

**SENATE SUBSTITUTE FOR  
HOUSE BILL NO. 4969**

A bill to amend 1978 PA 368, entitled  
"Public health code,"  
by amending section 7411 (MCL 333.7411), as amended by 2012 PA 549.

**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 include, but are not limited to,  
2 payment of a probation supervision fee as prescribed in section 3c  
3 of chapter XI of the code of criminal procedure, 1927 PA 175, MCL  
4 771.3c. 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. Upon violation of a term or condition, the court may  
8 enter an adjudication of guilt and proceed as otherwise provided.  
9 Upon fulfillment of the terms and conditions, the court shall  
10 discharge the individual and dismiss the proceedings. Discharge and  
11 dismissal under this section shall be without adjudication of guilt  
12 and, except as otherwise provided by law, is not a conviction for  
13 purposes of this section or for purposes of disqualifications or  
14 disabilities imposed by law upon conviction of a crime, including  
15 the additional penalties imposed for second or subsequent  
16 convictions under section 7413. There may be only 1 discharge and  
17 dismissal under this section as to an individual.

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

1 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:

13 (i) That a defendant has already once availed himself or  
14 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(5) of the revised judicature act  
18 of 1961, 1961 PA 236, MCL 600.1076.

19 ~~—— (c) The department of corrections for ascertaining~~  
20 ~~preemployment criminal history or to determine whether a department~~  
21 ~~of corrections employee has violated conditions of employment.~~

22 (C) ~~(d)~~ The department of human services for enforcing child  
23 protection laws and vulnerable adult protection laws or  
24 ascertaining the preemployment criminal history of any individual  
25 who will be engaged in the enforcement of child protection laws or  
26 vulnerable adult protection laws.

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

1 civil fine for a first violation of section 7341(4) shall not be  
2 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 shall be considered  
14 a violation of 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 shall be considered a violation of the terms of the  
27 probation.

1           Enacting section 1. This amendatory act takes effect January  
2 1, 2014.