

HOUSE BILL No. 4392

March 8, 2011, Introduced by Reps. Segal, Meadows, Melton, Stapleton, Dillon, Kandrevas, McCann, Tlaib and Hovey-Wright 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 PROBATION AS PROVIDED IN THIS SECTION. HOWEVER, BEFORE DEFERRING

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

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

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

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

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

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

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

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

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

26 Enacting section 1. This amendatory act does not take effect
27 unless Senate Bill No. _____ or House Bill No. _____ (request no.

1 01685'11) of the 96th Legislature is enacted into law.