

PUBLIC HEALTH CODE (EXCERPT)
Act 368 of 1978

***** 333.7411.amended THIS AMENDED SECTION IS EFFECTIVE JANUARY 2, 2017 *****

333.7411.amended Possession or use of controlled substance or imitation controlled substance; probation; terms and conditions; violation; discharge and dismissal; deferral of proceedings; nonpublic record of arrest, court proceedings, and disposition; nonpublic record open to certain individuals and entities; purposes; course of instruction or rehabilitation program; conviction of second violation; screening and assessment; costs.

Sec. 7411. (1) When an individual who has not previously been convicted of an offense under this article or under any statute of the United States or of any state relating to narcotic drugs, coca leaves, marihuana, or stimulant, depressant, or hallucinogenic drugs, pleads guilty to or is found guilty of possession of a controlled substance under section 7403(2)(a)(v), 7403(2)(b), (c), or (d), or of use of a controlled substance under section 7404, or possession or use of an imitation controlled substance under section 7341 for a second time, the court, without entering a judgment of guilt with the consent of the accused, may defer further proceedings and place the individual on probation upon terms and conditions that shall include, but are not limited to, payment of a probation supervision fee as prescribed in section 3c of chapter XI of the code of criminal procedure, 1927 PA 175, MCL 771.3c. The terms and conditions of probation may include participation in a drug treatment court under chapter 10A of the revised judicature act of 1961, 1961 PA 236, MCL 600.1060 to 600.1084. Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as otherwise provided. Upon fulfillment of the terms and conditions, the court shall discharge the individual and dismiss the proceedings. Discharge and dismissal under this section shall be without adjudication of guilt and, except as otherwise provided by law, is not a conviction for purposes of this section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime, including the additional penalties imposed for second or subsequent convictions under section 7413. There may be only 1 discharge and dismissal under this section as to an individual.

(2) All court proceedings under this section shall be open to the public. Except as provided in subsection (3), if the record of proceedings as to the defendant is deferred under this section, the record of proceedings during the period of deferral shall be closed to public inspection.

(3) Unless the court enters a judgment of guilt under this section, the department of state police shall retain a nonpublic record of the arrest, court proceedings, and disposition of the criminal charge under this section. However, the nonpublic record shall be open to the following individuals and entities for the purposes noted:

(a) The courts of this state, law enforcement personnel, the department of corrections, and prosecuting attorneys for use only in the performance of their duties or to determine whether an employee of the court, law enforcement agency, department of corrections, or prosecutor's office has violated his or her conditions of employment or whether an applicant meets criteria for employment with the court, law enforcement agency, department of corrections, or prosecutor's office.

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

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

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

(c) The department of human services for enforcing child protection laws and vulnerable adult protection laws or ascertaining the preemployment criminal history of any individual who will be engaged in the enforcement of child protection laws or vulnerable adult protection laws.

(d) The Michigan commission on law enforcement standards created in section 3 of the Michigan commission on law enforcement standards act, 1965 PA 203, MCL 28.603, as follows:

(i) The court placed the individual on probation after March 25, 2002.

(ii) If, at the time of the request, the individual is seeking licensure as a law enforcement officer under the Michigan commission on law enforcement standards act, 1965 PA 203, MCL 28.601 to 28.615, the Michigan commission on law enforcement standards may use the record to determine whether the individual meets the requirements for licensure as provided in that act.

(iii) If the individual is licensed or certified as a law enforcement officer under the Michigan commission on law enforcement standards act, 1965 PA 203, MCL 28.601 to 28.615, the Michigan commission on law enforcement standards may use the record to determine whether the license or certificate may be revoked as provided in that act.

(iv) If the individual is seeking admission to a law enforcement training academy, the Michigan commission on law enforcement standards may use the record to determine whether the individual meets the requirements for admission to the academy as provided in the Michigan commission on law enforcement standards act, 1965 PA 203, MCL 28.601 to 28.615.

(v) If the individual is seeking a waiver from the law enforcement officer minimum standards regarding training requirements, the Michigan commission on law enforcement standards may use the record to determine whether the individual meets the requirements for the waiver as provided in the Michigan commission on law enforcement standards act, 1965 PA 203, MCL 28.601 to 28.615.

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

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

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

History: 1978, Act 368, Eff. Sept. 30, 1978;—Am. 1984, Act 347, Eff. Mar. 29, 1985;—Am. 1988, Act 144, Imd. Eff. June 6, 1988;—Am. 1993, Act 169, Eff. Sept. 30, 1993;—Am. 2002, Act 79, Imd. Eff. Mar. 25, 2002;—Am. 2004, Act 225, Eff. Jan. 1, 2005;—Am. 2012, Act 549, Eff. Apr. 1, 2013;—Am. 2013, Act 223, Eff. Jan. 1, 2014;—Am. 2016, Act 291, Eff. Jan. 2, 2017.

Popular name: Act 368