

SENATE BILL No. 999

February 17, 2004, Introduced by Senators SANBORN, BISHOP, CROPSEY and PATTERSON 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 2002 PA 79.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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1 Sec. 7411. (1) When an individual who has **not successfully**
2 **completed participation in a drug treatment court under chapter**
3 **10A of the revised judicature act of 1961, 1961 PA 236, MCL**
4 **600.1060 to 600.1082, and has** not previously been convicted of an
5 offense under this article or under any statute of the United
6 States or of any state relating to narcotic drugs, coca leaves,
7 marihuana, or stimulant, depressant, or hallucinogenic drugs,
8 pleads guilty to or is found guilty of possession of a controlled
9 substance under section 7403(2)(a)(v), 7403(2)(b), (c), or (d),
10 or of use of a controlled substance under section 7404, or

1 possession or use of an imitation controlled substance under
2 section 7341 for a second time, the court, without entering a
3 judgment of guilt with the consent of the accused, may defer
4 further proceedings and place the individual on probation upon
5 terms and conditions that shall include, but are not limited to,
6 payment of a probation supervision fee as prescribed in section
7 3c of chapter XI of the code of criminal procedure, 1927 PA 175,
8 MCL 771.3c. Upon violation of a term or condition, the court may
9 enter an adjudication of guilt and proceed as otherwise
10 provided. Upon fulfillment of the terms and conditions, the
11 court shall discharge the individual and dismiss the
12 proceedings. Discharge and dismissal under this section shall be
13 without adjudication of guilt and, except as provided in
14 subsection (2)(b), is not a conviction for purposes of this
15 section or for purposes of disqualifications or disabilities
16 imposed by law upon conviction of a crime, including the
17 additional penalties imposed for second or subsequent convictions
18 under section 7413. There may be only 1 discharge and dismissal
19 under this section as to an individual.

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

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

1 as defined in section 7341, covered in this article has already
2 once utilized this section.

3 (b) To the state department of corrections, ~~or~~ a law
4 enforcement agency, **a court, or the office of a prosecuting**
5 **attorney** upon **request of** the ~~department's or~~ **department,** law
6 enforcement ~~agency's request,~~ **agency, court, or office of a**
7 **prosecuting attorney,** subject to all of the following
8 conditions:

9 (i) At the time of the request, the individual is an employee
10 of the department, ~~or the~~ law enforcement agency, **court, or**
11 **office of prosecuting attorney** or an applicant for employment
12 with the department, ~~or the~~ law enforcement agency, **court, or**
13 **office of prosecuting attorney.**

14 (ii) If the individual is an employee of the department, ~~or~~
15 ~~the~~ law enforcement agency, **court, or prosecuting attorney,** the
16 date on which the court placed the individual on probation
17 occurred after ~~the effective date of the~~ **March 25, 2002.**
18 ~~amendatory act that added this subdivision.~~

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

24 (3) For purposes of this section, a person subjected to a
25 civil fine for a first violation of section 7341(4) shall not be
26 considered to have previously been convicted of an offense under
27 this article.

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

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

26 Enacting section 1. This amendatory act does not take
27 effect unless Senate Bill No. 998

1 of the 92nd Legislature is enacted into
2 law.