



Senate Fiscal Agency  
P. O. Box 30036  
Lansing, Michigan 48909-7536

BILL



ANALYSIS

Telephone: (517) 373-5383  
Fax: (517) 373-1986

Senate Bill 1295 (as passed by the Senate)  
Sponsor: Senator Tonya Schuitmaker  
Committee: Judiciary

Date Completed: 10-24-12

### **RATIONALE**

Under Section 7411 of the Public Health Code, when an individual who has not previously been convicted of a drug-related offense pleads guilty to or is found guilty of a controlled substance offense specified in the Code, the court may defer further proceedings and place the person on probation. When the person has met the terms and conditions of probation, the court must discharge him or her and dismiss the proceedings without adjudication of guilt. The Code requires the Department of State Police to maintain a nonpublic record of an arrest and discharge or dismissal under Section 7411, and allows that record to be available only to certain entities under specific conditions. Some people believe that the record of discharges and dismissals should be made available to the Michigan Commission on Law Enforcement Standards (MCOLES), so it can determine whether an individual meets the requirements for certification as a law enforcement officer or for admission to a law enforcement academy.

### **CONTENT**

**The bill would amend the Public Health Code to make deferral and dismissal records in drug-related cases available to the Michigan Commission on Law Enforcement Standards.**

The Code requires the Department of State Police to retain a record of an arrest and discharge or dismissal under Section 7411. The record is nonpublic but must be furnished to certain entities or individuals under specific conditions. Under the bill, the

record also would have to be furnished to MCOLES if the court placed the individual on probation after March 25, 2002, subject to all of the following conditions.

If, at the time of the request, the individual were seeking certification as a law enforcement officer, MCOLES could use the record to determine whether the individual met the requirements for certification.

If the individual were certified as a law enforcement officer, MCOLES could use the record to determine whether the certification could be revoked under the Commission on Law Enforcement Standards Act.

If the individual were seeking admission to a law enforcement training academy, MCOLES could use the record to determine whether the individual met the requirements for admission, as provided in the Commission on Law Enforcement Standards Act.

If the individual were seeking a waiver from the law enforcement officer minimum standards regarding training requirements, MCOLES could use the record to determine whether the individual met the requirements for waiver, as provided in the Commission on Law Enforcement Standards Act.

MCL 333.7411

### **ARGUMENTS**

*(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)*

### **Supporting Argument**

According to testimony submitted to the Senate Judiciary Committee by the village manager of Paw Paw, a Village of Paw Paw police officer was arrested in March 2010 as part of a joint investigative effort by two southwestern Michigan regional narcotics squads. The officer was stopped while in uniform and driving his squad car, and was discovered to be in possession of illegal anabolic steroids. The officer was fired and found guilty of a felony for knowingly possessing a controlled substance, but was sentenced under the deferral and dismissal provisions of Section 7411. The officer thought that he should be reinstated as a police officer but the village reported the conviction to MCOLES, believing that his certification as a police officer should be revoked. Although rules promulgated under the Commission on Law Enforcement Standards Act must provide for the revocation of a law enforcement officer's certification if he or she is convicted of a felony, the Commission was unsure of its ability to revoke the Paw Paw officer's certification due to the deferral and dismissal of the criminal charges.

According to testimony before the Senate Judiciary Committee by an MCOLES official, the Commission took the case of the Paw Paw officer to an administrative hearing and was allowed to revoke his law enforcement officer certification. By requiring the State Police record of sentencing under Section 7411 to be shared with MCOLES, the bill would ensure that the Commission was made aware of similar cases involving currently serving police officers, those applying for certification as law enforcement officers, and those seeking admission to a law enforcement training academy, so that law enforcement officer certification could be revoked or denied.

While the sentencing option under Section 7411 is designed to give a first-time drug offender an opportunity to get past a drug issue without a criminal conviction, it should not be used to allow that person to serve as a law enforcement officer.

Legislative Analyst: Patrick Affholter

### **FISCAL IMPACT**

The bill would have no fiscal impact on State or local government.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.