

SENATE BILL No. 1460

August 17, 2010, Introduced by Senators ANDERSON, CHERRY, SWITALSKI, BASHAM, WHITMER, BRATER, JACOBS, CLARK-COLEMAN, THOMAS and SCOTT and referred to the Committee on Judiciary.

A bill to amend 1927 PA 175, entitled
"The code of criminal procedure,"
(MCL 760.1 to 777.69) by adding section 4b to chapter IX.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

CHAPTER IX

SEC. 4B. (1) WHEN AN INDIVIDUAL LESS THAN 18 YEARS OF AGE WHO
HAS NOT BEEN CONVICTED PREVIOUSLY OF A VIOLATION OF SECTION 411W OF
THE MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.411W, PLEADS GUILTY
TO, OR IS FOUND GUILTY OF, A VIOLATION OF SECTION 411W(1) (A) OR (B)
OF THE MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.411W, THE COURT,
WITHOUT ENTERING A JUDGMENT OF GUILT AND WITH THE CONSENT OF THE
ACCUSED AND OF THE PROSECUTING ATTORNEY IN CONSULTATION WITH THE
VICTIM, MAY DEFER FURTHER PROCEEDINGS AND PLACE THE ACCUSED ON

1 PROBATION AS PROVIDED IN THIS SECTION. HOWEVER, BEFORE DEFERRING
2 PROCEEDINGS UNDER THIS SUBSECTION, THE COURT SHALL CONTACT THE
3 DEPARTMENT OF STATE POLICE AND DETERMINE WHETHER, ACCORDING TO THE
4 RECORDS OF THE DEPARTMENT OF STATE POLICE, THE ACCUSED HAS
5 PREVIOUSLY BEEN CONVICTED OF A VIOLATION OF SECTION 411W OR HAS
6 PREVIOUSLY AVAILED HIMSELF OR HERSELF OF THIS SECTION. IF THE
7 SEARCH OF THE RECORDS REVEALS AN ARREST FOR A VIOLATION OF SECTION
8 411W OF THE MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.411W, BUT NO
9 DISPOSITION, THE COURT SHALL CONTACT THE ARRESTING AGENCY AND THE
10 COURT THAT HAD JURISDICTION OVER THE VIOLATION TO DETERMINE THE
11 DISPOSITION OF THAT ARREST FOR PURPOSES OF THIS SECTION.

12 (2) UPON A VIOLATION OF A TERM OR CONDITION OF PROBATION, THE
13 COURT MAY ENTER AN ADJUDICATION OF GUILT AND PROCEED AS OTHERWISE
14 PROVIDED IN THIS CHAPTER.

15 (3) AN ORDER OF PROBATION ENTERED UNDER SUBSECTION (1) MAY
16 INCLUDE ANY CONDITION OF PROBATION AUTHORIZED UNDER SECTION 3 OF
17 CHAPTER XI, INCLUDING, BUT NOT LIMITED TO, REQUIRING THE ACCUSED TO
18 PARTICIPATE IN A MANDATORY COUNSELING PROGRAM. THE COURT MAY ORDER
19 THE ACCUSED TO PAY THE REASONABLE COSTS OF THE MANDATORY COUNSELING
20 PROGRAM. THE COURT MAY ORDER THE DEFENDANT TO BE IMPRISONED FOR NOT
21 MORE THAN 30 DAYS AT THE TIME OR INTERVALS, WHICH MAY BE
22 CONSECUTIVE OR NONCONSECUTIVE AND WITHIN THE PERIOD OF PROBATION,
23 AS THE COURT DETERMINES. THE COURT MAY PERMIT DAY PAROLE AS
24 AUTHORIZED UNDER 1962 PA 60, MCL 801.251 TO 801.258. THE COURT MAY
25 PERMIT A WORK OR SCHOOL RELEASE FROM JAIL.

26 (4) THE COURT SHALL ENTER AN ADJUDICATION OF GUILT AND PROCEED
27 AS OTHERWISE PROVIDED IN THIS CHAPTER IF ANY OF THE FOLLOWING

1 CIRCUMSTANCES EXIST:

2 (A) THE ACCUSED COMMITS A VIOLATION OF SECTION 411H, 411I, OR
3 411W OF THE MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.411H,
4 750.411I, OR 750.411W, DURING THE PERIOD OF PROBATION.

5 (B) THE ACCUSED VIOLATES AN ORDER OF THE COURT THAT HE OR SHE
6 RECEIVE COUNSELING REGARDING HIS OR HER VIOLENT BEHAVIOR.

7 (C) THE ACCUSED VIOLATES AN ORDER OF THE COURT THAT HE OR SHE
8 HAVE NO CONTACT WITH A NAMED INDIVIDUAL.

9 (5) UPON FULFILLMENT OF THE TERMS AND CONDITIONS, THE COURT
10 SHALL DISCHARGE THE PERSON AND DISMISS THE PROCEEDINGS AGAINST THE
11 PERSON. DISCHARGE AND DISMISSAL UNDER THIS SECTION SHALL BE WITHOUT
12 ADJUDICATION OF GUILT AND ARE NOT A CONVICTION FOR PURPOSES OF THIS
13 SECTION OR FOR PURPOSES OF DISQUALIFICATIONS OR DISABILITIES
14 IMPOSED BY LAW UPON CONVICTION OF A CRIME.

15 (6) THERE MAY BE ONLY 1 DISCHARGE AND DISMISSAL UNDER THIS
16 SECTION WITH RESPECT TO ANY INDIVIDUAL. THE DEPARTMENT OF STATE
17 POLICE SHALL RETAIN A NONPUBLIC RECORD OF AN ARREST AND DISCHARGE
18 AND DISMISSAL UNDER THIS SECTION. THIS RECORD SHALL BE FURNISHED TO
19 A COURT OR POLICE AGENCY UPON REQUEST PURSUANT TO SUBSECTION (1) OR
20 TO AN OFFICE OF PROSECUTING ATTORNEY FOR THE PURPOSE OF SHOWING
21 THAT A DEFENDANT IN A CRIMINAL ACTION UNDER SECTION 411W OF THE
22 MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.411W, OR A LOCAL
23 ORDINANCE SUBSTANTIALLY CORRESPONDING TO SECTION 411W OF THAT ACT
24 HAS ALREADY ONCE AVAILED HIMSELF OR HERSELF OF THIS SECTION OR FOR
25 THE PURPOSE OF DETERMINING WHETHER THE DEFENDANT IN A CRIMINAL
26 ACTION IS ELIGIBLE FOR DISCHARGE AND DISMISSAL OF PROCEEDINGS.

27 Enacting section 1. This amendatory act does not take effect

1 unless Senate Bill No. 1459

2 of the 95th Legislature is enacted into law.