



**House
Legislative
Analysis
Section**

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**DISCHARGE AND DISMISSAL
RECORDS**

**House Bill 4859 (Substitute H-1)
First Analysis (10-11-01)**

**Sponsor: Rep. Larry Julian
Committee: Criminal Justice**

THE APPARENT PROBLEM:

Section 7411 of the Public Health Code grants a court the discretion to place a person on probation for a first offense involving the possession of a controlled substance or for a second offense of possessing an imitation controlled substance. If the person fulfills the terms and conditions of his or her probation, the court is required to discharge the individual and dismiss the proceedings. This is commonly referred to as a “7411 adjudication”. However, a nonpublic record of the arrest and discharge is kept by the Records and Identifications Division of the Department of State Police and furnished to a court or police agency to show that a defendant in a criminal action involving the possession or use of a controlled substance has already made use of this provision.

Under Public Act 232 of 1953, known as the “Corrections Code”, a person who has been convicted of a felony or who is subject to pending felony charges is prohibited from being employed by the Department of Corrections (DOC). Further, it is the department’s policy to deny employment to persons who have committed drug violations. Though the DOC conducts background checks on new applicants for employment, the discharge and dismissal records for 7411 adjudications are not currently available to the DOC for employment purposes.

In order to promote security in prisons, the department sets a high standard of allowable behaviors and activities on the part of employees and potential employees. The DOC believes that persons who may have had a 7411 adjudication in the past remain a security risk. Legislation has therefore been offered to permit the department, along with law enforcement agencies, to access records kept under Section 7411 to screen applicants for employment for past histories of drug involvement and to determine whether current employees have violated conditions of employment.

THE CONTENT OF THE BILL:

House Bill 4859 would amend the Public Health Code to allow for the release of a record of arrest and dismissal under Section 7411 to the Department of Corrections (DOC) or to a law enforcement agency, upon request, subject to the following conditions:

- If, at the time of the arrest, the individual was an employee, or an applicant for employment, of the DOC or the law enforcement agency.
- If the individual were a DOC or law enforcement agency employee, the date on which the court placed the individual on probation would have to have occurred after the effective date of the bill.
- The record could only be used by the DOC or a law enforcement agency to determine whether or not an employee violated his or her conditions of employment or whether an applicant met the criteria for employment.

MCL 333.7411

FISCAL IMPLICATIONS:

Fiscal information is not available.

ARGUMENTS:

For:

Because of the demands put on many corrections employees and the degree of trust that the public needs to have in its corrections officers, the Department of Corrections (DOC) has taken a zero tolerance approach to drug offenses. Though current law prohibits employment to persons with a felony conviction, according to a representative of the DOC, the department takes a broader approach to drug offenses and denies employment for any drug violation. Currently, though background checks are done on applicants for employment, the department lacks the statutory authority to access 7411

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adjudication records for purposes of screening job applicants.

Further, the DOC employee handbook requires that employees immediately report any arrest. Failure to do so constitutes a work rule violation. The department has a set procedure to follow, including hearings to determine disciplinary actions, when an employee reports an arrest or when it comes to the department's attention that an employee has failed to do so. Passage of the bill would enable the department to appropriately screen job applicants and detect those who failed to disclose an arrest for a controlled substance. The bill would also enable the department to better track the court proceedings for current employees who have been arrested for a controlled substance offense. It is assumed that similar benefits would be realized by law enforcement agencies with regard to screening out inappropriate job applicants and tracking the legal proceedings for current employees who have run afoul of the law.

Against:

Without evidence of rampant drug use by corrections officers and law enforcement personnel, or evidence that a significant amount of employees are supplying prisoners with drugs, the bill would seem to be an infringement of the rights of corrections and law enforcement agency employees. It is one thing to deny employment to a person convicted of a felony drug offense as required by statute, but another to base denial of employment on an adjudication that does not count as a conviction. Conceivably, the DOC and police departments and other law enforcement agencies could use the bill not just to screen out applicants with past drug involvement, but also could run periodic checks on current employees to see if anyone failed to report a recent drug arrest.

Response:

As for infringing on the rights of current employees, the bill specifies that the department could request the release of a record only for drug offenses discharged and dismissed under Section 7411 that occurred after the bill's effective date, and then only to determine if an employee violated his or her employment conditions – which include drug offenses. It is already the department's policy to prohibit illegal drug use by employees (including misdemeanor drug offenses) and to require employees to self-report arrests. Since many employees of the DOC are represented by a union, and since departmental policy and current laws require a hearing procedure, infringement on current employee rights should not pose a problem.

According to DOC staff, with over 19,000 employees, it would be too costly in time and money to request 7411 adjudication records for every employee. It is the department's expressed intention to primarily use the bill's provisions to identify and screen out inappropriate job applicants.

Again, it is reasonable to assume that access to discharge and dismissal records for 7411 adjudications by law enforcement agencies would also be used primarily to screen for suitable applicants or to ensure that personnel were not violating conditions of employment. Due to the nature of the work of corrections personnel and law enforcement agency personnel, a higher standard of behavior, even in off-hours, is not unreasonable.

POSITIONS:

The Department of Corrections supports the bill. (10-9-01)

Analyst: S. Stutzky

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.