

HOUSE BILL No. 6174

June 12, 2018, Introduced by Reps. Geiss, Sabo, Cochran, Chang, Lasinski, Brinks, Guerra, Greig, Love, Green, Pagan, Yancey, Gay-Dagnogo, Wittenberg, Rabhi and Jones and referred to the Committee on Law and Justice.

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 SEX ACTS** or engaging or offering to engage the services
6 of a ~~prostitute~~ **PERSON TO ENGAGE IN A COMMERCIAL SEX ACT** may, upon
7 order of the court, be examined or tested to determine whether the
8 individual has sexually transmitted infection, hepatitis B
9 infection, hepatitis C infection, HIV infection, or acquired

1 immunodeficiency syndrome. Examination or test results that
2 indicate the presence of sexually transmitted infection, hepatitis
3 B infection, hepatitis C infection, HIV infection, or acquired
4 immunodeficiency syndrome must be reported to the defendant and,
5 pursuant to sections 5114 and 5114a, to the department and the
6 appropriate local health department for partner notification.

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

27 (3) If a defendant is bound over to circuit court for

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

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 sexually transmitted infection, hepatitis B
21 infection, hepatitis C infection, or HIV or an antibody to HIV, or
22 if the defendant or child receives appropriate follow-up testing
23 for the presence of HIV, the person or agency conducting the
24 examinations or administering the tests shall immediately provide
25 the examination or test results to the victim or individual with
26 whom the defendant or child found to be within the provisions of
27 section 2(a)(1) of chapter XIIIA of the probate code of 1939, 1939

1 PA 288, MCL 712A.2, engaged in sexual penetration or sexual contact
2 or who was exposed to a body fluid during the course of the crime
3 and shall refer the victim or other individual for appropriate
4 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 sexually
23 transmitted infection, hepatitis B, or hepatitis C or to be HIV
24 infected, the individual must be referred by the agency providing
25 the counseling or testing for appropriate medical care. The
26 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 sexually transmitted infection, counseling concerning
5 sexually transmitted infection, and examining or testing for
6 sexually transmitted infection under subsections (2), (3), and (4)
7 do not apply to an individual charged with or convicted of
8 violating section 7404 by intravenously using a controlled
9 substance or violating a local ordinance prohibiting the
10 intravenous use of a controlled substance.

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

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

1 addition to the costs ordered under subsection (10), the payments
2 must be allocated as provided under the probate code of 1939, 1939
3 PA 288, MCL 710.21 to 712B.41, the code of criminal procedure, 1927
4 PA 175, MCL 760.1 to 777.69, and the William Van Regenmorter crime
5 victim's rights act, 1985 PA 87, MCL 780.751 to 780.834. An
6 individual who fails to pay the costs within the 30-day period or
7 as otherwise ordered by the court is guilty of a misdemeanor
8 punishable by imprisonment for not more than 90 days or a fine of
9 not more than \$100.00, or both.

10 (12) As used in this section:

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

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

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

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

20 Enacting section 2. This amendatory act does not take effect
21 unless Senate Bill No. _____ or House Bill No. 6169 (request no.
22 02879'17) of the 99th Legislature is enacted into law.