



HOUSE BILL No. 4902

June 29, 1993, Introduced by Rep. Bryant and referred to the Committee on Judiciary.

A bill to amend sections 7401, 7403, and 7413 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 and section 7413 as amended by Act No. 144 of the Public Acts of 1988, being sections 333.7401, 333.7403, and 333.7413 of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 7401, 7403, and 7413 of Act No. 368 of
2 the Public Acts of 1978, sections 7401 and 7403 as amended by Act
3 No. 143 of the Public Acts of 1989 and section 7413 as amended by
4 Act No. 144 of the Public Acts of 1988, being sections 333.7401,
5 333.7403, and 333.7413 of the Michigan Compiled Laws, are amended
6 to read as follows:

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

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

11 (a) A controlled substance classified in schedule 1 or 2
 12 which is either a narcotic drug or described in section 7214(a)
 13 (iv) and:

14 (i) Which is in an amount of 650 grams or more of any mix-
 15 ture containing that controlled substance is guilty of a felony
 16 and shall be imprisoned for ~~life~~ NOT LESS THAN 10 YEARS OR MORE
 17 THAN 30 YEARS.

18 (ii) Which is in an amount of 225 grams or more, but less
 19 than 650 grams, of any mixture containing that controlled sub-
 20 stance is guilty of a felony and shall be imprisoned for not less
 21 than ~~20~~ 8 years ~~nor~~ OR more than ~~30~~ 24 years.

22 (iii) Which is in an amount of 50 grams or more, but less
 23 than 225 grams, of any mixture containing that controlled sub-
 24 stance is guilty of a felony and shall be imprisoned for not less
 25 than ~~10~~ 6 years ~~nor~~ OR more than ~~20~~ 18 years.

26 (iv) Which is in an amount less than 50 grams, of any
 27 mixture containing that substance is guilty of a felony and shall

1 be imprisoned for not less than 1 year ~~nor~~ OR more than ~~20~~ 4
2 years, and may be fined not more than \$25,000.00, or placed on
3 probation for life.

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

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

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

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

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

23 (3) A term of imprisonment imposed pursuant to subsection
24 (2)(a) or section 7403(2)(a)(i), (ii), (iii), or (iv) shall be
25 imposed to run consecutively with any term of imprisonment
26 imposed for the commission of another felony. An individual
27 subject to a mandatory term of imprisonment under subsection

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

8 (4) The court may depart from the minimum term of imprison-
 9 ment authorized under subsection ~~(2)(a)(iii), (iii), or (iv)~~
 10 (2)(A) if the court finds on the record that there are substan-
 11 tial and compelling reasons to do so. THE COURT MAY CONSIDER 1
 12 OR MORE OF THE FOLLOWING IN DETERMINING WHETHER THERE ARE SUB-
 13 STANTIAL AND COMPELLING REASONS TO DEPART FROM THAT MINIMUM TERM
 14 OF IMPRISONMENT:

15 (A) THE CIRCUMSTANCES UNDER WHICH THE VIOLATION WAS
 16 COMMITTED.

17 (B) THE LEVEL OF PARTICIPATION OF THE DEFENDANT IN COMMIT-
 18 TING THE VIOLATION.

19 (C) FACTORS THAT MITIGATE THE CULPABILITY OF THE DEFENDANT.

20 (D) THE CREDIBILITY, CHARACTER, AND REHABILITATIVE POTENTIAL
 21 OF THE DEFENDANT.

22 (E) FACTORS RELEVANT TO THE PRINCIPLE OF PROPORTIONALITY.

23 (5) IF THE COURT DEPARTS FROM THE MINIMUM TERM OF IMPRISON-
 24 MENT AUTHORIZED UNDER SUBSECTION (2)(A), THE COURT SHALL IMPOSE A
 25 SENTENCE OF IMPRISONMENT FOR A MINIMUM TERM OF NOT LESS THAN 1/2
 26 THE LENGTH OF THE MINIMUM TERM AUTHORIZED FOR THE VIOLATION AND A
 27 MAXIMUM TERM EQUAL TO 1/2 THE LENGTH OF THE MAXIMUM TERM FOR THAT

1 VIOLATION. AN INDIVIDUAL SENTENCED TO A MINIMUM TERM OF
2 IMPRISONMENT UNDER THIS SUBSECTION IS NOT ELIGIBLE FOR PROBATION,
3 SUSPENSION OF THAT SENTENCE, OR PAROLE DURING THAT MINIMUM TERM
4 AND SHALL NOT RECEIVE A REDUCTION IN THAT MINIMUM TERM BY DISCI-
5 PLINARY CREDITS OR ANY OTHER TYPE OF SENTENCE CREDIT REDUCTION.

6 (6) THE LEGISLATURE FINDS THAT SENTENCING CONVICTED INDIVID-
7 UALS UNDER THIS SECTION AS IT EXISTED BEFORE THE EFFECTIVE DATE
8 OF THE AMENDATORY ACT THAT ADDED THIS SUBSECTION OR UNDER A SUB-
9 STANTIALLY SIMILAR FORMER LAW OF THIS STATE HAS RESULTED IN
10 UNWARRANTEDLY HARSH PUNISHMENT IN NUMEROUS INSTANCES. THEREFORE,
11 THE LEGISLATURE INTENDS THE PROVISIONS SET FORTH IN
12 SUBSECTION (5) AS ADDED BY THE AMENDATORY ACT THAT ADDED THIS
13 SUBSECTION, PERMITTING DEPARTURE FROM THE SENTENCES AUTHORIZED
14 UNDER SUBSECTION (2)(A) TO HAVE RETROACTIVE APPLICATION TO INDIV-
15 IDUALS SENTENCED TO IMPRISONMENT FOR A VIOLATION OF
16 SUBSECTION (2)(A). HOWEVER, IF IT IS DETERMINED THAT THOSE
17 DEPARTURE PROVISIONS CANNOT CONSTITUTIONALLY BE APPLIED RETROAC-
18 TIVELY, THE LEGISLATURE URGES THE GOVERNOR TO EXAMINE ALL CASES
19 IN WHICH PERSONS ARE SERVING MANDATORY SENTENCES IMPOSED UNDER
20 THIS SECTION OR UNDER A SUBSTANTIALLY SIMILAR FORMER LAW OF THIS
21 STATE BEFORE THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED
22 THIS SUBSECTION AND TO GRANT COMMUTATIONS OR PARDONS AS THE GOV-
23 ERNOR SEES FIT.

24 Sec. 7403. (1) A person shall not knowingly or intention-
25 ally possess a controlled substance, ~~or~~ an official prescrip-
26 tion form, or a prescription form unless the controlled
27 substance, official prescription form, or prescription form was

1 obtained directly from, or pursuant to, a valid Prescription or
2 order of a practitioner while acting in the course of the
3 practitioner's professional practice, or except as otherwise
4 authorized by this article.

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

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

9 (i) Which is in an amount of 650 grams or more of any mix-
10 ture containing that controlled substance is guilty of a felony
11 and shall be imprisoned for ~~life~~ NOT LESS THAN 10 YEARS OR MORE
12 THAN 30 YEARS.

13 (ii) Which is in an amount of 225 grams or more, but less
14 than 650 grams, of any mixture containing that controlled sub-
15 stance is guilty of a felony and shall be imprisoned for not less
16 than ~~20~~ 8 years ~~nor~~ OR more than ~~30~~ 24 years.

17 (iii) Which is in an amount of 50 grams or more, but less
18 than 225 grams, of any mixture containing that controlled sub-
19 stance is guilty of a felony and shall be imprisoned for not less
20 than ~~10~~ 6 years ~~nor~~ OR more than ~~20~~ 18 years.

21 (iv) Which is in an amount of 25 grams or more, but less
22 than 50 grams of any mixture containing that controlled substance
23 is guilty of a felony, and shall be imprisoned for not less than
24 1 year ~~and not~~ OR more than 4 years, and may be fined not more
25 than \$25,000.00 or placed on probation for life.

26 ~~(v) Which is in an amount less than 25 grams of any mixture~~
27 ~~containing that controlled substance is guilty of a felony,~~

~~1 punishable by imprisonment for not more than 4 years or a fine of~~
~~2 not more than \$25,000.00, or both.~~

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

9 (c) Lysergic acid diethylamide, peyote, mescaline, dimethyl-
10 tryptamine, psilocyn, psilocybin, or a controlled substance clas-
11 sified in schedule 5, is guilty of a misdemeanor, punishable by
12 imprisonment for not more than 1 year, or a fine of not more than
13 \$1,000.00, or both.

14 (d) Marihuana, is guilty of a misdemeanor, punishable by
15 imprisonment for not more than 1 year, or a fine of not more than
16 \$1,000.00, or both.

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

20 (f) A prescription form other than an official prescription
21 form, is guilty of a misdemeanor, punishable by imprisonment for
22 not more than 1 year, or a fine of not more than \$1,000.00, or
23 both.

24 (3) IF A PERSON IS CHARGED WITH VIOLATING SECTION
25 7401(2)(A), THE TRIER OF FACT SHALL NOT RENDER A FINDING OF
26 GUILTY UNDER SUBSECTION (2)(A).

1 (4) ~~(3)~~ The court may depart from the minimum term of
2 imprisonment authorized under subsection ~~(2)(ii), (iii), or~~
3 ~~(iv)~~ (2)(A) if the court finds on the record that there are sub-
4 stantial and compelling reasons to do so. THE COURT MAY CONSIDER
5 1 OR MORE OF THE FOLLOWING IN DETERMINING WHETHER THERE ARE SUB-
6 STANTIAL AND COMPELLING REASONS TO DEPART FROM THAT MINIMUM TERM
7 OF IMPRISONMENT:

8 (A) THE CIRCUMSTANCES UNDER WHICH THE VIOLATION WAS
9 COMMITTED.

10 (B) THE LEVEL OF PARTICIPATION OF THE DEFENDANT IN COMMIT-
11 TING THE VIOLATION.

12 (C) FACTORS THAT MITIGATE THE CULPABILITY OF THE DEFENDANT.

13 (D) THE CREDIBILITY, CHARACTER, AND REHABILITATIVE POTENTIAL
14 OF THE DEFENDANT.

15 (E) FACTORS RELEVANT TO THE PRINCIPLE OF PROPORTIONALITY.

16 (5) IF THE COURT DEPARTS FROM THE MINIMUM TERM OF IMPRISON-
17 MENT AUTHORIZED UNDER SUBSECTION (2)(A), THE COURT SHALL IMPOSE A
18 SENTENCE OF IMPRISONMENT FOR A MINIMUM TERM OF NOT LESS THAN 1/2
19 THE LENGTH OF THE MINIMUM TERM AUTHORIZED FOR THE VIOLATION AND A
20 MAXIMUM TERM EQUAL TO 1/2 THE LENGTH OF THE MAXIMUM TERM FOR THAT
21 VIOLATION. AN INDIVIDUAL SENTENCED TO A MINIMUM TERM OF IMPRIS-
22 ONMENT UNDER THIS SUBSECTION IS NOT ELIGIBLE FOR PROBATION, SUS-
23 PENSION OF THAT SENTENCE, OR PAROLE DURING THAT MINIMUM TERM AND
24 SHALL NOT RECEIVE A REDUCTION IN THAT MINIMUM TERM BY DISCI-
25 PLINARY CREDITS OR ANY OTHER TYPE OF SENTENCE CREDIT REDUCTION.

26 (6) THE LEGISLATURE FINDS THAT SENTENCING CONVICTED
27 INDIVIDUALS UNDER THIS SECTION AS IT EXISTED BEFORE THE EFFECTIVE

1 DATE OF THE AMENDATORY ACT THAT ADDED THIS SUBSECTION OR UNDER A
 2 SUBSTANTIALLY SIMILAR FORMER LAW OF THIS STATE HAS RESULTED IN
 3 UNWARRANTEDLY HARSH PUNISHMENT IN NUMEROUS INSTANCES. THEREFORE,
 4 THE LEGISLATURE INTENDS THE PROVISIONS SET FORTH IN
 5 SUBSECTION (5) AS ADDED BY THE AMENDATORY ACT THAT ADDED THIS
 6 SUBSECTION, PERMITTING DEPARTURE FROM THE SENTENCES AUTHORIZED
 7 UNDER SUBSECTION (2)(A) TO HAVE RETROACTIVE APPLICATION TO INDI-
 8 VIDUALS SENTENCED TO IMPRISONMENT FOR A VIOLATION OF
 9 SUBSECTION (2)(A). HOWEVER, IF IT IS DETERMINED THAT THOSE
 10 DEPARTURE PROVISIONS CANNOT CONSTITUTIONALLY BE APPLIED RETROAC-
 11 TIVELY, THE LEGISLATURE URGES THE GOVERNOR TO EXAMINE ALL CASES
 12 IN WHICH PERSONS ARE SERVING MANDATORY SENTENCES IMPOSED UNDER
 13 THIS SECTION OR UNDER A SUBSTANTIALLY SIMILAR FORMER LAW OF THIS
 14 STATE BEFORE THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED
 15 THIS SUBSECTION AND TO GRANT COMMUTATIONS OR PARDONS AS THE GOV-
 16 ERNOR SEES FIT.

17 Sec. 7413. (1) An individual who was convicted previously
 18 for a violation of any of the following offenses and is thereaf-
 19 ter convicted of a second or subsequent violation of any of the
 20 following offenses shall be imprisoned for life and shall not be
 21 eligible for probation, suspension of sentence, or parole during
 22 that mandatory term:

23 (a) A violation of section ~~7401(2)(a)(ii) or (iii)~~
 24 7401(2)(A)(i) OR (ii).

25 (b) A violation of section ~~7403(2)(a)(ii) or (iii)~~
 26 7403(2)(A)(i) OR (ii).

1 (c) Conspiracy to commit an offense proscribed by section
2 ~~7401(2)(a)(ii) or (iii)~~ 7401(2)(A)(i) OR (ii) or
3 section ~~7403(2)(a)(ii) or (iii)~~ 7403(2)(A)(i) OR (ii).

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

9 (3) An individual convicted of a second or subsequent
10 offense under section 7410(2) or (3) shall be punished, subject
11 to subsection (4), by a term of imprisonment of not less than 5
12 years nor more than twice that authorized under section 7410(2)
13 or (3) and, in addition, may be punished by a fine of not more
14 than 3 times that authorized by section 7410(2) or (3); and shall
15 not be eligible for probation or suspension of sentence during
16 the term of imprisonment.

17 (4) The court may depart from the minimum term of imprison-
18 ment authorized under subsection (3) if the court finds on the
19 record that there are substantial and compelling reasons to do
20 so.

21 (5) For purposes of subsection (2), an offense is considered
22 a second or subsequent offense, if, before conviction of the
23 offense, the offender has at any time been convicted under this
24 article or under any statute of the United States or of any state
25 relating to a narcotic drug ~~, marijuana, depressant, stimulant,~~
26 ~~or hallucinogenic drug~~ OR A DRUG DESCRIBED IN
27 SECTION 7214(A)(iv).

1 Section 2. This amendatory act shall not take effect unless
2 Senate Bill No. _____ or House Bill No. 4903 (request
3 no. 01547'93 a) of the 87th Legislature is enacted into law.