

SENATE BILL No. 632

September 8, 2011, Introduced by Senators BIEDA, JONES, SCHUITMAKER, GLEASON, MARLEAU, PROOS and PAPPAGEORGE and referred to the Committee on Judiciary.

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
10 judgment of guilt with the consent of the accused, may defer
11 further proceedings and place the individual on probation upon

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

18 (2) The records and identifications division of the department
19 of state police shall retain a nonpublic record of an arrest,
20 **DIVERSION**, and discharge or dismissal under this section. This
21 record shall be furnished to ~~any or~~ all of the following:

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

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

6 (c) To the state department of corrections, a law enforcement
7 agency, a court, or the office of a prosecuting attorney upon
8 request of the department, law enforcement agency, court, or office
9 of a prosecuting attorney, subject to all of the following
10 conditions:

11 (i) At the time of the request, the individual is an employee
12 of the department, law enforcement agency, court, or office of
13 prosecuting attorney or an applicant for employment with the
14 department, law enforcement agency, court, or office of prosecuting
15 attorney.

16 (ii) If the individual is an employee of the department, law
17 enforcement agency, court, or prosecuting attorney, the date on
18 which the court placed the individual on probation occurred after
19 March 25, 2002.

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

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

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

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