



# SENATE BILL No. 910

October 20, 1993, Introduced by Senator FAUST and referred  
to the Committee on Judiciary

A bill to amend sections 7401, 7403, 7410, and 7411 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, and section 7411 as amended by Act No 144 of the  
Public Acts of 1988 being sections 333 7401, 333 7403 333 7410  
and 333 7411 of the Michigan Compiled Laws

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT

1 Section 1 Sections 7401, 7403, 7410, and 7411 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, and section  
5 7411 as amended by Act No 144 of the Public Acts of 1988, being

1 sections 333 7401, 333 7403, 333 7410, and 333 7411 of the  
2 Michigan Compiled Laws, are amended to read as follows

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

12       (2) A person who violates this section as to

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

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

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

23       (111) Which is in an amount of 50 grams or more, but less  
24 than 225 grams, of any mixture containing that controlled sub-  
25 stance is guilty of a felony and shall be imprisoned for not less  
26 than 10 years nor 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 more than 20 years,  
4 and may be fined not more than \$25,000 00, or placed on probation  
5 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)(1), (11), (111), 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 not  
4 be eligible for probation, suspension of that sentence, or parole  
5 during that mandatory term, except and only to the extent that  
6 those provisions permit probation for life, and shall not receive  
7 a reduction in that mandatory term of imprisonment by disci-  
8 plinary credits or any other type of sentence credit reduction

9 (4) The court may depart from the minimum term of imprison-  
10 ment authorized under ~~subsection (2)(a)(ii), (iii), or (iv)~~  
11 THIS SECTION if ~~the~~ EITHER OF THE FOLLOWING CIRCUMSTANCES  
12 EXIST

13 (A) THE PERSON HAS NOT PREVIOUSLY BEEN CONVICTED OF A FELONY  
14 OR AN ASSAULTIVE CRIME, AND IS NOT CONVICTED OF A FELONY OR AN  
15 ASSAULTIVE CRIME ARISING FROM THE SAME TRANSACTIONS AS THE VIOLA-  
16 TION OF THIS SECTION

17 (B) THE court finds on the record that there are substantial  
18 and compelling reasons to do so

19 (5) AS USED IN THIS SECTION, "ASSAULTIVE CRIME" MEANS A  
20 CRIME THAT HAS AS AN ELEMENT OF THAT CRIME THE USE OF FORCE OR  
21 THE THREAT OF THE USE OF FORCE

22 Sec 7403 (1) A person shall not knowingly or intention-  
23 ally possess a controlled substance or an official prescription  
24 form or a prescription form unless the controlled substance,  
25 official prescription form, or prescription form was obtained  
26 directly from, or pursuant to, a valid prescription or order of a  
27 practitioner while acting in the course of the practitioner's

1 professional practice, or except as otherwise authorized by this  
2 article

3 (2) A person who violates this section as to

4 (a) A controlled substance classified in schedule 1 or 2  
5 which is either a narcotic drug or described in section  
6 7214(a)(1v), and

7 (1) Which is in an amount of 650 grams or more of any mix-  
8 ture containing that controlled substance is guilty of a felony  
9 and shall be imprisoned for life

10 (11) Which is in an amount of 225 grams or more, but less  
11 than 650 grams, of any mixture containing that controlled sub-  
12 stance is guilty of a felony and shall be imprisoned for not less  
13 than 20 years nor more than 30 years

14 (111) Which is in an amount of 50 grams or more, but less  
15 than 225 grams, of any mixture containing that controlled sub-  
16 stance is guilty of a felony and shall be imprisoned for not less  
17 than 10 years nor more than 20 years

18 (1v) Which is in an amount of 25 grams or more, but less  
19 than 50 grams of any mixture containing that controlled substance  
20 is guilty of a felony, and shall be imprisoned for not less than  
21 1 year and not more than 4 years and may be fined not more than  
22 \$25,000 00 or placed on probation for life

23 (v) Which is in an amount less than 25 grams of any mixture  
24 containing that controlled substance is guilty of a felony, pun-  
25 ishable by imprisonment for not more than 4 years or a fine of  
26 not more than \$25,000 00, or both

1 (b) A controlled substance classified in schedule 1, 2 3  
 2 or 4, except a controlled substance classified in schedule 1 for  
 3 which a penalty is prescribed in subdivision (a), (c), or (d), is  
 4 guilty of a felony, punishable by imprisonment for not more than  
 5 2 years, or a fine of not more than \$2,000 00, or both

6 (c) Lysergic acid diethylamide, peyote, mescaline, dimethyl-  
 7 tryptamine, psilocyn, psilocybin, or a controlled substance clas-  
 8 sified in schedule 5, is guilty of a misdemeanor, punishable by  
 9 imprisonment for not more than 1 year, or a fine of not more than  
 10 \$1,000 00, or both

11 (d) Marihuana, 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 (e) An official prescription form, is guilty of a felony,  
 15 punishable by imprisonment for not more than 1 year, or a fine of  
 16 not more than \$2,000 00, or both

17 (f) A prescription form other than an official prescription  
 18 form is guilty of a misdemeanor, punishable by imprisonment for  
 19 not more than 1 year, or a fine of not more than \$1,000 00, or  
 20 both

21 (3) The court may depart from the minimum term of imprison-  
 22 ment authorized under ~~subsection (2)(i), (iii), or (iv)~~ THIS  
 23 SECTION if ~~the~~ EITHER OF THE FOLLOWING CIRCUMSTANCES EXIST

24 (A) THE PERSON HAS NOT PREVIOUSLY BEEN CONVICTED OF A FELONY  
 25 OR AN ASSAULTIVE CRIME, AND IS NOT CONVICTED OF A FELONY OR AN  
 26 ASSAULTIVE CRIME ARISING FROM THE SAME TRANSACTIONS AS THE  
 27 VIOLATION OF THIS SECTION

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

3 (4) AS USED IN THIS SECTION, "ASSAULTIVE CRIME" MEANS A  
4 CRIME THAT HAS AS AN ELEMENT OF THAT CRIME THE USE OF FORCE OR  
5 THE THREAT OF THE USE OF FORCE

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

23 (2) An individual 18 years of age or over who violates sec-  
24 tion 7401(2)(a)(iv) by delivering a controlled substance  
25 described in schedule 1 or 2 which is either a narcotic drug or  
26 described in section 7214(a)(iv) to a minor who is a student on  
27 or within 500 feet of school property shall be punished, subject

1 to subsection (5), by a term of imprisonment of not less than 2  
2 years nor more than 3 times that authorized by section  
3 7401(2)(a)(iv) and, in addition, may be punished by a fine of not  
4 more than 3 times that authorized by section 7401(2)(a)(iv)

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

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

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

24 (6) As used in this section, "school property" means a  
25 building, playing field, or property used for school purposes to  
26 impart instruction to children in grades kindergarten through 12,  
27 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  
14 ~~possession of~~ MANUFACTURING, DELIVERING, OR POSSESSING WITH  
15 INTENT TO MANUFACTURE OR DELIVER A CONTROLLED SUBSTANCE IN VIOLA-  
16 TION OF SECTION 7401(2)(C), OR POSSESSING a controlled substance  
17 ~~under~~ IN VIOLATION OF section 7403(2)(a)(v), 7403(2)(b), (c),  
18 or (d), or ~~of use of~~ USING a controlled substance ~~under~~ IN  
19 VIOLATION OF section 7404, or ~~possession or use of~~ POSSESSING  
20 OR USING an imitation controlled substance under section 7341 for  
21 a second time the court without entering a judgment of guilt  
22 with the consent of the accused, may defer further proceedings  
23 and place the individual on probation upon terms and conditions  
24 Upon violation of a term or condition, the court may enter an  
25 adjudication of guilt and proceed as otherwise provided Upon  
26 fulfillment of the terms and conditions, the court shall  
27 discharge the individual and dismiss the proceedings Discharge

1 and dismissal under this section shall be without adjudication of  
2 guilt and is not a conviction for purposes of this section or for  
3 purposes of disqualifications or disabilities imposed by law upon  
4 conviction of a crime, including the additional penalties imposed  
5 for second or subsequent convictions under section 7413 There  
6 may be only 1 discharge and dismissal under this section ~~as to~~  
7 ~~an~~ FOR EACH individual The records and identifications divi-  
8 sion of the department of state police shall retain a nonpublic  
9 record of an arrest and discharge or dismissal under this  
10 section This record shall be furnished to a court or police  
11 agency upon request ~~for the purpose of showing~~ TO SHOW that a  
12 defendant in a criminal action involving ~~the possession or use~~  
13 ~~of~~ POSSESSING OR USING a controlled substance, or an imitation  
14 controlled substance as defined in section 7341, ~~covered in this~~  
15 ~~article has already once utilized~~ HAS PREVIOUSLY USED this  
16 section For purposes of this section, a person subjected to a  
17 civil fine for a first violation of section 7341(4) ~~shall~~ IS  
18 not ~~be~~ considered to have previously been convicted of an  
19 offense under this 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)(1) to (1v) or section 7403(2)(a)(1) to  
23 (1v), 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 Section 2 This amendatory act shall not take effect unless  
19 Senate Bill No 911

20 of the 87th Legislature is enacted into law