

HOUSE BILL No. 4969

September 12, 2013, Introduced by Reps. O'Brien, Cotter, Heise and Nesbitt 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 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.

5 (b) The courts of this state, law enforcement personnel, and
6 prosecuting attorneys for the purpose of showing either of the
7 following:

8 (i) That a defendant has already once availed himself or
9 herself of this section.

10 (ii) Determining whether the defendant in a criminal action is
11 eligible for discharge and dismissal of proceedings by a drug
12 treatment court under section 1076(5) of the revised judicature act
13 of 1961, 1961 PA 236, MCL 600.1076.

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

17 (C) ~~(d)~~—The department of human services for enforcing child
18 protection laws and vulnerable adult protection laws or
19 ascertaining the preemployment criminal history of any individual
20 who will be engaged in the enforcement of child protection laws or
21 vulnerable adult protection laws.

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

26 (5) Except as provided in subsection (6), if an individual is
27 convicted of a violation of this article, other than a violation of

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

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