

**SENATE SUBSTITUTE FOR  
HOUSE BILL NO. 4859**

A bill to amend 1978 PA 368, entitled  
"Public health code,"  
by amending section 7411 (MCL 333.7411), as amended by 1993  
PA 169.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

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

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1 the accused, may defer further proceedings and place the  
2 individual on probation upon terms and conditions that shall  
3 include, but are not limited to, payment of a probation supervi-  
4 sion fee as prescribed in section 3c of chapter XI of the code of  
5 criminal procedure, ~~Act No. 175 of the Public Acts of 1927,~~  
6 ~~being section 771.3c of the Michigan Compiled Laws~~ 1927 PA 175,  
7 MCL 771.3C. Upon violation of a term or condition, the court may  
8 enter an adjudication of guilt and proceed as otherwise  
9 provided. Upon fulfillment of the terms and conditions, the  
10 court shall discharge the individual and dismiss the  
11 proceedings. Discharge and dismissal under this section shall be  
12 without adjudication of guilt and, EXCEPT AS PROVIDED IN SUBSEC-  
13 TION (2)(B), is not a conviction for purposes of this section or  
14 for purposes of disqualifications or disabilities imposed by law  
15 upon conviction of a crime, including the additional penalties  
16 imposed for second or subsequent convictions under section 7413.  
17 There may be only 1 discharge and dismissal under this section as  
18 to an individual.

19 (2) The records and identifications division of the depart-  
20 ment of state police shall retain a nonpublic record of an arrest  
21 and discharge or dismissal under this section. This record shall  
22 be furnished to EITHER OR BOTH OF THE FOLLOWING:

23 (A) TO a court or police agency upon request for the purpose  
24 of showing that a defendant in a criminal action involving the  
25 possession or use of a controlled substance, or an imitation con-  
26 trolled substance as defined in section 7341, covered in this  
27 article has already once utilized this section.

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1 (B) TO THE STATE DEPARTMENT OF CORRECTIONS OR A LAW  
2 ENFORCEMENT AGENCY, UPON THE DEPARTMENT'S OR LAW ENFORCEMENT  
3 AGENCY'S REQUEST, SUBJECT TO ALL OF THE FOLLOWING CONDITIONS:

4 (i) AT THE TIME OF THE REQUEST, THE INDIVIDUAL IS AN  
5 EMPLOYEE OF THE DEPARTMENT OR THE LAW ENFORCEMENT AGENCY OR AN  
6 APPLICANT FOR EMPLOYMENT WITH THE DEPARTMENT OR THE LAW ENFORCE-  
7 MENT AGENCY.

8 (ii) IF THE INDIVIDUAL IS AN EMPLOYEE OF THE DEPARTMENT OR  
9 THE LAW ENFORCEMENT AGENCY, THE DATE ON WHICH THE COURT PLACED  
10 THE INDIVIDUAL ON PROBATION OCCURRED AFTER THE EFFECTIVE DATE OF  
11 THE 2002 AMENDATORY ACT THAT ADDED THIS SUBDIVISION.

12 (iii) THE RECORD SHALL BE USED BY THE DEPARTMENT OF CORREC-  
13 TIONS OR THE LAW ENFORCEMENT AGENCY ONLY TO DETERMINE WHETHER AN  
14 EMPLOYEE HAS VIOLATED HIS OR HER CONDITIONS OF EMPLOYMENT OR  
15 WHETHER AN APPLICANT MEETS CRITERIA FOR EMPLOYMENT.

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

20 (4) ~~(2)~~ Except as provided in subsection ~~(3)~~ (5), if an  
21 individual is convicted of a violation of this article, other  
22 than a violation of section 7401(2)(a)(i) to (iv) or section  
23 7403(2)(a)(i) to (iv), the court as part of the sentence, during  
24 the period of confinement or the period of probation, or both,  
25 may require the individual to attend a course of instruction or  
26 rehabilitation program approved by the department on the medical,  
27 psychological, and social effects of the misuse of drugs. The

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1 court may order the individual to pay a fee, as approved by the  
2 director, for the instruction or program. Failure to complete  
3 the instruction or program shall be considered a violation of the  
4 terms of probation.

5 (5) ~~(3)~~ If an individual is convicted of a second viola-  
6 tion of section 7341(4), before imposing sentence under  
7 subsection (1), the court shall order the person to undergo  
8 screening and assessment by a person or agency designated by the  
9 office of substance abuse services, to determine whether the  
10 person is likely to benefit from rehabilitative services, includ-  
11 ing alcohol or drug education and alcohol or drug treatment  
12 programs. As part of the sentence imposed under subsection (1),  
13 the court may order the person to participate in and successfully  
14 complete 1 or more appropriate rehabilitative programs. The  
15 person shall pay for the costs of the screening, assessment, and  
16 rehabilitative services. Failure to complete a program shall be  
17 considered a violation of the terms of the probation.