

**HOUSE SUBSTITUTE FOR
SENATE BILL NO. 94**

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

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

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

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

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

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

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

(D) THE MICHIGAN COMMISSION ON LAW ENFORCEMENT STANDARDS

CREATED IN [SECTION 3 OF THE MICHIGAN COMMISSION ON LAW ENFORCEMENT STANDARDS ACT, 1965 PA 203, MCL 28.603],
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 LICENSURE AS A LAW ENFORCEMENT OFFICER UNDER THE MICHIGAN
5 COMMISSION ON LAW ENFORCEMENT STANDARDS ACT, 1965 PA 203, MCL
6 28.601 TO 28.615, THE MICHIGAN COMMISSION ON LAW ENFORCEMENT
7 STANDARDS MAY USE THE RECORD TO DETERMINE WHETHER THE INDIVIDUAL
8 MEETS THE REQUIREMENTS FOR LICENSURE AS PROVIDED IN THAT ACT.

9 (iii) IF THE INDIVIDUAL IS LICENSED OR CERTIFIED AS A LAW
10 ENFORCEMENT OFFICER UNDER THE MICHIGAN COMMISSION ON LAW
11 ENFORCEMENT STANDARDS ACT, 1965 PA 203, MCL 28.601 TO 28.615, THE
12 MICHIGAN COMMISSION ON LAW ENFORCEMENT STANDARDS MAY USE THE RECORD
13 TO DETERMINE WHETHER THE LICENSE OR CERTIFICATE MAY BE REVOKED AS
14 PROVIDED IN THAT ACT.

15 (iv) IF THE INDIVIDUAL IS SEEKING ADMISSION TO A LAW
16 ENFORCEMENT TRAINING ACADEMY, THE MICHIGAN COMMISSION ON LAW
17 ENFORCEMENT STANDARDS MAY USE THE RECORD TO DETERMINE WHETHER THE
18 INDIVIDUAL MEETS THE REQUIREMENTS FOR ADMISSION TO THE ACADEMY AS
19 PROVIDED IN THE MICHIGAN COMMISSION ON LAW ENFORCEMENT STANDARDS
20 ACT, 1965 PA 203, MCL 28.601 TO 28.615.

21 (v) IF THE INDIVIDUAL IS SEEKING A WAIVER FROM THE LAW
22 ENFORCEMENT OFFICER MINIMUM STANDARDS REGARDING TRAINING
23 REQUIREMENTS, THE MICHIGAN COMMISSION ON LAW ENFORCEMENT STANDARDS
24 MAY USE THE RECORD TO DETERMINE WHETHER THE INDIVIDUAL MEETS THE
25 REQUIREMENTS FOR THE WAIVER AS PROVIDED IN THE MICHIGAN COMMISSION
26 ON LAW ENFORCEMENT STANDARDS ACT, 1965 PA 203, MCL 28.601 TO
27 28.615.

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

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

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

1 probation.

2 Enacting section 1. This amendatory act takes effect 90 days
3 after the date it is enacted into law.

4 Enacting section 2. This amendatory act does not take effect
5 unless Senate Bill No. 92 of the 98th Legislature is enacted into
6 law.