

HOUSE BILL No. 6302

September 5, 2018, Introduced by Rep. Neeley and referred to the Committee on Law and Justice.

A bill to amend 1978 PA 368, entitled "Public health code," by amending section 7411 (MCL 333.7411), as amended by 2016 PA 291.

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
11 further proceedings and place the individual on probation upon

1 terms and conditions that ~~shall~~**MUST** include, but are not limited
2 to, payment of a probation supervision fee as prescribed in section
3 3c of chapter XI of the code of criminal procedure, 1927 PA 175,
4 MCL 771.3c. The terms and conditions of probation may include
5 participation in a drug treatment court under chapter 10A of the
6 revised judicature act of 1961, 1961 PA 236, MCL 600.1060 to
7 ~~600.1084.~~**600.1086**. Upon violation of a term or condition, the
8 court may enter an adjudication of guilt and proceed as otherwise
9 provided. Upon fulfillment of the terms and conditions, the court
10 shall discharge the individual and dismiss the proceedings.

11 Discharge and dismissal under this section ~~shall~~**MUST** be without
12 adjudication of guilt and, except as otherwise provided by law, is
13 not a conviction for purposes of this section or for purposes of
14 disqualifications or disabilities imposed by law upon conviction of
15 a crime, including the additional penalties imposed for second or
16 subsequent convictions under section 7413. ~~There may be only 1~~
17 ~~discharge and dismissal under this section as to an individual.~~

18 (2) All court proceedings under this section ~~shall~~**MUST** be
19 open to the public. Except as provided in subsection (3), if the
20 record of proceedings as to the defendant is deferred under this
21 section, the record of proceedings during the period of deferral
22 ~~shall~~**MUST** be closed to public inspection.

23 (3) Unless the court enters a judgment of guilt under this
24 section, the department of state police shall retain a nonpublic
25 record of the arrest, court proceedings, and disposition of the
26 criminal charge under this section. However, the nonpublic record
27 ~~shall~~**MUST** be open to the following individuals and entities for

1 the purposes noted:

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

10 (b) The courts of this state, law enforcement personnel, and
11 prosecuting attorneys for ~~the purpose of showing~~ either of the
12 following **PURPOSES**:

13 (i) ~~That~~ **SHOWING THAT** a defendant has ~~already once~~ **PREVIOUSLY**
14 availed himself or herself of this section.

15 (ii) Determining whether the defendant in a criminal action is
16 eligible for discharge and dismissal of proceedings by a drug
17 treatment court under section 1076 of the revised judicature act of
18 1961, 1961 PA 236, MCL 600.1076.

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

24 (d) The Michigan commission on law enforcement standards
25 created in section 3 of the Michigan commission on law enforcement
26 standards act, 1965 PA 203, MCL 28.603, as follows:

27 (i) ~~The~~ **IF THE** court placed the individual on probation after

1 March 25, 2002.

2 (ii) If, at the time of the request, the individual is seeking
3 licensure as a law enforcement officer under the Michigan
4 commission on law enforcement standards act, 1965 PA 203, MCL
5 28.601 to 28.615, the Michigan commission on law enforcement
6 standards may use the record to determine whether the individual
7 meets the requirements for licensure as provided in that act.

8 (iii) If the individual is licensed or certified as a law
9 enforcement officer under the Michigan commission on law
10 enforcement standards act, 1965 PA 203, MCL 28.601 to 28.615, the
11 Michigan commission on law enforcement standards may use the record
12 to determine whether the license or certificate may be revoked as
13 provided in that act.

14 (iv) If the individual is seeking admission to a law
15 enforcement training academy, the Michigan commission on law
16 enforcement standards may use the record to determine whether the
17 individual meets the requirements for admission to the academy as
18 provided in the Michigan commission on law enforcement standards
19 act, 1965 PA 203, MCL 28.601 to 28.615.

20 (v) If the individual is seeking a waiver from the law
21 enforcement officer minimum standards regarding training
22 requirements, the Michigan commission on law enforcement standards
23 may use the record to determine whether the individual meets the
24 requirements for the waiver as provided in the Michigan commission
25 on law enforcement standards act, 1965 PA 203, MCL 28.601 to
26 28.615.

27 (4) For purposes of this section, a person subjected to a

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

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

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

27 Enacting section 1. This amendatory act takes effect 90 days

1 after the date it is enacted into law.