



# SENATE BILL No. 212

January 26, 1993, Introduced by Senators DILLINGHAM, CISKY, WELBORN, GEAKE, ARTHURHULTZ and DI NELLO and referred to the Committee on Family Law, Criminal Law, and Corrections.

A bill to amend sections 7410 and 7413 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 and section 7413 as amended by Act No. 144 of the Public Acts of 1988, being sections 333.7410 and 333.7413 of the Michigan Compiled Laws.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Section 1. Sections 7410 and 7413 of Act No. 368 of the  
2 Public Acts of 1978, section 7410 as amended by Act No. 12 of the  
3 Public Acts of 1988 and section 7413 as amended by Act No. 144 of  
4 the Public Acts of 1988, being sections 333.7410 and 333.7413 of  
5 the Michigan Compiled Laws, are amended to read as follows:

1       Sec. 7410. (1) Except as otherwise provided in  
2 ~~subsections (2) and (3)~~ THIS SECTION, an individual 18 years of  
3 age or over who violates section 7401(2)(a)(iv) by delivering or  
4 distributing a controlled substance listed in schedule 1 or 2  
5 which is either a narcotic drug or described in section  
6 7214(a)(iv) to an individual under 18 years of age ~~who is at~~  
7 ~~least 3 years the deliverer's or distributor's junior~~ may be  
8 punished by the fine authorized by section 7401(2)(a)(iv) or by a  
9 term of imprisonment of not less than 1 year ~~nor~~ OR more than  
10 twice that authorized by section 7401(2)(a)(iv), or both. An  
11 individual 18 years of age or over who violates section ~~7401~~  
12 7401(2)(B), (C), OR (D) by delivering or distributing any other  
13 controlled substance listed in schedules 1 to 5 to an individual  
14 under 18 years of age ~~who is at least 3 years the distributor's~~  
15 ~~junior~~ may be punished by the fine authorized by section  
16 7401(2)(b), (c), or (d), or by a term of imprisonment not more  
17 than twice that authorized by section 7401(2)(b), (c), or (d), or  
18 both. IT IS NOT A DEFENSE TO A PROSECUTION PURSUANT TO THIS SUB-  
19 SECTION THAT THE INDIVIDUAL 18 YEARS OF AGE OR OLDER DID NOT KNOW  
20 THAT THE INDIVIDUAL TO WHOM HE OR SHE DELIVERED OR DISTRIBUTED  
21 THE CONTROLLED SUBSTANCE WAS UNDER 18 YEARS OF AGE.

22       (2) ~~An~~ EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (3), AN  
23 individual ~~18 years of age or over~~ who violates section  
24 7401(2)(a)(iv), (B), OR (C) OR SECTION 7402(2)(A), (B), (C), OR  
25 (E) by delivering OR POSSESSING WITH INTENT TO DELIVER a con-  
26 trolled substance ~~described~~ OR COUNTERFEIT SUBSTANCE CLASSIFIED  
27 in schedule 1, ~~or~~ 2, ~~which is either a narcotic drug or~~

~~1 described in section 7214(a)(iv) to a minor who is a student on~~  
~~2 or within 500 feet of school property~~ 3, OR 4, OR A CONTROLLED  
3 SUBSTANCE ANALOGUE WITHIN A DRUG FREE ZONE shall be punished,  
4 subject to subsection ~~-(5)-~~ (7), by a term of imprisonment of not  
5 less than 2 years ~~nor~~ OR more than 3 times that authorized by  
6 section 7401(2)(a)(iv), (B), OR (C) OR SECTION 7402(2)(A), (B),  
7 (C), OR (E) and, in addition, may be punished by a fine of not  
8 more than 3 times that authorized by section 7401(2)(a)(iv), (B),  
9 OR (C) OR SECTION 7402(2)(A), (B), (C), OR (E).

10 (3) ~~An individual 18 years of age or over who violates sec-~~  
11 ~~tion 7401(2)(a)(iv) by possessing with intent to deliver to a~~  
12 ~~minor who is a student on or within 500 feet of school property a~~  
13 ~~controlled substance described in schedule 1 or 2 which is either~~  
14 ~~a narcotic drug or described in section 7214(a)(iv) shall be pun-~~  
15 ~~ished, subject to subsection (5), by a term of imprisonment of~~  
16 ~~not less than 2 years nor more than twice that authorized by~~  
17 ~~section 7401(2)(a)(iv) and, in addition, may be punished by a~~  
18 ~~fine of not more than 3 times that authorized by section~~  
19 ~~7401(2)(a)(iv).~~ IF THE ONLY CONTROLLED SUBSTANCE INVOLVED IN THE  
20 VIOLATION OF SUBSECTION (2) IS LESS THAN 25 GRAMS OF MARIJUANA,  
21 THE MINIMUM TERM OF IMPRISONMENT IMPOSED ON THE INDIVIDUAL SHALL  
22 BE NOT LESS THAN 1 YEAR.

23 (4) An individual ~~18 years of age or over~~ who violates  
24 section 7403(2)(a)(v), (b), (c), or (d) by possessing a con-  
25 trolled substance ~~on school property~~ WITHIN A DRUG FREE ZONE  
26 shall be punished by a term of imprisonment or a fine, or both,

1 of not more than twice that authorized by section  
2 7403(2)(a)(v), (b), (c), or (d).

3 (5) AN INDIVIDUAL SUBJECT TO A MANDATORY MINIMUM TERM OF  
4 IMPRISONMENT UNDER SUBSECTION (2) OR (3) IS NOT ELIGIBLE FOR PRO-  
5 BATION, SUSPENSION OF THE SENTENCE, OR PAROLE DURING THAT MANDA-  
6 TORY MINIMUM TERM AND SHALL NOT RECEIVE A REDUCTION IN THAT MAN-  
7 DATORY TERM OF IMPRISONMENT BY DISCIPLINARY CREDITS OR ANY OTHER  
8 TYPE OF SENTENCE CREDIT REDUCTION.

9 (6) IT IS NOT A DEFENSE TO A PROSECUTION PURSUANT TO  
10 SUBSECTION (2), (3), OR (4) THAT THE DEFENDANT DID NOT KNOW THAT  
11 THE PROHIBITED CONDUCT TOOK PLACE WITHIN A DRUG FREE ZONE.

12 (7) ~~-(5)-~~ The court may depart from the minimum term of  
13 imprisonment authorized under subsection (2) or (3) if the court  
14 finds on the record that there are substantial and compelling  
15 reasons to do so.

16 (8) A CITY, TOWNSHIP, VILLAGE, COUNTY, OR LOCAL OR INTERME-  
17 DIATE SCHOOL DISTRICT MAY PLACE DRUG FREE ZONE SIGNS ON PUBLIC  
18 ROADS WITHIN THAT CITY, TOWNSHIP, VILLAGE, COUNTY, OR LOCAL OR  
19 INTERMEDIATE SCHOOL DISTRICT TO NOTIFY INDIVIDUALS OF DRUG FREE  
20 ZONES.

21 ~~-(6) As used in this section, "school property" means a~~  
22 ~~building, playing field, or property used for school purposes to~~  
23 ~~impart instruction to children in grades kindergarten through 12,~~  
24 ~~when provided by a public, private, denominational, or parochial~~  
25 ~~school, except those buildings used primarily for adult education~~  
26 ~~or college extension courses.~~

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

(9) AS USED IN THIS SECTION:

(A) "DRUG FREE ZONE" MEANS 1 OR MORE OF THE FOLLOWING:

(i) SCHOOL PROPERTY AND THE AREA EXTENDING 1,000 FEET FROM SCHOOL PROPERTY.

(ii) A STATE PARK, A MUNICIPAL PARK, A MUNICIPAL RECREATION AREA, OR OTHER RECREATION AREA DESIGNATED BY LOCAL ORDINANCE, AND THE AREA EXTENDING 1,000 FEET FROM THAT STATE PARK, MUNICIPAL PARK, MUNICIPAL RECREATION AREA, OR OTHER RECREATION AREA DESIGNATED BY LOCAL ORDINANCE.

(iii) A RECREATIONAL FACILITY AND THE AREA EXTENDING 100 FEET FROM A RECREATIONAL FACILITY.

(B) "DRUG FREE ZONE SIGN" MEANS A DURABLE PLACARD THAT MEETS ALL OF THE FOLLOWING CRITERIA:

(i) IS NOT LESS THAN 2 FEET IN WIDTH AND 2 FEET IN HEIGHT.

(ii) IS POSTED NOT LESS THAN 5 FEET HIGH OR MORE THAN 10 FEET HIGH AS MEASURED FROM THE SURFACE OF THE GROUND TO THE BOTTOM OF THE PLACARD.

(iii) CONTAINS AT LEAST THE PHRASE "DRUG FREE ZONE" IN LETTERS NOT LESS THAN 1 INCH HIGH ON A WHITE BACKGROUND.

(C) "PLAYGROUND" MEANS 1 OR MORE OF THE FOLLOWING:

1 (i) AN OUTDOOR FACILITY THAT IS USED OR INTENDED TO BE USED  
2 FOR PUBLIC RECREATION THAT CONTAINS 3 OR MORE SEPARATE APPARATUS,  
3 INCLUDING, BUT NOT LIMITED TO, SLIDING BOARDS, SWING SETS, AND  
4 TEETERBOARDS, USED OR INTENDED TO BE USED FOR RECREATION BY INDIV-  
5 IDUALS UNDER 18 YEARS OF AGE.

6 (ii) A PARKING LOT THAT IS APPURTENANT TO A FACILITY  
7 DESCRIBED IN SUBPARAGRAPH (i).

8 (D) "RECREATIONAL FACILITY" MEANS 1 OR MORE OF THE  
9 FOLLOWING:

10 (i) A SWIMMING POOL USED OR INTENDED TO BE USED BY THE  
11 PUBLIC, OR A PARKING LOT APPURTENANT TO A SWIMMING POOL USED OR  
12 INTENDED TO BE USED BY THE PUBLIC.

13 (ii) A PLAYGROUND.

14 (iii) A VIDEO ARCADE.

15 (iv) A YOUTH CENTER.

16 (E) "SCHOOL PROPERTY" MEANS 1 OR MORE OF THE FOLLOWING:

17 (i) A BUILDING, PLAYING FIELD, OR PROPERTY USED FOR SCHOOL  
18 PURPOSES TO IMPART INSTRUCTION TO CHILDREN IN ANY GRADE FROM KIN-  
19 DERGARTEN THROUGH 12, WHEN PROVIDED BY A PUBLIC, PRIVATE, DENOMI-  
20 NATIONAL, OR PAROCHIAL SCHOOL.

21 (ii) A COLLEGE, UNIVERSITY, JUNIOR COLLEGE, OR VOCATIONAL  
22 SCHOOL.

23 (F) "VIDEO ARCADE" MEANS A FACILITY THAT CONTAINS 10 OR MORE  
24 PINBALL OR VIDEO MACHINES IN ANY COMBINATION, IF THAT FACILITY IS  
25 LEGALLY ACCESSIBLE FOR THE USE OF INDIVIDUALS UNDER 18 YEARS OF  
26 AGE.

(G) "YOUTH CENTER" MEANS 1 OR MORE OF THE FOLLOWING:

(i) A RECREATIONAL FACILITY OR GYMNASIUM USED OR INTENDED TO BE USED PRIMARILY BY INDIVIDUALS UNDER 18 YEARS OF AGE THAT REGULARLY PROVIDES ATHLETIC, CIVIC, OR CULTURAL ACTIVITIES.

(ii) A PARKING LOT THAT IS APPURTENANT TO A FACILITY DESCRIBED IN SUBPARAGRAPH (i).

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

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

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

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

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

(3) An individual convicted of a second or subsequent offense under section 7410(2) ~~or (3)~~ shall be punished, subject to subsection (4), by a term of imprisonment of not less than 5 years ~~nor~~ OR more than twice that authorized under section 7410(2) ~~or (3)~~ and, in addition, may be punished by a fine of not more than 3 times that authorized by section 7410(2);

1 ~~or (3)~~ and shall not be eligible for probation or suspension  
2 of sentence during the term of imprisonment.

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

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