

HOUSE BILL No. 4024

January 31, 1991, Introduced by Rep. Bryant and referred to the Committee on Judiciary.

A bill to amend sections 7401 and 7403 of Act No. 368 of the Public Acts of 1978, entitled as amended "Public health code," as amended by Act No. 143 of the Public Acts of 1989, being sections 333.7401 and 333.7403 of the Michigan Compiled Laws; and to add section 7401a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 7401 and 7403 of Act No. 368 of the
2 Public Acts of 1978, as amended by Act No. 143 of the Public Acts
3 of 1989, being sections 333.7401 and 333.7403 of the Michigan
4 Compiled Laws, are amended and section 7401a is added to read as
5 follows:

6 Sec. 7401. (1) Except as authorized by this article, a
7 person shall not manufacture, deliver, or possess with intent to
8 manufacture or deliver, a controlled substance, a prescription

1 form, an official prescription form, or a counterfeit
2 prescription form. A practitioner licensed by the administrator
3 under this article shall not dispense, prescribe, or administer a
4 controlled substance for other than legitimate and professionally
5 recognized therapeutic or scientific purposes or outside the
6 scope of practice of the practitioner, licensee, or applicant.

7 (2) A person who violates this section as to:

8 (a) A controlled substance classified in schedule 1 or 2
9 which is either a narcotic drug or described in section 7214(a)
10 (iv) and:

11 (i) Which is in an amount of 650 grams or more of any mix-
12 ture containing that controlled substance is guilty of a felony
13 and shall be imprisoned for life.

14 (ii) Which is in an amount of 225 grams or more, but less
15 than 650 grams, of any mixture containing that controlled sub-
16 stance is guilty of a felony and shall be imprisoned for not less
17 than 20 years ~~nor~~ OR more than 30 years.

18 (iii) Which is in an amount of 50 grams or more, but less
19 than 225 grams, of any mixture containing that controlled sub-
20 stance is guilty of a felony and shall be imprisoned for not less
21 than 10 years ~~nor~~ OR more than 20 years.

22 (iv) Which is in an amount less than 50 grams, of any mix-
23 ture containing that substance is guilty of a felony and shall be
24 imprisoned for not less than 1 year ~~nor~~ OR more than 20 years,
25 and may be fined not more than \$25,000.00, or placed on probation
26 for life.

1 (b) Any other controlled substance classified in schedule 1,
2 2, or 3, except marihuana, is guilty of a felony, punishable by
3 imprisonment for not more than 7 years, or a fine of not more
4 than \$5,000.00, or both.

5 (c) A substance classified in schedule 4 or marihuana, is
6 guilty of a felony, punishable by imprisonment for not more than
7 4 years, or a fine of not more than \$2,000.00, or both.

8 (d) A substance classified in schedule 5, is guilty of a
9 felony, punishable by imprisonment for not more than 2 years, or
10 a fine of not more than \$2,000.00, or both.

11 (e) An official prescription form or a counterfeit official
12 prescription form, is guilty of a felony, punishable by imprison-
13 ment for not more than 20 years, or a fine of not more than
14 \$25,000.00, or both.

15 (f) A prescription form or a counterfeit prescription form
16 other than an official prescription form or a counterfeit offi-
17 cial prescription form, is guilty of a felony, punishable by
18 imprisonment for not more than 7 years, or a fine of not more
19 than \$5,000.00, or both.

20 (3) A term of imprisonment imposed pursuant to subsection
21 (2)(a) or section 7403(2)(a)(i), (ii), (iii), or (iv) shall be
22 imposed to run consecutively with any term of imprisonment
23 imposed for the commission of another felony. An individual
24 subject to a mandatory term of imprisonment under subsection
25 (2)(a) or section 7403(2)(a)(i), (ii), (iii), or (iv) ~~shall~~ IS
26 not ~~be~~ eligible for probation, suspension of that sentence, or
27 parole during that mandatory term, except and only to the extent

1 that those provisions permit probation for life, and shall not
2 receive a reduction in that mandatory term of imprisonment by
3 disciplinary credits or any other type of sentence credit
4 reduction.

5 (4) The court may depart from the minimum term of imprison-
6 ment authorized under subsection (2)(a)(ii), (iii), or (iv) if
7 the court finds on the record that there are substantial and com-
8 pelling reasons to do so.

9 (5) THE COURT MAY DEPART FROM THE TERM OF IMPRISONMENT FOR
10 LIFE AUTHORIZED UNDER SUBSECTION (2)(A)(i) IF THE COURT FINDS ON
11 THE RECORD THAT THERE ARE SUBSTANTIAL AND COMPELLING REASONS TO
12 DO SO. IF THE COURT DEPARTS FROM THE TERM OF IMPRISONMENT FOR
13 LIFE AUTHORIZED UNDER SUBSECTION (2)(A)(i), THE COURT SHALL
14 IMPOSE A SENTENCE OF IMPRISONMENT FOR A MINIMUM TERM OF NOT LESS
15 THAN 5 YEARS AND A MAXIMUM TERM OF ANY NUMBER OF YEARS. AN INDI-
16 VIDUAL SENTENCED TO A MINIMUM TERM OF IMPRISONMENT UNDER THIS
17 SUBSECTION IS NOT ELIGIBLE FOR PROBATION, SUSPENSION OF THAT SEN-
18 TENCE, OR PAROLE DURING THAT MINIMUM TERM AND SHALL NOT RECEIVE A
19 REDUCTION IN THAT MINIMUM TERM BY DISCIPLINARY CREDITS OR ANY
20 OTHER TYPE OF SENTENCE CREDIT REDUCTION. THIS SUBSECTION IS RET-
21 ROACTIVE TO SEPTEMBER 1, 1978, AND APPLIES TO ALL PERSONS SEN-
22 TENCED ON OR AFTER THAT DATE TO IMPRISONMENT FOR LIFE UNDER
23 SUBSECTION (2)(A)(i) OF THIS SECTION OR UNDER SECTION 41(1)(A)(i)
24 OF FORMER ACT NO. 196 OF THE PUBLIC ACTS OF 1971.

25 SEC. 7401A. THE LEGISLATURE FINDS THAT SENTENCING UNDER THE
26 MANDATORY IMPRISONMENT FOR LIFE WITHOUT PAROLE PROVISIONS OF
27 SECTIONS 7401 AND 7403, AS THOSE PROVISIONS EXISTED BEFORE THE

1 EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS SECTION, HAS
2 RESULTED IN UNWARRANTEDLY HARSH PUNISHMENT IN NUMEROUS
3 INSTANCES. THEREFORE, THE LEGISLATURE INTENDS THE PROVISIONS SET
4 FORTH IN SECTIONS 7401(5) AND 7403(4), AS ADDED BY THE AMENDATORY
5 ACT THAT ADDED THIS SECTION, PERMITTING DEPARTURE FROM THE SEN-
6 TENCE OF IMPRISONMENT FOR LIFE, TO HAVE RETROACTIVE APPLICATION.
7 HOWEVER, IF IT IS DETERMINED THAT THOSE DEPARTURE PROVISIONS
8 CANNOT CONSTITUTIONALLY BE APPLIED RETROACTIVELY, THE LEGISLATURE
9 URGES THE GOVERNOR TO EXAMINE ALL CASES IN WHICH PERSONS ARE
10 SERVING MANDATORY LIFE SENTENCES IMPOSED UNDER SECTIONS 7401 AND
11 7403 BEFORE THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED
12 THIS SECTION AND TO GRANT COMMUTATIONS OR PARDONS AS THE GOVERNOR
13 SEES FIT.

14 Sec. 7403. (1) A person shall not knowingly or intention-
15 ally possess a controlled substance, ~~or~~ an official prescrip-
16 tion form, or a prescription form unless the controlled sub-
17 stance, official prescription form, or prescription form was
18 obtained directly from, or pursuant to, a valid prescription or
19 order of a practitioner while acting in the course of the
20 practitioner's professional practice, or except as otherwise
21 authorized by this article.

22 (2) A person who violates this section as to:

23 (a) A controlled substance classified in schedule 1 or 2
24 which is either a narcotic drug or described in section
25 7214(a)(iv), and:

1 (i) Which is in an amount of 650 grams or more of any
2 mixture containing that controlled substance is guilty of a
3 felony and shall be imprisoned for life.

4 (ii) Which is in an amount of 225 grams or more, but less
5 than 650 grams, of any mixture containing that controlled sub-
6 stance is guilty of a felony and shall be imprisoned for not less
7 than 20 years ~~nor~~ OR more than 30 years.

8 (iii) Which is in an amount of 50 grams or more, but less
9 than 225 grams, of any mixture containing that controlled sub-
10 stance is guilty of a felony and shall be imprisoned for not less
11 than 10 years ~~nor~~ OR more than 20 years.

12 (iv) Which is in an amount of 25 grams or more, but less
13 than 50 grams of any mixture containing that controlled substance
14 is guilty of a felony, and shall be imprisoned for not less than
15 1 year ~~and not~~ OR more than 4 years, and may be fined not more
16 than \$25,000.00 or placed on probation for life.

17 (v) Which is in an amount less than 25 grams of any mixture
18 containing that controlled substance is guilty of a felony, pun-
19 ishable by imprisonment for not more than 4 years or a fine of
20 not more than \$25,000.00, or both.

21 (b) A controlled substance classified in schedule 1, 2, 3,
22 or 4, except a controlled substance ~~classified in schedule 1~~
23 for which a penalty is prescribed in subdivision (a), (c), or
24 (d), is guilty of a felony, punishable by imprisonment for not
25 more than 2 years, or a fine of not more than \$2,000.00, or
26 both.

1 (c) Lysergic acid diethylamide, peyote, mescaline,
2 dimethyltryptamine, psilocyn, psilocybin, or a controlled
3 substance classified in schedule 5, is guilty of a misdemeanor,
4 punishable by imprisonment for not more than 1 year, or a fine of
5 not more than \$1,000.00, or both.

6 (d) Marihuana, is guilty of a misdemeanor, punishable by
7 imprisonment for not more than 1 year, or a fine of not more than
8 \$1,000.00, or both.

9 (e) An official prescription form, is guilty of a felony,
10 punishable by imprisonment for not more than 1 year, or a fine of
11 not more than \$2,000.00, or both.

12 (f) A prescription form other than an official prescription
13 form, is guilty of a misdemeanor, punishable by imprisonment for
14 not more than 1 year, or a fine of not more than \$1,000.00, or
15 both.

16 (3) The court may depart from the minimum term of imprison-
17 ment authorized under subsection ~~(2)(ii), (iii), or (iv)~~
18 (2)(A)(ii), (iii), OR (iv) if the court finds on the record that
19 there are substantial and compelling reasons to do so.

20 (4) THE COURT MAY DEPART FROM THE TERM OF IMPRISONMENT FOR
21 LIFE AUTHORIZED UNDER SUBSECTION (2)(A)(i) IF THE COURT FINDS ON
22 THE RECORD THAT THERE ARE SUBSTANTIAL AND COMPELLING REASONS TO
23 DO SO. IF THE COURT DEPARTS FROM THE TERM OF IMPRISONMENT FOR
24 LIFE AUTHORIZED UNDER SUBSECTION (2)(A)(i), THE COURT SHALL
25 IMPOSE A SENTENCE OF IMPRISONMENT FOR A MINIMUM TERM OF NOT LESS
26 THAN 5 YEARS AND A MAXIMUM TERM OF ANY NUMBER OF YEARS. AN
27 INDIVIDUAL SENTENCED TO A MINIMUM TERM OF IMPRISONMENT UNDER THIS

1 SUBSECTION IS NOT ELIGIBLE FOR PROBATION, SUSPENSION OF THAT
2 SENTENCE, OR PAROLE DURING THAT MINIMUM TERM AND SHALL NOT
3 RECEIVE A REDUCTION IN THAT MINIMUM TERM BY DISCIPLINARY CREDITS
4 OR ANY OTHER TYPE OF SENTENCE CREDIT REDUCTION. THIS SUBSECTION
5 IS RETROACTIVE TO SEPTEMBER 1, 1978, AND APPLIES TO ALL PERSONS
6 SENTENCED ON OR AFTER THAT DATE TO IMPRISONMENT FOR LIFE UNDER
7 SUBSECTION (2)(A)(i) OF THIS SECTION OR UNDER SECTION 41(4)(A)(i)
8 OF FORMER ACT NO. 196 OF THE PUBLIC ACTS OF 1971.