

HOUSE BILL NO. 5642

March 12, 2020, Introduced by Reps. Allor, Bollin, Rendon, Glenn, Afendoulis, Whiteford, Kahle, Bellino, Filler, Farrington, Whitsett, Hammoud, Yaroch, Crawford, Alexander, Cambensy and Calley and referred to the Committee on Judiciary.

A bill to amend 1978 PA 368, entitled
"Public health code,"
by amending section 5129 (MCL 333.5129), as amended by 2016 PA 70.

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 **commercial sexual activity** or engaging or offering to engage the
6 services of a ~~prostitute~~ **person who provides or offers to provide**



1 **commercial sexual activity** may, upon order of the court, be
 2 examined or tested to determine whether the individual has sexually
 3 transmitted infection, hepatitis B infection, hepatitis C
 4 infection, HIV infection, or acquired immunodeficiency syndrome.
 5 Examination or test results that indicate the presence of sexually
 6 transmitted infection, hepatitis B infection, hepatitis C
 7 infection, HIV infection, or acquired immunodeficiency syndrome
 8 must be reported to the defendant and, pursuant to sections 5114
 9 and 5114a, to the department and the appropriate local health
 10 department for partner notification.

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



1 voluntary on the part of the individual.

2 (3) If a defendant is bound over to circuit court for
3 violating section 145a, 338, 338a, 338b, 450, 452, 455, 520b, 520c,
4 520d, 520e, or 520g of the Michigan penal code, 1931 PA 328, MCL
5 750.145a, 750.338, 750.338a, 750.338b, 750.450, 750.452, 750.455,
6 750.520b, 750.520c, 750.520d, 750.520e, and 750.520g, and the
7 district court determines there is reason to believe the violation
8 involved sexual penetration or exposure to a body fluid of the
9 defendant, the district court shall order the defendant to be
10 examined or tested for sexually transmitted infection, hepatitis B
11 infection, and hepatitis C infection and for the presence of HIV or
12 an antibody to HIV. The circuit court shall order the examination
13 or testing if the defendant is brought before it by way of
14 indictment for any of the violations described in this subsection.
15 If a defendant is bound over to or brought before the circuit court
16 for violating section 520b, 520c, 520d, 520e, or 520g of the
17 Michigan penal code, 1931 PA 328, MCL 750.520b, 750.520c, 750.520d,
18 750.520e, and 750.520g, the court shall, upon the victim's request,
19 order the examination or testing to be done not later than 48 hours
20 after the date that the information or indictment is presented and
21 the defendant is in custody or has been served with the information
22 or indictment. The court shall include in its order for expedited
23 examination or testing at the victim's request under this
24 subsection a provision that requires follow-up examination or
25 testing that is considered medically appropriate based on the
26 results of the initial examination or testing. Except as provided
27 in subsection (5), (6), or (7), or as otherwise provided by law,
28 the examinations and tests must be confidentially administered by a
29 licensed physician, the department, or a local health department.



1 The court also shall order the defendant to receive counseling
2 regarding sexually transmitted infection, hepatitis B infection,
3 hepatitis C infection, HIV infection, and acquired immunodeficiency
4 syndrome, 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 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,~~ **commercial sexual**
17 **activity**, solicitation, gross indecency, or the intravenous use of
18 a controlled substance, the court that has jurisdiction of the
19 criminal prosecution or juvenile hearing shall order the defendant
20 or child to be examined or tested for sexually transmitted
21 infection, hepatitis B infection, and hepatitis C infection and for
22 the presence of HIV or an antibody to HIV. Except as provided in
23 subsection (5), (6), or (7), or as otherwise provided by law, the
24 examinations and tests must be confidentially administered by a
25 licensed physician, the department, or a local health department.
26 The court also shall order the defendant or child to receive
27 counseling regarding sexually transmitted infection, hepatitis B
28 infection, hepatitis C infection, HIV infection, and acquired
29 immunodeficiency syndrome, including, at a minimum, information



1 regarding treatment, transmission, and protective measures.

2 (5) If the victim or individual with whom the defendant or
3 child found to be within the provisions of section 2(a)(1) of
4 chapter XIIIA of the probate code of 1939, 1939 PA 288, MCL 712A.2,
5 engaged in sexual penetration or sexual contact or who was exposed
6 to a body fluid during the course of the crime consents, the court
7 or probate court shall provide the person or agency conducting the
8 examinations or administering the tests under subsection (3) or (4)
9 with the name, address, and telephone number of the victim or
10 individual with whom the defendant or child engaged in sexual
11 penetration or sexual contact or who was exposed to a body fluid of
12 the defendant during the course of the crime. If the victim or
13 individual with whom the defendant or child engaged in sexual
14 penetration during the course of the crime is a minor or otherwise
15 incapacitated, the victim's or individual's parent, guardian, or
16 person in loco parentis may give consent for purposes of this
17 subsection. After the defendant or child is examined or tested as
18 to the presence of sexually transmitted infection, hepatitis B
19 infection, hepatitis C infection, or HIV or an antibody to HIV, or
20 if the defendant or child receives appropriate follow-up testing
21 for the presence of HIV, the person or agency conducting the
22 examinations or administering the tests shall immediately provide
23 the examination or test results to the victim or individual with
24 whom the defendant or child found to be within the provisions of
25 section 2(a)(1) of chapter XIIIA of the probate code of 1939, 1939
26 PA 288, MCL 712A.2, engaged in sexual penetration or sexual contact
27 or who was exposed to a body fluid during the course of the crime
28 and shall refer the victim or other individual for appropriate
29 counseling.



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

12 (a) The defendant or child.

13 (b) The local health department.

14 (c) The department.

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

20 (e) Upon written authorization of the defendant or child found
21 to be within the provisions of section 2(a)(1) of chapter XIIA of
22 the probate code of 1939, 1939 PA 288, MCL 712A.2, or the child's
23 parent, guardian, or person in loco parentis.

24 (f) As otherwise provided by law.

25 (7) If the defendant is placed in the custody of the
26 department of corrections, the court shall transmit a copy of the
27 defendant's examination and test results and other medical
28 information to the department of corrections. If the child found to
29 be within the provisions of section 2(a)(1) of chapter XIIA of the



1 probate code of 1939, 1939 PA 288, MCL 712A.2, is placed by the
2 probate court in the custody of an individual related to the child
3 or a public or private agency, institution, or facility, the
4 probate court shall transmit a copy of the child's examination or
5 test results to the individual related to the child or the director
6 of the agency, institution, or facility. A person or agency that
7 discloses information in compliance with this subsection or
8 subsection (6) is not civilly or criminally liable for making the
9 disclosure. A person or agency that receives test results or other
10 medical information pertaining to HIV infection or acquired
11 immunodeficiency syndrome under this subsection or subsection (6)
12 is subject to section 5131 and shall not disclose the test results
13 or other medical information except as specifically permitted under
14 that section.

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

24 (9) The requirements for the distribution of information
25 concerning sexually transmitted infection, counseling concerning
26 sexually transmitted infection, and examining or testing for
27 sexually transmitted infection under subsections (2), (3), and (4)
28 do not apply to an individual charged with or convicted of
29 violating section 7404 by intravenously using a controlled



1 substance or violating a local ordinance prohibiting the
2 intravenous use of a controlled substance.

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

11 (11) An individual who is ordered to pay the costs of an
12 examination or test under subsection (10) shall pay those costs
13 within 30 days after the order is issued or as otherwise provided
14 by the court. The amount ordered to be paid under subsection (10)
15 must be paid to the clerk of the court, who shall transmit the
16 appropriate amount to the physician or local health department
17 named in the order. If an individual is ordered to pay a
18 combination of fines, costs, restitution, assessments, probation or
19 parole supervision fees, or other payments upon conviction in
20 addition to the costs ordered under subsection (10), the payments
21 must be allocated as provided under the probate code of 1939, 1939
22 PA 288, MCL 710.21 to 712B.41, the code of criminal procedure, 1927
23 PA 175, MCL 760.1 to 777.69, and the William Van Regenmorter crime
24 victim's rights act, 1985 PA 87, MCL 780.751 to 780.834. An
25 individual who fails to pay the costs within the 30-day period or
26 as otherwise ordered by the court is guilty of a misdemeanor
27 punishable by imprisonment for not more than 90 days or a fine of
28 not more than \$100.00, or both.

29 (12) As used in this section:



1 (a) "Sexual contact" means that term as defined in section
2 520a of the Michigan penal code, 1931 PA 328, MCL 750.520a.

3 (b) "Sexual penetration" means that term as defined in section
4 520a of the Michigan penal code, 1931 PA 328, MCL 750.520a.

5 (c) "Victim" includes, but is not limited to, a victim as that
6 term is defined in section 520a of the Michigan penal code, 1931 PA
7 328, MCL 750.520a.

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

10 Enacting section 2. This amendatory act does not take effect
11 unless Senate Bill No. _____ or House Bill No. 5655 (request no.
12 05968'20) of the 100th Legislature is enacted into law.

