

HOUSE BILL No. 5811

May 7, 1992, Introduced by Reps. Clarke, Clack, Kilpatrick and Jondahl and referred to the Committee on Judiciary.

A bill to amend sections 7401, 7403, 7410, 7413, and 7416 of Act No. 368 of the Public Acts of 1978, entitled as amended "Public health code,"

sections 7401 and 7403 as amended by Act No. 143 of the Public Acts of 1989, section 7410 as amended by Act No. 12 of the Public Acts of 1988, section 7413 as amended by Act No. 144 of the Public Acts of 1988, and section 7416 as added by Act No. 17 of the Public Acts of 1988, being sections 333.7401, 333.7403, 333.7410, 333.7413, and 333.7416 of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 7401, 7403, 7410, 7413, and 7416 of Act
2 No. 368 of the Public Acts of 1978, sections 7401 and 7403 as
3 amended by Act No. 143 of the Public Acts of 1989, section 7410
4 as amended by Act No. 12 of the Public Acts of 1988, section 7413
5 as amended by Act No. 144 of the Public Acts of 1988, and section

1 7416 as added by Act No. 17 of the Public Acts of 1988, being
2 sections 333.7401, 333.7403, 333.7410, 333.7413, and 333.7416 of
3 the Michigan Compiled Laws, are amended to read as follows:

4 Sec. 7401. (1) Except as authorized by this article, a
5 person shall not manufacture, deliver, or possess with intent to
6 manufacture or deliver, a controlled substance, a prescription
7 form, an official prescription form, or a counterfeit prescrip-
8 tion form. A practitioner licensed by the administrator under
9 this article shall not dispense, prescribe, or administer a con-
10 trolled substance for other than legitimate and professionally
11 recognized therapeutic or scientific purposes or outside the
12 scope of practice of the practitioner, licensee, or applicant.

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

14 (a) A controlled substance classified in schedule 1 or 2
15 which is either a narcotic drug or described in section 7214(a)
16 (iv) and:

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

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

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

1 (iv) Which is in an amount less than 50 grams, of any
2 mixture containing that substance is guilty of a felony and shall
3 be imprisoned for not less than 1 year ~~nor~~ OR more than 20
4 years, and may be fined not more than \$25,000.00, or placed on
5 probation for life.

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

10 (c) A substance classified in schedule 4 or marihuana, is
11 guilty of a felony, punishable by imprisonment for not more than
12 4 years, or a fine of not more than \$2,000.00, or both.

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

16 (e) An official prescription form or a counterfeit official
17 prescription form, is guilty of a felony, punishable by imprison-
18 ment for not more than 20 years, or a fine of not more than
19 \$25,000.00, or both.

20 (f) A prescription form or a counterfeit prescription form
21 other than an official prescription form or a counterfeit offi-
22 cial prescription form, is guilty of a felony, punishable by
23 imprisonment for not more than 7 years, or a fine of not more
24 than \$5,000.00, or both.

25 (3) A term of imprisonment imposed pursuant to subsection
26 (2)(a) or section 7403(2)(a)(i), (ii), (iii), or (iv) shall be
27 imposed to run consecutively with any term of imprisonment

1 imposed for the commission of another felony. An individual
2 subject to a mandatory term of imprisonment under subsection
3 (2)(a) or section 7403(2)(a)(i), (ii), (iii), or (iv) ~~shall~~ IS
4 not ~~be~~ eligible for probation, suspension of that sentence, or
5 parole during that mandatory term, except and only to the extent
6 that those provisions permit probation for life, and shall not
7 receive a reduction in that mandatory term of imprisonment by
8 disciplinary credits or any other type of sentence credit
9 reduction.

10 (4) The court may depart from the minimum term of imprison-
11 ment authorized under subsection (2)(a)(ii), (iii), or (iv) if
12 the court finds on the record that there are ~~substantial~~ CLEAR
13 and ~~compelling~~ CONVINCING reasons to do so.

14 (5) THE COURT MAY DEPART FROM THE TERM OF IMPRISONMENT FOR
15 LIFE AUTHORIZED UNDER SUBSECTION (2)(A)(i) IF THE PERSON HAS NOT
16 PREVIOUSLY BEEN CONVICTED OF A VIOLATION OF THIS ARTICLE OR ANY
17 SIMILAR STATUTE OF THE UNITED STATES OR ANY STATE AND THE COURT
18 FINDS ON THE RECORD THAT THERE ARE CLEAR AND CONVINCING REASONS
19 TO DEPART. IF THE COURT DEPARTS FROM THE TERM OF IMPRISONMENT
20 FOR LIFE AUTHORIZED UNDER SUBSECTION (2)(A)(i), THE COURT SHALL
21 IMPOSE A SENTENCE OF IMPRISONMENT FOR A MINIMUM TERM OF NOT LESS
22 THAN 5 YEARS AND A MAXIMUM TERM OF ANY NUMBER OF YEARS. A TERM
23 OF IMPRISONMENT IMPOSED PURSUANT TO THIS SUBSECTION SHALL BE
24 IMPOSED TO RUN CONSECUTIVELY WITH ANY TERM OF IMPRISONMENT
25 IMPOSED FOR THE COMMISSION OF ANOTHER FELONY. AN INDIVIDUAL SEN-
26 TENCED TO A MINIMUM TERM OF IMPRISONMENT UNDER THIS SUBSECTION IS
27 NOT ELIGIBLE FOR PROBATION, SUSPENSION OF THAT SENTENCE, OR

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

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

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

17 (a) A controlled substance classified in schedule 1 or 2
18 which is either a narcotic drug or described in section
19 7214(a)(iv), and:

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

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

1 (iii) Which is in an amount of 50 grams or more, but less
2 than 225 grams, of any mixture containing that controlled
3 substance is guilty of a felony and shall be imprisoned for not
4 less than 10 years ~~nor~~ OR more than 20 years.

5 (iv) Which is in an amount of 25 grams or more, but less
6 than 50 grams of any mixture containing that controlled substance
7 is guilty of a felony, and shall be imprisoned for not less than
8 1 year ~~and not~~ OR more than 4 years, and may be fined not more
9 than \$25,000.00 or placed on probation for life.

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

14 (b) A controlled substance classified in schedule 1, 2, 3,
15 or 4, except a controlled substance ~~classified in schedule 1~~
16 for which a penalty is prescribed in subdivision (a), (c), or
17 (d), is guilty of a felony, punishable by imprisonment for not
18 more than 2 years, or a fine of not more than \$2,000.00, or
19 both.

20 (c) Lysergic acid diethylamide, peyote, mescaline, dimethyl-
21 tryptamine, psilocyn, psilocybin, or a controlled substance clas-
22 sified in schedule 5, is guilty of a misdemeanor, punishable by
23 imprisonment for not more than 1 year, or a fine of not more than
24 \$1,000.00, or both.

25 (d) Marihuana, is guilty of a misdemeanor, punishable by
26 imprisonment for not more than 1 year, or a fine of not more than
27 \$1,000.00, or both.

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

4 (f) A prescription form other than an official prescription
5 form, is guilty of a misdemeanor, punishable by imprisonment for
6 not more than 1 year, or a fine of not more than \$1,000.00, or
7 both.

8 (3) The court may depart from the minimum term of imprison-
9 ment authorized under subsection ~~(2)(ii), (iii), or (iv)~~
10 (2)(A)(ii), (iii), OR (iv) if the court finds on the record that
11 there are ~~substantial~~ CLEAR and ~~compelling~~ CONVINCING reasons
12 to do so.

13 (4) THE COURT MAY DEPART FROM THE TERM OF IMPRISONMENT FOR
14 LIFE AUTHORIZED UNDER SUBSECTION (2)(A)(i) IF THE PERSON HAS NOT
15 PREVIOUSLY BEEN CONVICTED OF A VIOLATION OF THIS ARTICLE OR ANY
16 SIMILAR STATUTE OF THE UNITED STATES OR ANY STATE AND THE COURT
17 FINDS ON THE RECORD THAT THERE ARE CLEAR AND CONVINCING REASONS
18 TO DEPART. IF THE COURT DEPARTS FROM THE TERM OF IMPRISONMENT
19 FOR LIFE AUTHORIZED UNDER SUBSECTION (2)(A)(i), THE COURT SHALL
20 IMPOSE A SENTENCE OF IMPRISONMENT FOR A MINIMUM TERM OF NOT LESS
21 THAN 5 YEARS AND A MAXIMUM TERM OF ANY NUMBER OF YEARS. A TERM
22 OF IMPRISONMENT IMPOSED PURSUANT TO THIS SUBSECTION SHALL BE
23 IMPOSED TO RUN CONSECUTIVELY WITH ANY TERM OF IMPRISONMENT
24 IMPOSED FOR THE COMMISSION OF ANOTHER FELONY. AN INDIVIDUAL SEN-
25 TENCED TO A MINIMUM TERM OF IMPRISONMENT UNDER THIS SUBSECTION IS
26 NOT ELIGIBLE FOR PROBATION, SUSPENSION OF THAT SENTENCE, OR
27 PAROLE DURING THAT MINIMUM TERM AND SHALL NOT RECEIVE A REDUCTION

1 IN THAT MINIMUM TERM BY DISCIPLINARY CREDITS OR ANY OTHER TYPE OF
2 SENTENCE CREDIT REDUCTION. THIS SUBSECTION IS RETROACTIVE TO
3 SEPTEMBER 1, 1978, AND APPLIES TO ALL PERSONS SENTENCED ON OR
4 AFTER THAT DATE TO IMPRISONMENT FOR LIFE UNDER
5 SUBSECTION (2)(A)(i) OF THIS SECTION OR UNDER SECTION 41(4)(A)(i)
6 OF FORMER ACT NO. 196 OF THE PUBLIC ACTS OF 1971.

7 Sec. 7410. (1) Except as otherwise provided in
8 subsections (2) and (3), an individual 18 OR MORE years of age
9 ~~or over~~ who violates section 7401(2)(a)(iv) by delivering or
10 distributing a controlled substance listed in schedule 1 or 2
11 ~~which~~ THAT is either a narcotic drug or described in section
12 7214(a)(iv) to an individual under 18 years of age who is at
13 least 3 years the deliverer's or distributor's junior may be pun-
14 ished by the fine authorized by section 7401(2)(a)(iv) or by a
15 term of imprisonment of not less than 1 year ~~nor~~ OR more than
16 twice that authorized by section 7401(2)(a)(iv), or both. An
17 individual 18 OR MORE years of age ~~or over~~ who violates section
18 7401 by delivering or distributing any other controlled substance
19 listed in schedules 1 to 5 to an individual under 18 years of age
20 who is at least 3 years the distributor's junior may be punished
21 by the fine authorized by section 7401(2)(b), (c), or (d), or by
22 a term of imprisonment not more than twice that authorized by
23 section 7401(2)(b), (c), or (d), or both.

24 (2) An individual 18 OR MORE years of age ~~or over~~ who vio-
25 lates section 7401(2)(a)(iv) by delivering a controlled substance
26 described in schedule 1 or 2 ~~which~~ THAT is either a narcotic
27 drug or described in section 7214(a)(iv) to a minor who is a

1 student on or within 500 feet of school property shall be
2 punished, subject to subsection (5), by a term of imprisonment of
3 not less than 2 years ~~nor~~ OR more than 3 times that authorized
4 by section 7401(2)(a)(iv) and, in addition, may be punished by a
5 fine of not more than 3 times that authorized by section
6 7401(2)(a)(iv).

7 (3) An individual 18 OR MORE years of age ~~or over~~ who vio-
8 lates section 7401(2)(a)(iv) by possessing with intent to deliver
9 to a minor who is a student on or within 500 feet of school prop-
10 erty a controlled substance described in schedule 1 or 2 ~~which~~
11 THAT is either a narcotic drug or described in
12 section 7214(a)(iv) shall be punished, subject to subsection (5),
13 by a term of imprisonment of not less than 2 years ~~nor~~ OR more
14 than twice that authorized by section 7401(2)(a)(iv) and, in
15 addition, may be punished by a fine of not more than 3 times that
16 authorized by section 7401(2)(a)(iv).

17 (4) An individual 18 OR MORE years of age ~~or over~~ who vio-
18 lates section 7403(2)(a)(v), (b), (c), or (d) by possessing a
19 controlled substance on school property shall be punished by a
20 term of imprisonment or a fine, or both, of not more than twice
21 that authorized by section 7403(2)(a)(v), (b), (c), or (d).

22 (5) The court may depart from the minimum term of imprison-
23 ment authorized under subsection (2) or (3) if the court finds on
24 the record that there are ~~substantial~~ CLEAR and ~~compelling~~
25 CONVINCING reasons to do so.

26 (6) As used in this section, "school property" means a
27 building, playing field, or property used for school purposes to

1 impart instruction to children in grades kindergarten through 12,
2 when provided by a public, private, denominational, or parochial
3 school, except those buildings used primarily for adult education
4 or college extension courses.

5 (7) A person who distributes marihuana without remuneration
6 and not to further commercial distribution and who does not vio-
7 late subsection (1) is guilty of a misdemeanor, punishable by
8 imprisonment for not more than 1 year, or a fine of not more than
9 \$1,000.00, or both, unless the distribution is in accordance with
10 the federal law or the law of this state.

11 Sec. 7413. (1) An individual who was convicted previously
12 for a violation of any of the following offenses and WHO is
13 ~~thereafter~~ convicted of a second or subsequent violation of any
14 of the following offenses shall be imprisoned for life and shall
15 not be eligible for probation, suspension of sentence, or parole
16 during that mandatory term:

17 (a) A violation of section 7401(2)(a)(ii) or (iii).

18 (b) A violation of section 7403(2)(a)(ii) or (iii).

19 (c) Conspiracy to commit an offense proscribed by section
20 7401(2)(a)(ii) or (iii) or section 7403(2)(a)(ii) or (iii).

21 (2) Except as otherwise provided in subsections (1) and (3),
22 an individual convicted of a second or subsequent offense under
23 this article may be imprisoned for a term not more than twice the
24 term otherwise authorized or fined an amount not more than twice
25 that otherwise authorized, or both.

26 (3) An individual convicted of a second or subsequent
27 offense under section 7410(2) or (3) shall be punished, subject

1 to subsection (4), by a term of imprisonment of not less than 5
2 years ~~nor~~ OR more than twice that authorized under
3 section 7410(2) or (3) and, in addition, may be punished by a
4 fine of not more than 3 times that authorized by section 7410(2)
5 or (3). ~~and shall~~ THE INDIVIDUAL IS not ~~be~~ eligible for
6 probation or suspension of sentence during the term of
7 imprisonment.

8 (4) The court may depart from the minimum term of imprison-
9 ment authorized under subsection (3) if the court finds on the
10 record that there are ~~substantial~~ CLEAR and ~~compelling~~
11 CONVINCING reasons to do so.

12 (5) For purposes of subsection (2), an offense is considered
13 a second or subsequent offense, if, before conviction of the
14 offense, the offender has at any time been convicted under this
15 article or under any statute of the United States or of any state
16 relating to a narcotic drug, marihuana, depressant, stimulant, or
17 hallucinogenic drug.

18 Sec. 7416. (1) Except as otherwise provided in subsection
19 (4), a person 17 OR MORE years of age ~~or over~~ who recruits,
20 induces, solicits, or coerces a minor less than 17 years of age
21 to commit or attempt to commit any act ~~which~~ THAT would be a
22 felony under this part if committed by an adult is guilty of a
23 felony and may be punished by a fine of not more than the fine
24 authorized by this part for an adult who commits such an act, and
25 shall be punished, subject to subsection (3), as follows:

26 (a) Except as provided in subdivision (b), by imprisonment
27 for not less than 1/2 of the maximum term of imprisonment

1 ~~authorized by this part for an adult who commits such an act~~
2 and not more than the maximum term of imprisonment authorized by
3 this part for an adult who commits such an act.

4 (b) If the act to be committed or attempted by the minor is
5 a violation of section 7401(2)(a)(i), by imprisonment for life.

6 (2) A person subject to a sentence under subsection (1)
7 ~~shall~~ IS not ~~be~~ subject to a delayed sentence or a suspended
8 sentence and ~~shall~~ IS not ~~be~~ eligible for probation.

9 (3) The court may depart from the minimum terms of imprison-
10 ment authorized under subsection (1)(a) and (b) if the court
11 finds on the record that there are ~~substantial~~ CLEAR and
12 ~~compelling~~ CONVINCING reasons to do so.

13 (4) Subsection (1)(a) does not apply to an act ~~which~~ THAT
14 is a violation of section 7401(2)(c) and ~~which~~ involves the
15 manufacture, delivery, or possession with intent to deliver of
16 marihuana.

17 Section 2. The legislature finds that sentencing under the
18 mandatory imprisonment for life without parole provisions of
19 sections 7401 and 7403, as those provisions existed before the
20 effective date of this amendatory act has resulted in unwar-
21 rantedly harsh punishment in numerous instances. Therefore, the
22 legislature intends the provisions set forth in sections 7401(5)
23 and 7403(4) as added by this amendatory act, permitting departure
24 from the sentence of imprisonment for life, to have retroactive
25 application. However, if it is determined that those departure
26 provisions cannot constitutionally be applied retroactively, the
27 legislature urges the governor to examine all cases in which

1 persons are serving mandatory life sentences imposed under
2 sections 7401 and 7403 before the effective date of this amenda-
3 tory act and to grant commutations or pardons as the governor
4 sees fit.