

SENATE BILL No. 94

February 10, 2015, Introduced by Senators SCHUITMAKER, NOFS and O'BRIEN 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 2013 PA 223.

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

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

19 (2) All court proceedings under this section shall be open to
20 the public. Except as provided in subsection (3), if the record of
21 proceedings as to the defendant is deferred under this section, the
22 record of proceedings during the period of deferral shall be closed
23 to public inspection.

24 (3) Unless the court enters a judgment of guilt under this
25 section, the department of state police shall retain a nonpublic
26 record of the arrest, court proceedings, and disposition of the
27 criminal charge under this section. However, the nonpublic record

1 shall be open to the following individuals and entities for the
2 purposes noted:

3 (a) The courts of this state, law enforcement personnel, the
4 department of corrections, and prosecuting attorneys for use only
5 in the performance of their duties or to determine whether an
6 employee of the court, law enforcement agency, department of
7 corrections, or prosecutor's office has violated his or her
8 conditions of employment or whether an applicant meets criteria for
9 employment with the court, law enforcement agency, department of
10 corrections, or prosecutor's office.

11 (b) The courts of this state, law enforcement personnel, and
12 prosecuting attorneys for the purpose of showing either of the
13 following:

14 (i) That a defendant has already once availed himself or
15 herself of this section.

16 (ii) Determining whether the defendant in a criminal action is
17 eligible for discharge and dismissal of proceedings by a drug
18 treatment court under section 1076(5) of the revised judicature act
19 of 1961, 1961 PA 236, MCL 600.1076.

20 (c) The department of human services for enforcing child
21 protection laws and vulnerable adult protection laws or
22 ascertaining the preemployment criminal history of any individual
23 who will be engaged in the enforcement of child protection laws or
24 vulnerable adult protection laws.

25 **(D) THE MICHIGAN COMMISSION ON LAW ENFORCEMENT STANDARDS**
26 **CREATED IN EXECUTIVE REORGANIZATION ORDER NO. 2001-2, MCL 28.621,**
27 **AS FOLLOWS:**

1 (i) THE COURT PLACED THE INDIVIDUAL ON PROBATION AFTER MARCH
2 25, 2002.

3 (ii) IF, AT THE TIME OF THE REQUEST, THE INDIVIDUAL IS SEEKING
4 CERTIFICATION AS A LAW ENFORCEMENT OFFICER UNDER THE COMMISSION ON
5 LAW ENFORCEMENT STANDARDS ACT, 1965 PA 203, MCL 28.601 TO 28.616,
6 THE COMMISSION MAY USE THE RECORD TO DETERMINE WHETHER THE
7 INDIVIDUAL MEETS THE REQUIREMENTS FOR CERTIFICATION AS PROVIDED IN
8 THAT ACT.

9 (iii) IF THE INDIVIDUAL IS CERTIFIED AS A LAW ENFORCEMENT
10 OFFICER UNDER THE COMMISSION ON LAW ENFORCEMENT STANDARDS ACT, 1965
11 PA 203, MCL 28.601 TO 28.616, THE COMMISSION MAY USE THE RECORD TO
12 DETERMINE WHETHER THE CERTIFICATION MAY BE REVOKED AS PROVIDED IN
13 THAT ACT.

14 (iv) IF THE INDIVIDUAL IS SEEKING ADMISSION TO A LAW
15 ENFORCEMENT TRAINING ACADEMY, THE MICHIGAN COMMISSION ON LAW
16 ENFORCEMENT STANDARDS MAY USE THE RECORD TO DETERMINE WHETHER THE
17 INDIVIDUAL MEETS THE REQUIREMENTS FOR ADMISSION TO THE ACADEMY AS
18 PROVIDED IN THE COMMISSION ON LAW ENFORCEMENT STANDARDS ACT, 1965
19 PA 203, MCL 28.601 TO 28.616.

20 (v) IF THE INDIVIDUAL IS SEEKING A WAIVER FROM THE LAW
21 ENFORCEMENT OFFICER MINIMUM STANDARDS REGARDING TRAINING
22 REQUIREMENTS, THE COMMISSION MAY USE THE RECORD TO DETERMINE
23 WHETHER THE INDIVIDUAL MEETS THE REQUIREMENTS FOR THE WAIVER AS
24 PROVIDED IN THE COMMISSION ON LAW ENFORCEMENT STANDARDS ACT, 1965
25 PA 203, MCL 28.601 TO 28.616.

26 (4) For purposes of this section, a person subjected to a
27 civil fine for a first violation of section 7341(4) shall not be

1 considered to have previously been convicted of an offense under
2 this article.

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

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