



HOUSE BILL No. 5511

April 27, 1994, Introduced by Rep Bryant and referred to the Committee on Judiciary

A bill to amend sections 7410, 7411, 7413, 7415, and 7416 of Act No 368 of the Public Acts of 1978, entitled as amended "Public health code,"

section 7410 as amended by Act No 12 of the Public Acts of 1988, section 7411 as amended by Act No 169 of the Public Acts of 1993, sections 7413 and 7415 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 7410, 333 7411, 333 7413, 333 7415, and 333 7416 of the Michigan Compiled Laws and to repeal certain parts of the act

THE PEOPLE OF THE STATE OF MICHIGAN ENACT

1 Section 1 Sections 7410, 7411, 7413, 7415, and 7416 of Act
2 No 368 of the Public Acts of 1978, section 7410 as amended by
3 Act No 12 of the Public Acts of 1988, section 7411 as amended by
4 Act No 169 of the Public Acts of 1993, sections 7413 and 7415 as

1 amended by Act No 144 of the Public Acts of 1988, and section
2 7416 as added by Act No 17 of the Public Acts of 1988, being
3 sections 333 7410, 333 7411, 333 7413, 333 7415, and 333 7416 of
4 the Michigan Compiled Laws, are amended to read as follows

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

22 ~~(2) An individual 18 years of age or over who violates sec-~~
23 ~~tion 7401(2)(a)(iv) by delivering a controlled substance~~
24 ~~described in schedule 1 or 2 which is either a narcotic drug or~~
25 ~~described in section 7214(a)(iv) to a minor who is a student on~~
26 ~~or within 500 feet of school property shall be punished, subject~~
27 ~~to subsection (5), by a term of imprisonment of not less than 2~~

~~1 years nor more than 3 times that authorized by section~~
~~2 7401(2)(a)(iv) and, in addition, may be punished by a fine of not~~
~~3 more than 3 times that authorized by section 7401(2)(a)(iv)~~

~~4 (3) An individual 18 years of age or over who violates sec-~~
~~5 tion 7401(2)(a)(iv) by possessing with intent to deliver to a~~
~~6 minor who is a student on or within 500 feet of school property a~~
~~7 controlled substance described in schedule 1 or 2 which is either~~
~~8 a narcotic drug or described in section 7214(a)(iv) shall be pun-~~
~~9 ished, subject to subsection (5), by a term of imprisonment of~~
~~10 not less than 2 years nor more than twice that authorized by~~
~~11 section 7401(2)(a)(iv) and, in addition, may be punished by a~~
~~12 fine of not more than 3 times that authorized by section~~
~~13 7401(2)(a)(iv)~~

~~14 (1) (4) An individual 18 years of age or over who violates~~
~~15 section 7403(2)(a)(v), (b), (c), or (d) by possessing a con-~~
~~16 trolled substance on school property shall be punished by a term~~
~~17 of imprisonment or a fine, or both, of not more than twice that~~
~~18 authorized by section 7403(2)(a)(v), (b), (c), or (d)~~

~~19 (5) The court may depart from the minimum term of imprison-~~
~~20 ment authorized under subsection (2) or (3) if the court finds on~~
~~21 the record that there are substantial and compelling reasons to~~
~~22 do so~~

~~23 (2) (6) As used in this section, "school property" means a~~
~~24 building, playing field, or property used for school purposes to~~
~~25 impart instruction to children in grades kindergarten through 12,~~
~~26 when provided by a public, private, denominational, or parochial~~

1 school, except those buildings used primarily for adult education
2 or college extension courses

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

9 Sec 7411 (1) When an individual who has not previously
10 been convicted of an offense under this article or under any
11 statute of the United States or of any state relating to narcotic
12 drugs, coca leaves, marihuana, or stimulant, depressant, or hal-
13 lucinogenic drugs, pleads guilty to or is found guilty of posses-
14 sion of a controlled substance under section 7403(2)(a)(v),
15 7403(2)(b), (c), or (d), or of use of a controlled substance
16 under section 7404, or possession or use of an imitation con-
17 trolled substance under section 7341 for a second time, the
18 court, without entering a judgment of guilt with the consent of
19 the accused, may defer further proceedings and place the individ-
20 ual on probation upon terms and conditions that shall include,
21 but are not limited to, payment of a probation supervision fee as
22 prescribed in section 3c of chapter XI of the code of criminal
23 procedure, Act No 175 of the Public Acts of 1927, being section
24 771 3c of the Michigan Compiled Laws Upon violation of a term
25 or condition, the court may enter an adjudication of guilt and
26 proceed as otherwise provided Upon fulfillment of the terms and
27 conditions, the court shall discharge the individual and dismiss

1 the proceedings Discharge and dismissal under this section
 2 shall be without adjudication of guilt and is not a conviction
 3 for purposes of this section or for purposes of disqualifications
 4 or disabilities imposed by law upon conviction of a crime,
 5 including the additional penalties imposed for second or subse-
 6 quent convictions under section 7413 There may be only
 7 1 discharge and dismissal under this section as to an
 8 individual The records and identifications division of the
 9 department of state police shall retain a nonpublic record of an
 10 arrest and discharge or dismissal under this section This
 11 record shall be furnished to a court or police agency upon
 12 request for the purpose of showing that a defendant in a criminal
 13 action involving the possession or use of a controlled substance,
 14 or an imitation controlled substance as defined in section 7341,
 15 covered in this article has already once utilized this section
 16 For purposes of this section, a person subjected to a civil fine
 17 for a first violation of section 7341(4) shall not be considered
 18 to have previously been convicted of an offense under this
 19 article

20 (2) Except as provided in subsection (3), if an individual
 21 is convicted of a violation of this article, other than a viola-
 22 tion of ~~section 7401(2)(a)(i) to (iv) or~~ section 7403(2)(a)(i)
 23 to (iv), the court as part of the sentence, during the period of
 24 confinement or the period of probation, or both, may require the
 25 individual to attend a course of instruction or rehabilitation
 26 program approved by the department on the medical, psychological,
 27 and social effects of the misuse of drugs The court may order

1 the individual to pay a fee, as approved by the director, for the
2 instruction or program Failure to complete the instruction or
3 program shall be considered a violation of the terms of
4 probation

5 (3) If an individual is convicted of a second violation of
6 section 7341(4), before imposing sentence under subsection (1),
7 the court shall order the person to undergo screening and assess-
8 ment by a person or agency designated by the office of substance
9 abuse services, to determine whether the person is likely to ben-
10 efit from rehabilitative services, including alcohol or drug edu-
11 cation and alcohol or drug treatment programs As part of the
12 sentence imposed under subsection (1), the court may order the
13 person to participate in and successfully complete 1 or more
14 appropriate rehabilitative programs The person shall pay for
15 the costs of the screening, assessment, and rehabilitative
16 services Failure to complete a program shall be considered a
17 violation of the terms of the probation

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

24 (a) A violation of FORMER section 7401(2)(a)(ii) or (iii)

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

1 (c) Conspiracy to commit an offense ~~prescribed by section~~
2 ~~7401(2)(a)(i) or (iii) or section 7403(2)(a)(i) or (iii)~~
3 DESCRIBED IN SUBDIVISION (A) OR (B) ,

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, marihuana, depressant, stimulant, or
26 hallucinogenic drug

1 Sec 7415 (1) After the arraignment of a defendant on a
 2 warrant charging the defendant with the commission of any of the
 3 offenses specified in section ~~7401(2)(a)(i) or (ii) or~~
 4 7403(2)(a)(i) or (ii), or with conspiracy to commit an offense
 5 specified in section ~~7401(2)(a)(i) or (ii) or~~ 7403(2)(a)(i) or
 6 (ii), the examining magistrate shall not dismiss the case upon
 7 motion of the prosecuting attorney unless the dismissal is with
 8 prejudice, nor shall the examining magistrate permit the prose-
 9 cuting attorney to reduce the charge if it appears to the examin-
 10 ing magistrate at the conclusion of the preliminary examination
 11 that 1 or more of the offenses set forth in this subsection was
 12 committed and that there is probable cause for charging the
 13 defendant with a violation of 1 or more of the offenses

14 (2) At or after the arraignment of a defendant on an indict-
 15 ment or information charging the defendant with the commission of
 16 any of the offenses specified in section ~~7401(2)(a)(i) or (ii)~~
 17 ~~or~~ 7403(2)(a)(i) or (ii), or with conspiracy to commit an
 18 offense specified in section ~~7401(2)(a)(i) or (ii) or~~
 19 7403(2)(a)(i) or (ii), the court in which the indictment or
 20 information is filed shall not dismiss the case upon motion of
 21 the prosecuting attorney unless the dismissal is with prejudice,
 22 and the court shall not accept a plea of guilty, guilty but men-
 23 tally ill, or nolo contendere unless, with the consent of the
 24 prosecuting attorney on the record, the defendant enters a plea
 25 of guilty, guilty but mentally ill, or nolo contendere to not
 26 less than 1 of the following felonies

1 ~~(a) An offense described in section 7401(2)(a)(i), (ii),~~
 2 ~~(iii), or (iv)~~

3 (A) ~~(b)~~ An offense described in section ~~7403(2)(a)(i),~~
 4 ~~(ii), (iii), or (iv)~~ 7403(2)(A)(ii), (iii), OR (iv)

5 (B) ~~(c)~~ Conspiracy to commit an offense described in sub-
 6 division (a) ~~or (b)~~

7 Sec 7416 (1) Except as otherwise provided in subsection
 8 (4), a person 17 years of age or over who recruits, induces,
 9 solicits, or coerces a minor less than 17 years of age to commit
 10 or attempt to commit any act which would be a felony under this
 11 part if committed by an adult is guilty of a felony and may be
 12 punished by a fine of not more than the fine authorized by this
 13 part for an adult who commits such an act, and shall be punished
 14 ~~, subject to subsection (3), as follows (a) Except as provided~~
 15 ~~in subdivision (b),~~ by imprisonment for not less than 1/2 of the
 16 maximum term of imprisonment authorized by this part for an adult
 17 who commits such an act and not more than the maximum term of
 18 imprisonment authorized by this part for an adult who commits
 19 such an act

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

22 (2) A person subject to a sentence under subsection (1)
 23 shall not be subject to a delayed sentence or a suspended sen-
 24 tence and shall not be eligible for probation

25 (3) The court may depart from the minimum terms of imprison-
 26 ment authorized under subsection ~~(i)(a) and (b)~~ (1) if the

1 court finds on the record that there are substantial and
2 compelling reasons to do so

3 ~~(4) Subsection (1)(a) does not apply to an act which is a~~
4 ~~violation of section 7401(2)(c) and which involves the manufac-~~
5 ~~ture, delivery, or possession with intent to deliver of~~
6 ~~marihuana~~

7 Section 2 Section 7401 of Act No 368 of the Public Acts
8 of 1978, being section 333 7401 of the Michigan Compiled Laws, is
9 repealed