

SENATE BILL No. 197

February 19, 2003, Introduced by Senators LELAND, JACOBS, BRATER, CLARK-COLEMAN and EMERSON 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:

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~~ **shall** 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, ~~— Upon~~
6 ~~violation of a term or condition, the court may enter an~~
7 ~~adjudication of guilt and proceed as otherwise provided. and~~
8 **participation in and completion of an appropriate drug treatment**
9 **program. The court may also impose, as a condition of probation,**
10 **participation in vocational training, family counseling, literacy**
11 **training, or community service, but may not impose incarceration**
12 **as a condition of probation. Aside from the limitations imposed**
13 **in this subsection, the court is not otherwise limited in the**
14 **type of probation conditions it may impose. In addition to any**
15 **fine assessed under other provisions of law, the trial judge may**
16 **require any person convicted of a nonviolent drug possession**
17 **offense who is reasonably able to do so to contribute to the cost**
18 **of his or her own placement in a drug treatment program. Upon**
19 **fulfillment of the terms and conditions, the court shall**
20 **discharge the individual and dismiss the proceedings. Discharge**
21 **and dismissal under this section shall be without adjudication of**
22 **guilt and, except as provided in subsection ~~-(2)(b)~~ **(3)(b)**, is**
23 **not a conviction for purposes of this section or for purposes of**
24 **disqualifications or disabilities imposed by law upon conviction**
25 **of a crime, including the additional penalties imposed for second**
26 **or subsequent convictions under section 7413. ~~There may be only~~**
27 **~~1 discharge and dismissal under this section as to an~~**

1 ~~individual.~~

2 (2) Subsection (1) does not apply to any of the following:

3 (a) A defendant who previously has been convicted of 1 or
4 more assaultive crimes, unless the nonviolent drug possession
5 offense occurred after a period of at least 5 years in which the
6 defendant was not incarcerated in a state correctional facility
7 and did not commit an offense that results in a felony
8 conviction, other than a nonviolent drug possession offense, and
9 was not convicted of a misdemeanor involving physical injury or
10 the threat of physical injury to another person.

11 (b) A defendant who, in addition to 1 or more nonviolent drug
12 possession offenses, has been convicted in the same proceeding of
13 any felony or a misdemeanor not related to the use of drugs.

14 (c) A defendant who, while using a firearm, unlawfully
15 possessed any amount of a substance containing either cocaine
16 base, cocaine, heroin, methamphetamine; or a liquid, nonliquid,
17 plant substance, or hand-rolled cigarette containing
18 phencyclidine.

19 (d) A defendant who, while using a firearm, is unlawfully
20 under the influence of cocaine base, cocaine, heroin,
21 methamphetamine, or phencyclidine.

22 (e) A defendant who refuses drug treatment as a condition of
23 probation.

24 (f) A defendant who has 2 separate convictions for nonviolent
25 drug possession offenses, has participated in 2 separate courses
26 of drug treatment pursuant to subsection (1), and is found by the
27 court, by clear and convincing evidence, to be unamenable to any

1 and all forms of available drug treatment.

2 (3) ~~—(2)—~~ The records and identifications division of the
3 department of state police shall retain a nonpublic record of an
4 arrest and discharge or dismissal under this section. This
5 record shall be furnished to either or both of the following:

6 (a) To a court or police agency upon request for the purpose
7 of showing that a defendant in a criminal action involving the
8 possession or use of a controlled substance, or an imitation
9 controlled substance as defined in section 7341, covered in this
10 article has already once utilized this section.

11 (b) To the state department of corrections or a law
12 enforcement agency, upon the department's or law enforcement
13 agency's request, subject to all of the following conditions:

14 (i) At the time of the request, the individual is an employee
15 of the department or the law enforcement agency or an applicant
16 for employment with the department or the law enforcement
17 agency.

18 (ii) If the individual is an employee of the department or
19 the law enforcement agency, the date on which the court placed
20 the individual on probation occurred after the effective date of
21 the 2002 amendatory act that added this subdivision.

22 (iii) The record shall be used by the department of
23 corrections or the law enforcement agency only to determine
24 whether an employee has violated his or her conditions of
25 employment or whether an applicant meets criteria for
26 employment.

27 (4) ~~—(3)—~~ For purposes of this section, a person subjected to

1 a civil fine for a first violation of section 7341(4) shall not
2 be considered to have previously been convicted of an offense
3 under this article.

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

16 (6) ~~-(5)-~~ If an individual is convicted of a second violation
17 of section 7341(4), before imposing sentence under
18 subsection (1), the court shall order the person to undergo
19 screening and assessment by a person or agency designated by the
20 office of substance abuse services, to determine whether the
21 person is likely to benefit from rehabilitative services,
22 including alcohol or drug education and alcohol or drug treatment
23 programs. As part of the sentence imposed under subsection (1),
24 the court may order the person to participate in and successfully
25 complete 1 or more appropriate rehabilitative programs. The
26 person shall pay for the costs of the screening, assessment, and
27 rehabilitative services. Failure to complete a program shall be

1 considered a violation of the terms of the probation.