

SENATE BILL No. 1295

September 20, 2012, Introduced by Senator SCHUITMAKER 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 2004 PA 225.

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

1 judgment of guilt with the consent of the accused, may defer
2 further proceedings and place the individual on probation upon
3 terms and conditions that shall include, but are not limited to,
4 payment of a probation supervision fee as prescribed in section 3c
5 of chapter XI of the code of criminal procedure, 1927 PA 175, MCL
6 771.3c. The terms and conditions of probation may include
7 participation in a drug treatment court under chapter 10A of the
8 revised judicature act of 1961, 1961 PA 236, MCL 600.1060 to
9 ~~600.1082.~~ **600.1084.** Upon violation of a term or condition, the
10 court may enter an adjudication of guilt and proceed as otherwise
11 provided. Upon fulfillment of the terms and conditions, the court
12 shall discharge the individual and dismiss the proceedings.
13 Discharge and dismissal under this section shall be without
14 adjudication of guilt and, except as provided in subsection (2)(b),
15 **(C), AND (D)**, is not a conviction for purposes of this section or
16 for purposes of disqualifications or disabilities imposed by law
17 upon conviction of a crime, including the additional penalties
18 imposed for second or subsequent convictions under section 7413.
19 There may be only 1 discharge and dismissal under this section as
20 to an individual.

21 (2) The records and identifications division of the department
22 of state police shall retain a nonpublic record of an arrest and
23 discharge or dismissal under this section. This record shall be
24 furnished to any or all of the following:

25 (a) To a court, police agency, or office of a prosecuting
26 attorney upon request for the purpose of showing that a defendant
27 in a criminal action involving the possession or use of a

1 controlled substance, or an imitation controlled substance as
2 defined in section 7341, covered in this article has already once
3 utilized this section.

4 (b) To a court, police agency, or prosecutor upon request for
5 the purpose of determining whether the defendant in a criminal
6 action is eligible for discharge and dismissal of proceedings by a
7 drug treatment court under section 1076(4) of the revised
8 judicature act of 1961, 1961 PA 236, MCL 600.1076.

9 (c) To the state department of corrections, a law enforcement
10 agency, a court, or the office of a prosecuting attorney upon
11 request of the department, law enforcement agency, court, or office
12 of a prosecuting attorney, subject to all of the following
13 conditions:

14 (i) At the time of the request, the individual is an employee
15 of the department, law enforcement agency, court, or office of
16 prosecuting attorney or an applicant for employment with the
17 department, law enforcement agency, court, or office of prosecuting
18 attorney.

19 (ii) If the individual is an employee of the department, law
20 enforcement agency, court, or prosecuting attorney, the date on
21 which the court placed the individual on probation occurred after
22 March 25, 2002.

23 (iii) The record shall be used by the department of corrections,
24 law enforcement agency, court, or prosecuting attorney only to
25 determine whether an employee has violated his or her conditions of
26 employment or whether an applicant meets criteria for employment.

27 (D) TO THE MICHIGAN COMMISSION ON LAW ENFORCEMENT STANDARDS

1 CREATED IN EXECUTIVE REORGANIZATION ORDER NO. 2001-2, MCL 28.621,
2 SUBJECT TO ALL OF THE FOLLOWING CONDITIONS:

3 (i) THE COURT PLACED THE INDIVIDUAL ON PROBATION AFTER MARCH
4 25, 2002.

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

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

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

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

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

5 (4) Except as provided in subsection (5), 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 a violation of the terms of probation.

16 (5) 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 a violation of the terms of the

1 probation.