR SUBSECTION (6) is
11 subject to section 5131 and shall not disclose the test results
12 or other medical information except as specifically permitted
13 under that section.

14 (8) ~~-(7)-~~ If an individual receives counseling or is
15 examined or tested under this section and is found to be infected
16 with a venereal disease or hepatitis B or to be HIV infected, the
17 individual shall be referred by the agency providing the counsel-
18 ing or testing for appropriate medical care. The department, the
19 local health department, or any other agency providing counseling
20 or testing under this section is not financially responsible for
21 medical care received by an individual as a result of a referral
22 made under this subsection.

23 (9) ~~-(8)-~~ The requirements for the distribution of informa-
24 tion concerning venereal disease, counseling concerning venereal
25 disease, and examining or testing for venereal disease under
26 subsections (2), (3), and (4) do not apply to an individual
27 charged with or convicted of violating section 7404 by

1 intravenously using a controlled substance OR VIOLATING A LOCAL
2 ORDINANCE PROHIBITING THE INTRAVENOUS USE OF A CONTROLLED
3 SUBSTANCE.

4 (10) ~~(9)~~ As used in this section:

5 (a) "Sexual contact" includes the intentional touching of
6 the victim's or actor's intimate parts or the intentional touch-
7 ing of the clothing covering the immediate area of the victim's
8 or actor's intimate parts, if that intentional touching can rea-
9 sonably be construed as being for the purpose of sexual arousal
10 or gratification.

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

16 (c) "Victim" includes, but is not limited to, ~~including,~~ a
17 person subjected to criminal sexual conduct in violation of sec-
18 tion 520b, 520c, 520d, 520e, or 520g of the Michigan penal code,
19 Act No. 328 of the Public Acts of 1931, being sections 750.520b,
20 750.520c, 750.520d, 750.520e, and 750.520g of the Michigan
21 Compiled Laws.