

**SUBSTITUTE FOR
SENATE BILL NO. 632**

A bill to amend 1978 PA 368, entitled
"Public health code,"
by amending section 7411 (MCL 333.7411), as amended by 2004 PA 225.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 7411. (1) When an individual who has not previously been
2 convicted of an offense under this article or under any statute of
3 the United States or of any state relating to narcotic drugs, coca
4 leaves, marihuana, or stimulant, depressant, or hallucinogenic
5 drugs, pleads guilty to or is found guilty of possession of a
6 controlled substance under section 7403(2)(a)(v), 7403(2)(b), (c),
7 or (d), or of use of a controlled substance under section 7404, or
8 possession or use of an imitation controlled substance under
9 section 7341 for a second time, the court, without entering a
10 judgment of guilt with the consent of the accused, may defer

1 further proceedings and place the individual on probation upon
2 terms and conditions that shall include, but are not limited to,
3 payment of a probation supervision fee as prescribed in section 3c
4 of chapter XI of the code of criminal procedure, 1927 PA 175, MCL
5 771.3c. The terms and conditions of probation may include
6 participation in a drug treatment court under chapter 10A of the
7 revised judicature act of 1961, 1961 PA 236, MCL 600.1060 to
8 ~~600.1082~~**600.1084**. Upon violation of a term or condition, the court
9 may enter an adjudication of guilt and proceed as otherwise
10 provided. Upon fulfillment of the terms and conditions, the court
11 shall discharge the individual and dismiss the proceedings.
12 Discharge and dismissal under this section shall be without
13 adjudication of guilt and, except as **OTHERWISE** provided ~~in~~
14 ~~subsection (2) (b)~~, **BY LAW**, is not a conviction for purposes of this
15 section or for purposes of disqualifications or disabilities
16 imposed by law upon conviction of a crime, including the additional
17 penalties imposed for second or subsequent convictions under
18 section 7413. There may be only 1 discharge and dismissal under
19 this section as to an individual.

20 ~~—— (2) The records and identifications division of the department~~
21 ~~of state police shall retain a nonpublic record of an arrest and~~
22 ~~discharge or dismissal under this section. This record shall be~~
23 ~~furnished to any or all of the following:~~

24 ~~—— (a) To a court, police agency, or office of a prosecuting~~
25 ~~attorney upon request for the purpose of showing that a defendant~~
26 ~~in a criminal action involving the possession or use of a~~
27 ~~controlled substance, or an imitation controlled substance as~~

1 ~~defined in section 7341, covered in this article has already once~~
2 ~~utilized this section.~~

3 ~~—— (b) To a court, police agency, or prosecutor upon request for~~
4 ~~the purpose of determining whether the defendant in a criminal~~
5 ~~action is eligible for discharge and dismissal of proceedings by a~~
6 ~~drug treatment court under section 1076(4) of the revised~~
7 ~~judicature act of 1961, 1961 PA 236, MCL 600.1076.~~

8 ~~—— (c) To the state department of corrections, a law enforcement~~
9 ~~agency, a court, or the office of a prosecuting attorney upon~~
10 ~~request of the department, law enforcement agency, court, or office~~
11 ~~of a prosecuting attorney, subject to all of the following~~
12 ~~conditions:~~

13 ~~—— (i) At the time of the request, the individual is an employee~~
14 ~~of the department, law enforcement agency, court, or office of~~
15 ~~prosecuting attorney or an applicant for employment with the~~
16 ~~department, law enforcement agency, court, or office of prosecuting~~
17 ~~attorney.~~

18 ~~—— (ii) If the individual is an employee of the department, law~~
19 ~~enforcement agency, court, or prosecuting attorney, the date on~~
20 ~~which the court placed the individual on probation occurred after~~
21 ~~March 25, 2002.~~

22 ~~—— (iii) The record shall be used by the department of corrections,~~
23 ~~law enforcement agency, court, or prosecuting attorney only to~~
24 ~~determine whether an employee has violated his or her conditions of~~
25 ~~employment or whether an applicant meets criteria for employment.~~

26 **(2) UNLESS THE COURT ENTERS AN ADJUDICATION OF GUILT UNDER**
27 **THIS SECTION, ALL PROCEEDINGS REGARDING THE DISPOSITION OF THE**

1 CRIMINAL CHARGE SHALL BE CLOSED TO PUBLIC INSPECTION, BUT SHALL BE
2 OPEN TO THE COURTS OF THIS STATE, THE DEPARTMENT OF CORRECTIONS,
3 THE DEPARTMENT OF HUMAN SERVICES, LAW ENFORCEMENT PERSONNEL, AND
4 PROSECUTING ATTORNEYS FOR USE ONLY IN THE PERFORMANCE OF THEIR
5 DUTIES.

6 (3) For purposes of this section, a person subjected to a
7 civil fine for a first violation of section 7341(4) shall not be
8 considered to have previously been convicted of an offense under
9 this article.

10 (4) Except as provided in subsection (5), if an individual is
11 convicted of a violation of this article, other than a violation of
12 section 7401(2)(a)(i) to (iv) or section 7403(2)(a)(i) to (iv), the
13 court as part of the sentence, during the period of confinement or
14 the period of probation, or both, may require the individual to
15 attend a course of instruction or rehabilitation program approved
16 by the department on the medical, psychological, and social effects
17 of the misuse of drugs. The court may order the individual to pay a
18 fee, as approved by the director, for the instruction or program.
19 Failure to complete the instruction or program shall be considered
20 a violation of the terms of probation.

21 (5) If an individual is convicted of a second violation of
22 section 7341(4), before imposing sentence under subsection (1), the
23 court shall order the person to undergo screening and assessment by
24 a person or agency designated by the office of substance abuse
25 services, to determine whether the person is likely to benefit from
26 rehabilitative services, including alcohol or drug education and
27 alcohol or drug treatment programs. As part of the sentence imposed

1 under subsection (1), the court may order the person to participate
2 in and successfully complete 1 or more appropriate rehabilitative
3 programs. The person shall pay for the costs of the screening,
4 assessment, and rehabilitative services. Failure to complete a
5 program shall be considered a violation of the terms of the
6 probation.

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