

Act No. 169
Public Acts of 1993
Approved by the Governor
September 16, 1993
Filed with the Secretary of State
September 16, 1993

**STATE OF MICHIGAN
87TH LEGISLATURE
REGULAR SESSION OF 1993**

Introduced by Reps. Bender, Cropsey, Walberg, Randall, Joe Young, Jr., Vorva, Hill, Whyman, Allen, Gnodtke, Dalman, Galloway, Middaugh, Gilmer, Martin, Bankes, Middleton, Johnson, Bobier, Wetters, Pitoniak and McNutt

ENROLLED HOUSE BILL No. 4876

AN ACT to amend section 7411 of Act No. 368 of the Public Acts of 1978, entitled as amended "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 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 penalties and remedies; 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," as amended by Act No. 144 of the Public Acts of 1988, being section 333.7411 of the Michigan Compiled Laws.

The People of the State of Michigan enact:

Section 1. Section 7411 of Act No. 368 of the Public Acts of 1978, as amended by Act No. 144 of the Public Acts of 1988, being section 333.7411 of the Michigan Compiled Laws, is amended to read as follows:

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, Act No. 175 of the Public Acts of 1927, being section 771.3c of the Michigan Compiled Laws. 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 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. 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 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. 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.

(2) Except as provided in subsection (3), 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.

(3) 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.

Section 2. This amendatory act shall not take effect unless all of the following bills of the 87th Legislature are enacted into law:

(a) House Bill No. 4875.

(b) House Bill No. 4877.

This act is ordered to take immediate effect.

Co-Clerk of the House of Representatives.

Secretary of the Senate.

Approved -----

Governor.