

**HOUSE SUBSTITUTE FOR
SENATE BILL NO. 999**

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:

1 Sec. 7411. (1) When an individual who has not previously
2 been convicted of an offense under this article or under any
3 statute of the United States or of any state relating to narcotic
4 drugs, coca leaves, marihuana, or stimulant, depressant, or
5 hallucinogenic drugs, pleads guilty to or is found guilty of
6 possession of a controlled substance under section 7403(2)(a)(v),
7 7403(2)(b), (c), or (d), or of use of a controlled substance
8 under section 7404, or possession or use of an imitation
9 controlled substance under section 7341 for a second time, the
10 court, without entering a judgment of guilt with the consent of

1 the accused, may defer further proceedings and place the
2 individual on probation upon terms and conditions that shall
3 include, but are not limited to, payment of a probation
4 supervision fee as prescribed in section 3c of chapter XI of the
5 code of criminal procedure, 1927 PA 175, MCL 771.3c. **The terms**
6 **and conditions of probation may include participation in a drug**
7 **treatment court under chapter 10A of the revised judicature act**
8 **of 1961, 1961 PA 236, MCL 600.1060 to 600.1082.** Upon violation of
9 a term or condition, the court may enter an adjudication of guilt
10 and proceed as otherwise provided. Upon fulfillment of the terms
11 and conditions, the court shall discharge the individual and
12 dismiss the proceedings. Discharge and dismissal under this
13 section shall be without adjudication of guilt and, except as
14 provided in subsection (2)(b), is not a conviction for purposes
15 of this section or for purposes of disqualifications or
16 disabilities imposed by law upon conviction of a crime, including
17 the additional penalties imposed for second or subsequent
18 convictions under section 7413. There may be only 1 discharge
19 and dismissal 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~~ **any or all** of the
24 following:

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

1 of a controlled substance, or an imitation controlled substance
2 as defined in section 7341, covered in this article has already
3 once utilized this section.

4 **(b) To a court, police agency, or prosecutor upon request for**
5 **the purpose of determining whether the defendant in a criminal**
6 **action is eligible for discharge and dismissal of proceedings by**
7 **a drug treatment court under section 1076(4) of the revised**
8 **judicature act of 1961, 1961 PA 236, MCL 600.1076.**

9 **(c) ~~(b)~~ To the state department of corrections, ~~or~~ a law**
10 **enforcement agency, a court, or the office of a prosecuting**
11 **attorney upon request of the ~~department's or~~ department, law**
12 **enforcement ~~agency's request,~~ agency, court, or office of a**
13 **prosecuting attorney, subject to all of the following**
14 **conditions:**

15 *(i)* At the time of the request, the individual is an employee
16 of the department, ~~or the~~ law enforcement agency, **court, or**
17 **office of prosecuting attorney** or an applicant for employment
18 with the department, ~~or the~~ law enforcement agency, **court, or**
19 **office of prosecuting attorney.**

20 *(ii)* If the individual is an employee of the department, ~~or~~
21 ~~the~~ law enforcement agency, **court, or prosecuting attorney,** the
22 date on which the court placed the individual on probation
23 occurred after ~~the effective date of the~~ **March 25, 2002.**
24 ~~amendatory act that added this subdivision.~~

25 *(iii)* The record shall be used by the department of
26 corrections, ~~or the~~ law enforcement agency, **court, or**
27 **prosecuting attorney** only to determine whether an employee has

1 violated his or her conditions of employment or whether an
2 applicant meets criteria for employment.

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

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

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

Senate Bill 999 (H-1) as amended June 29, 2004

1 more appropriate rehabilitative programs. The person shall pay
2 for the costs of the screening, assessment, and rehabilitative
3 services. Failure to complete a program shall be considered a
4 violation of the terms of the probation.

[Enacting section 1. This amendatory act takes effect January 1,
2005.]

5 Enacting section [2]. This amendatory act does not take
6 effect unless Senate Bill No. 998 of the 92nd Legislature is
7 enacted into law.