

HOUSE 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

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

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

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

1 ~~controlled substance, or an imitation controlled substance as~~
2 ~~defined in section 7341, covered in this article has already once~~
3 ~~utilized this section.~~

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

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

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

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

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

27 (2) ALL COURT PROCEEDINGS UNDER THIS SECTION SHALL BE OPEN TO

1 THE PUBLIC. EXCEPT AS PROVIDED IN SUBSECTION (3), IF THE RECORD OF
2 PROCEEDINGS AS TO THE DEFENDANT IS DEFERRED UNDER THIS SECTION, THE
3 RECORD OF PROCEEDINGS DURING THE PERIOD OF DEFERRAL SHALL BE CLOSED
4 TO PUBLIC INSPECTION.

5 (3) UNLESS THE COURT ENTERS A JUDGMENT OF GUILT UNDER THIS
6 SECTION, THE DEPARTMENT OF STATE POLICE SHALL RETAIN A NONPUBLIC
7 RECORD OF THE ARREST, COURT PROCEEDINGS, AND DISPOSITION OF THE
8 CRIMINAL CHARGE UNDER THIS SECTION. HOWEVER, THE NONPUBLIC RECORD
9 SHALL BE OPEN TO THE FOLLOWING INDIVIDUALS AND ENTITIES FOR THE
10 PURPOSES NOTED:

11 (A) THE COURTS OF THIS STATE, LAW ENFORCEMENT PERSONNEL, AND
12 PROSECUTING ATTORNEYS FOR USE ONLY IN THE PERFORMANCE OF THEIR
13 DUTIES.

14 (B) THE COURTS OF THIS STATE, LAW ENFORCEMENT PERSONNEL, AND
15 PROSECUTING ATTORNEYS FOR THE PURPOSE OF SHOWING EITHER OF THE
16 FOLLOWING:

17 (i) THAT A DEFENDANT HAS ALREADY ONCE AVAILED HIMSELF OR
18 HERSELF OF THIS SECTION.

19 (ii) DETERMINING WHETHER THE DEFENDANT IN A CRIMINAL ACTION IS
20 ELIGIBLE FOR DISCHARGE AND DISMISSAL OF PROCEEDINGS BY A DRUG
21 TREATMENT COURT UNDER SECTION 1076(5) OF THE REVISED JUDICATURE ACT
22 OF 1961, 1961 PA 236, MCL 600.1076.

23 (C) THE DEPARTMENT OF CORRECTIONS FOR ASCERTAINING
24 PREEMPLOYMENT CRIMINAL HISTORY OR TO DETERMINE WHETHER A DEPARTMENT
25 OF CORRECTIONS EMPLOYEE HAS VIOLATED CONDITIONS OF EMPLOYMENT.

26 (D) THE DEPARTMENT OF HUMAN SERVICES FOR ENFORCING CHILD
27 PROTECTION LAWS AND VULNERABLE ADULT PROTECTION LAWS OR

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1 ASCERTAINING THE PREEMPLOYMENT CRIMINAL HISTORY OF ANY INDIVIDUAL
2 WHO WILL BE ENGAGED IN THE ENFORCEMENT OF CHILD PROTECTION LAWS OR
3 VULNERABLE ADULT PROTECTION LAWS.

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21 (4) ~~(3)~~—For purposes of this section, a person subjected to a
22 civil fine for a first violation of section 7341(4) shall not be
23 considered to have previously been convicted of an offense under
24 this article.

25 [(5)] ~~(4)~~—Except as provided in subsection ~~(5)~~ [(6)], if an
26 individual is convicted of a violation of this article, other than
27 a violation of section 7401(2)(a)(i) to (iv) or section 7403(2)(a)(i)

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1 to (iv), the court as part of the sentence, during the period of
2 confinement or the period of probation, or both, may require the
3 individual to attend a course of instruction or rehabilitation
4 program approved by the department on the medical, psychological,
5 and social effects of the misuse of drugs. The court may order the
6 individual to pay a fee, as approved by the director, for the
7 instruction or program. Failure to complete the instruction or
8 program shall be considered a violation of the terms of probation.

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

22 Enacting section 1. This amendatory act takes effect April 1,
23 2013.