

HOUSE BILL No. 4967

September 12, 2013, Introduced by Reps. Cotter, Heise, O'Brien and Nesbitt and referred to the Committee on Judiciary.

A bill to amend 1961 PA 236, entitled "Revised judicature act of 1961," by amending section 1076 (MCL 600.1076), as amended by 2012 PA 547.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1076. (1) Upon completion or termination of the drug
2 treatment court program, the court shall find on the record or
3 place a written statement in the court file as to whether the
4 participant completed the program successfully or whether the
5 individual's participation in the program was terminated and, if it
6 was terminated, the reason for the termination.

7 (2) For a participant who successfully completes probation or
8 other court supervision and whose proceedings were deferred or who
9 was sentenced under section 1070, the court shall comply with the
10 agreement made with the participant upon admission into the drug
11 treatment court, or the agreement as it was altered after admission

1 by the court with approval of the participant and the prosecutor
2 for that jurisdiction as provided in subsections (3) to (8).

3 (3) If an individual is participating in a drug treatment
4 court under section 11 of chapter II of the code of criminal
5 procedure, 1927 PA 175, MCL 762.11, section 7411 of the public
6 health code, 1978 PA 368, MCL 333.7411, section 4a of chapter IX of
7 the code of criminal procedure, 1927 PA 175, MCL 769.4a, or section
8 350a or 430 of the Michigan penal code, 1931 PA 328, MCL 750.350a
9 and 750.430, the court shall proceed under the applicable section
10 of law. There may only be 1 discharge or dismissal under this
11 subsection.

12 (4) Except as provided in subsection (5), the court, with the
13 agreement of the prosecutor and in conformity with the terms and
14 conditions of the memorandum of understanding under section 1062,
15 may discharge and dismiss the proceedings against an individual who
16 meets all of the following criteria:

17 (a) The individual has participated in a drug treatment court
18 for the first time.

19 (b) The individual has successfully completed the terms and
20 conditions of the drug treatment court program.

21 (c) The individual is not required by law to be sentenced to a
22 correctional facility for the crimes to which he or she has pled
23 guilty.

24 (d) The individual is not currently charged with and has not
25 pled guilty to a traffic offense.

26 (e) The individual has not previously been subject to more
27 than 1 of any of the following:

1 (i) Assignment to the status of youthful trainee under section
2 11 of chapter II of the code of criminal procedure, 1927 PA 175,
3 MCL 762.11.

4 (ii) The dismissal of criminal proceedings against him or her
5 under section 7411 of the public health code, 1978 PA 368, MCL
6 333.7411, section 4a of chapter IX of the code of criminal
7 procedure, 1927 PA 175, MCL 769.4a, or section 350a or 430 of the
8 Michigan penal code, 1931 PA 328, MCL 750.350a and 750.430.

9 (5) The court may grant a discharge and dismissal of a
10 domestic violence offense only if all of the following
11 circumstances apply:

12 (a) The individual has not previously had proceedings
13 dismissed under section 4a of chapter IX of the code of criminal
14 procedure, 1927 PA 175, MCL 769.4a.

15 (b) The domestic violence offense is eligible to be dismissed
16 under section 4a of chapter IX of the code of criminal procedure,
17 1927 PA 175, MCL 769.4a.

18 (c) The individual fulfills the terms and conditions imposed
19 under section 4a of chapter IX of the code of criminal procedure,
20 1927 PA 175, MCL 769.4a, and the discharge and dismissal of
21 proceedings are processed and reported under section 4a of chapter
22 IX of the code of criminal procedure, 1927 PA 175, MCL 769.4a.

23 (6) A discharge and dismissal under subsection (4) shall be
24 without adjudication of guilt or, for a juvenile, without
25 adjudication of responsibility and are not a conviction or a
26 finding of responsibility for purposes of this section or for
27 purposes of disqualifications or disabilities imposed by law upon

1 conviction of a crime or, for a juvenile, a finding of
2 responsibility. There may only be 1 discharge and dismissal under
3 subsection (4) for an individual. The court shall send a record of
4 the discharge and dismissal to the criminal justice information
5 center of the department of state police, and the department of
6 state police shall enter that information into the law enforcement
7 information network with an indication of participation by the
8 individual in a drug treatment court. All records of the
9 proceedings regarding the participation of the individual in the
10 drug treatment court under subsection (4) are closed to public
11 inspection, and are exempt from public disclosure under the freedom
12 of information act, 1976 PA 442, MCL 15.231 to 15.246.

13 (7) Except as provided in subsection (3), (4), or (5), if an
14 individual has successfully completed probation or other court
15 supervision, the court shall do the following:

16 (a) If the court has not already entered an adjudication of
17 guilt or responsibility, enter an adjudication of guilt or, in the
18 case of a juvenile, enter a finding or adjudication of
19 responsibility.

20 (b) If the court has not already sentenced the individual,
21 proceed to sentencing or, in the case of a juvenile, disposition
22 pursuant to the agreement.

23 (c) Send a record of the conviction and sentence or the
24 finding or adjudication of responsibility and disposition to the
25 criminal justice information center of the department of state
26 police. The department of state police shall enter that information
27 into the law enforcement information network with an indication of

1 successful participation by the individual in a drug treatment
2 court.

3 (8) For a participant whose participation is terminated or who
4 fails to successfully complete the drug treatment court program,
5 the court shall enter an adjudication of guilt, or, in the case of
6 a juvenile, a finding of responsibility, if the entering of guilt
7 or adjudication of responsibility was deferred under section 1070,
8 and shall then proceed to sentencing or disposition of the
9 individual for the original charges to which the individual pled
10 guilty or, if a juvenile, to which the juvenile admitted
11 responsibility prior to admission to the drug treatment court. Upon
12 sentencing or disposition of the individual, the court shall send a
13 record of that sentence or disposition and the individual's
14 unsuccessful participation in the drug treatment court to the
15 criminal justice information center of the department of state
16 police, and the department of state police shall enter that
17 information into the law enforcement information network, with an
18 indication that the individual unsuccessfully participated in a
19 drug treatment court.

20 (9) All court proceedings under this section shall be open to
21 the public. Except as provided in subsection (10), if the record of
22 proceedings as to the defendant is deferred under this section, the
23 record of proceedings during the period of deferral shall be closed
24 to public inspection.

25 (10) Unless the court enters a judgment of guilt or an
26 adjudication of responsibility under this section, the department
27 of state police shall retain a nonpublic record of the arrest,

1 court proceedings, and disposition of the criminal charge under
2 this section. However, the nonpublic record shall be open to the
3 following individuals and entities for the purposes noted:

4 (a) The courts of this state, law enforcement personnel, **THE**
5 **DEPARTMENT OF CORRECTIONS**, and prosecuting attorneys for use only
6 in the performance of their duties.

7 (b) The courts of this state, law enforcement personnel, and
8 prosecuting attorneys for the purpose of showing that a defendant
9 has already once availed himself or herself of this section.

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

13 (C) ~~(d)~~ The department of human services for enforcing child
14 protection laws and vulnerable adult protection laws or
15 ascertaining the preemployment criminal history of any individual
16 who will be engaged in the enforcement of child protection laws or
17 vulnerable adult protection laws.