

Act No. 79  
Public Acts of 2002  
Approved by the Governor  
March 25, 2002  
Filed with the Secretary of State  
March 25, 2002  
EFFECTIVE DATE: March 25, 2002

**STATE OF MICHIGAN  
91ST LEGISLATURE  
REGULAR SESSION OF 2002**

Introduced by Rep. Julian

# **ENROLLED HOUSE BILL No. 4859**

AN ACT to amend 1978 PA 368, entitled "An act to protect and promote the public health; to codify, revise, consolidate, classify, and add to the laws relating to public health; to provide for the prevention and control of diseases and disabilities; to provide for the classification, administration, regulation, financing, and maintenance of personal, environmental, and other health services and activities; to create or continue, and prescribe the powers and duties of, departments, boards, commissions, councils, committees, task forces, and other agencies; to prescribe the powers and duties of governmental entities and officials; to regulate occupations, facilities, and agencies affecting the public health; to regulate health maintenance organizations and certain third party administrators and insurers; to provide for the imposition of a regulatory fee; to promote the efficient and economical delivery of health care services, to provide for the appropriate utilization of health care facilities and services, and to provide for the closure of hospitals or consolidation of hospitals or services; to provide for the collection and use of data and information; to provide for the transfer of property; to provide certain immunity from liability; to regulate and prohibit the sale and offering for sale of drug paraphernalia under certain circumstances; to provide for the implementation of federal law; to provide for penalties and remedies; to provide for sanctions for violations of this act and local ordinances; to repeal certain acts and parts of acts; to repeal certain parts of this act; and to repeal certain parts of this act on specific dates," by amending section 7411 (MCL 333.7411), as amended by 1993 PA 169.

*The People of the State of Michigan enact:*

Sec. 7411. (1) When an individual who has not previously been convicted of an offense under this article or under any statute of the United States or of any state relating to narcotic drugs, coca leaves, marihuana, or stimulant, depressant, or hallucinogenic drugs, pleads guilty to or is found guilty of possession of a controlled substance under section 7403(2)(a)(v), 7403(2)(b), (c), or (d), or of use of a controlled substance under section 7404, or possession or use of an imitation controlled substance under section 7341 for a second time, the court, without entering a judgment of guilt with the consent of the accused, may defer further proceedings and place the individual on probation upon terms and conditions that shall include, but are not limited to, payment of a probation supervision fee as prescribed in section 3c of chapter XI of the code of criminal procedure, 1927 PA 175, MCL 771.3c. Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as otherwise provided. Upon fulfillment of the terms and conditions, the court shall discharge the individual and dismiss the proceedings. Discharge and dismissal under this section shall be without adjudication of guilt and, except as provided in subsection (2)(b), is not a conviction for purposes of this section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime, including the additional penalties imposed for second or subsequent convictions under section 7413. There may be only 1 discharge and dismissal under this section as to an individual.

(2) The records and identifications division of the department of state police shall retain a nonpublic record of an arrest and discharge or dismissal under this section. This record shall be furnished to either or both of the following:

(a) To a court or police agency upon request for the purpose of showing that a defendant in a criminal action involving the possession or use of a controlled substance, or an imitation controlled substance as defined in section 7341, covered in this article has already once utilized this section.

(b) To the state department of corrections or a law enforcement agency, upon the department's or law enforcement agency's request, subject to all of the following conditions:

(i) At the time of the request, the individual is an employee of the department or the law enforcement agency or an applicant for employment with the department or the law enforcement agency.

(ii) If the individual is an employee of the department or the law enforcement agency, the date on which the court placed the individual on probation occurred after the effective date of the 2002 amendatory act that added this subdivision.

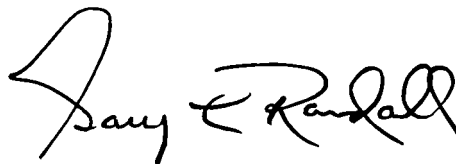
(iii) The record shall be used by the department of corrections or the law enforcement agency only to determine whether an employee has violated his or her conditions of employment or whether an applicant meets criteria for employment.

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

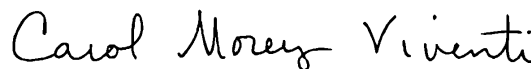
(4) Except as provided in subsection (5), if an individual is convicted of a violation of this article, other than a violation of section 7401(2)(a)(i) to (iv) or section 7403(2)(a)(i) to (iv), the court as part of the sentence, during the period of confinement or the period of probation, or both, may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

(5) If an individual is convicted of a second violation of section 7341(4), before imposing sentence under subsection (1), the court shall order the person to undergo screening and assessment by a person or agency designated by the office of substance abuse services, to determine whether the person is likely to benefit from rehabilitative services, including alcohol or drug education and alcohol or drug treatment programs. As part of the sentence imposed under subsection (1), the court may order the person to participate in and successfully complete 1 or more appropriate rehabilitative programs. The person shall pay for the costs of the screening, assessment, and rehabilitative services. Failure to complete a program shall be considered a violation of the terms of the probation.

This act is ordered to take immediate effect.



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Clerk of the House of Representatives.



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Secretary of the Senate.

Approved .....

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Governor.