

REPRINT

SUBSTITUTE FOR

HOUSE BILL NO. 5395

(As passed the House, December 3, 2002)
(As amended by the Senate, December 12, 2002)

A bill to amend 1927 PA 175, entitled
"The code of criminal procedure,"
by amending section 34 of chapter IX, sections 1 and 2 of chapter
XI, and sections 13m, 43, 45, and 57 of chapter XVII (MCL 769.34,
771.1, 771.2, 777.13m, 777.43, 777.45, and 777.57), section 34 of
chapter IX and section 43 of chapter XVII as amended by 2000 PA
279, section 1 of chapter XI as amended by 2002 PA 483, section 2
of chapter XI as amended by 1998 PA 520, section 13m of chapter
XVII as added by 2002 PA 30, section 45 of chapter XVII as added
by 1998 PA 317, and section 57 of chapter XVII as amended by 1999
PA 227.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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CHAPTER IX

Sec. 34. (1) The sentencing guidelines promulgated by order of the Michigan supreme court ~~shall~~ DO not apply to felonies enumerated in part 2 of chapter XVII committed on or after January 1, 1999.

(2) Except as otherwise provided in this subsection or for a departure from the appropriate minimum sentence range provided for under subsection (3), the minimum sentence imposed by a court of this state for a felony enumerated in part 2 of chapter XVII committed on or after January 1, 1999 shall be within the appropriate sentence range under the version of those sentencing guidelines in effect on the date the crime was committed. Both of the following apply to minimum sentences under this subsection:

(a) If a statute mandates a minimum sentence for an individual sentenced to the jurisdiction of the department of corrections, the court shall impose sentence in accordance with that statute. Imposing a mandatory minimum sentence is not a departure under this section. If a statute mandates a minimum sentence for an individual sentenced to the jurisdiction of the department of corrections and the statute authorizes the sentencing judge to depart from that minimum sentence, imposing a sentence that exceeds the recommended sentence range but is less than the mandatory minimum sentence is not a departure under this section. If the Michigan vehicle code, 1949 PA 300, MCL 257.1 to 257.923, mandates a minimum sentence for an individual sentenced to the jurisdiction of the department of corrections and the

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1 Michigan vehicle code, 1949 PA 300, MCL 257.1 to 257.923,
2 authorizes the sentencing judge to impose a sentence that is less
3 than that minimum sentence, imposing a sentence that exceeds the
4 recommended sentence range but is less than the mandatory minimum
5 sentence is not a departure under this section.

6 (b) The court shall not impose a minimum sentence, including
7 a departure, that exceeds 2/3 of the statutory maximum sentence.

8 (3) A court may depart from the appropriate sentence range
9 established under the sentencing guidelines set forth in chapter
10 XVII if the court has a substantial and compelling reason for
11 that departure and states on the record the reasons for
12 departure. All of the following apply to a departure:

13 (a) The court shall not use an individual's gender, race,
14 ethnicity, alienage, national origin, legal occupation, lack of
15 employment, representation by appointed legal counsel, represen-
16 tation by retained legal counsel, appearance in propria persona,
17 or religion to depart from the appropriate sentence range.

18 (b) The court shall not base a departure on an offense char-
19 acteristic or offender characteristic already taken into account
20 in determining the appropriate sentence range unless the court
21 finds from the facts contained in the court record, including the
22 presentence investigation report, that the characteristic has
23 been given inadequate or disproportionate weight.

24 (4) Intermediate sanctions shall be imposed under this chap-
25 ter as follows:

26 (a) If the upper limit of the recommended minimum sentence
27 range for a defendant determined under the sentencing guidelines

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1 set forth in chapter XVII is 18 months or less, the court shall
2 impose an intermediate sanction unless the court states on the
3 record a substantial and compelling reason to sentence the indi-
4 vidual to the jurisdiction of the department of corrections. An
5 intermediate sanction may include a jail term that does not
6 exceed the upper limit of the recommended minimum sentence range
7 or 12 months, whichever is less.

8 ~~(b) If the offense is a violation of section 7401(2)(a)(iv)~~
9 ~~or 7403(2)(a)(iv) of the public health code, 1978 PA 368, MCL~~
10 ~~333.7401 and 333.7403, and the upper limit of the recommended~~
11 ~~minimum sentence range is 18 months or less, the court shall~~
12 ~~impose a sentence of life probation absent a departure.~~

13 (B) ~~(c)~~ If an attempt to commit a felony designated in
14 offense class H in part 2 of ~~this~~ chapter XVII is punishable by
15 imprisonment for more than 1 year, the court shall impose an
16 intermediate sanction upon conviction of that offense absent a
17 departure.

18 (C) ~~(d)~~ If the upper limit of the recommended minimum sen-
19 tence exceeds 18 months and the lower limit of the recommended
20 minimum sentence is 12 months or less, the court shall sentence
21 the offender as follows absent a departure:

22 (i) To imprisonment with a minimum term within that range.

23 (ii) To an intermediate sanction that may include a term of
24 imprisonment of not more than 12 months.

25 (5) If a crime has a mandatory determinant penalty or a man-
26 datory penalty of life imprisonment, the court shall impose that

1 penalty. This section does not apply to sentencing for that
2 crime.

3 (6) As part of the sentence, the court may also order the
4 defendant to pay any combination of a fine, costs, or applicable
5 assessments. The court shall order payment of restitution as
6 provided by law.

7 (7) If the trial court imposes on a defendant a minimum sen-
8 tence that is longer or more severe than the appropriate sentence
9 range, as part of the court's advice of the defendant's rights
10 concerning appeal, the court shall advise the defendant orally
11 and in writing that he or she may appeal the sentence as provided
12 by law on grounds that it is longer or more severe than the
13 appropriate sentence range.

14 (8) All of the following shall be part of the record filed
15 for an appeal of a sentence under this section:

16 (a) An entire record of the sentencing proceedings.

17 (b) The presentence investigation report. Any portion of
18 the presentence investigation report exempt from disclosure by
19 law shall not be a public record.

20 (c) Any other reports or documents the sentencing court used
21 in imposing sentence.

22 (9) An appeal of a sentence under this section does not stay
23 execution of the sentence.

24 (10) If a minimum sentence is within the appropriate guide-
25 lines sentence range, the court of appeals shall affirm that sen-
26 tence and shall not remand for resentencing absent an error in
27 scoring the sentencing guidelines or inaccurate information

1 relied upon in determining the defendant's sentence. A party
2 shall not raise on appeal an issue challenging the scoring of the
3 sentencing guidelines or challenging the accuracy of information
4 relied upon in determining a sentence that is within the appro-
5 priate guidelines sentence range unless the party has raised the
6 issue at sentencing, in a proper motion for resentencing, or in a
7 proper motion to remand filed in the court of appeals.

8 (11) If, upon a review of the record, the court of appeals
9 finds the trial court did not have a substantial and compelling
10 reason for departing from the appropriate sentence range, the
11 court shall remand the matter to the sentencing judge or another
12 trial court judge for resentencing under this chapter.

13 (12) Time served on the sentence appealed under this section
14 is considered time served on any sentence imposed after remand.

15 CHAPTER XI

16 Sec. 1. (1) In all prosecutions for felonies or misdemean-
17 ors other than murder, treason, criminal sexual conduct in the
18 first or third degree, armed robbery, and major controlled sub-
19 stance offenses not described in subsection (4), if the defendant
20 has been found guilty upon verdict or plea and the court deter-
21 mines that the defendant is not likely again to engage in an
22 offensive or criminal course of conduct and that the public good
23 does not require that the defendant suffer the penalty imposed by
24 law, the court may place the defendant on probation under the
25 charge and supervision of a probation officer.

26 (2) ~~Except as provided in subsection (4), in~~ IN an action
27 in which the court may place the defendant on probation, the

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1 court may delay sentencing the defendant for not more than 1 year
2 to give the defendant an opportunity to prove to the court his or
3 her eligibility for probation or other leniency compatible with
4 the ends of justice and the defendant's rehabilitation. When
5 sentencing is delayed, the court shall enter an order stating the
6 reason for the delay upon the court's records. The delay in
7 passing sentence does not deprive the court of jurisdiction to
8 sentence the defendant at any time during the period of delay.

9 (3) If a defendant is before the circuit court and the court
10 delays imposing sentence under subsection (2), the court shall
11 include in the delayed sentence order that the department of cor-
12 rections shall collect a supervision fee of not more than \$135.00
13 multiplied by the number of months of delay ordered, but not more
14 than 12 months. The fee is payable when the delayed sentence
15 order is entered, but the fee may be paid in monthly installments
16 if the court approves installment payments for that defendant.
17 In determining the amount of the fee, the court shall consider
18 the defendant's projected income and financial resources. The
19 court shall use the following table of projected monthly income
20 in determining the amount of the fee to be ordered:

21	<u>Projected Monthly Income</u>	<u>Amount of Fee</u>
22	\$ 0-249.99	\$ 0.00
23	\$ 250.00-499.99	\$ 10.00
24	\$ 500.00-749.99	\$25.00
25	\$ 750.00-999.99	\$40.00

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1	\$1,000.00 or more	5% of projected
2		monthly income, but
3		not more than \$135.00

4 The court may order a higher amount than indicated by the table,
5 up to the maximum of \$135.00 multiplied by the number of months
6 of delay ordered but not more than 12 months, if the court deter-
7 mines that the defendant has sufficient assets or other financial
8 resources to warrant the higher amount. If the court orders a
9 higher amount, the amount and the reasons for ordering that
10 amount shall be stated in the court order. The fee shall be col-
11 lected as provided in section 25a of the corrections code of
12 1953, 1953 PA 232, MCL 791.225a. A person shall not be subject
13 to more than 1 supervision fee at the same time. If a supervi-
14 sion fee is ordered for a person for any month or months during
15 which that person already is subject to a supervision fee, the
16 court shall waive the fee having the shorter remaining duration.

~~(4) The sentencing judge may place a defendant on life pro-~~
~~bation pursuant to subsection (1) if the defendant is convicted~~
~~for a violation of section 7401(2)(a)(iv) or 7403(2)(a)(iv) of~~
~~the public health code, 1978 PA 368, MCL 333.7401 and 333.7403,~~
~~or conspiracy to commit either offense. Subsection (2) does not~~
~~apply to this subsection.~~

23 (4) ~~-(5)-~~ This section does not apply to a juvenile placed
24 on probation and committed under section 1(3) or (4) of chapter
25 IX to an institution or agency described in the youth rehabilita-
26 tion services act, 1974 PA 150, MCL 803.301 to 803.309.

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1 Sec. 2. (1) Except as provided in section 2a of this
2 chapter, if the defendant is convicted for an offense that is not
3 a felony, the probation period shall not exceed 2 years. Except
4 as provided in section 2a of this chapter, if the defendant is
5 convicted of a felony, ~~that is not a major controlled substance~~
6 ~~offense,~~ the probation period shall not exceed 5 years.

7 (2) The court shall by order, to be filed or entered in the
8 cause as the court may direct by general rule or in each case,
9 fix and determine the period and conditions of probation. The
10 order is part of the record in the cause. The court may amend
11 the order in form or substance at any time.

12 ~~(3) A defendant who is placed on probation under section~~
13 ~~1(4) of this chapter shall be placed on probation for life. That~~
14 ~~sentence shall be made subject to conditions of probation speci-~~
15 ~~fied in section 3 of this chapter, including the payment of a~~
16 ~~probation supervision fee as prescribed in section 3c of this~~
17 ~~chapter, and to revocation for violation of those conditions, but~~
18 ~~the probation period shall not be reduced other than by a revoca-~~
19 ~~tion that results in imprisonment.~~

(3) A DEFENDANT WHO WAS PLACED ON PROBATION UNDER SECTION 1(4) OF THIS CHAPTER PRIOR TO THE EFFECTIVE DATE OF THE ACT THAT AMENDED THIS SECTION IS SUBJECT TO THE CONDITIONS OF PROBATION SPECIFIED IN SECTION 3 OF THIS CHAPTER, INCLUDING PAYMENT OF A PROBATION SUPERVISION FEE AS PRESCRIBED IN SECTION 3C OF THIS CHAPTER, AND TO REVOCATION FOR VIOLATION OF THESE CONDITIONS, BUT THE PROBATION PERIOD SHALL NOT BE REDUCED OTHER THAN BY A REVOCATION THAT RESULTS IN IMPRISONMENT OR AS OTHERWISE PROVIDED BY LAW.

20 (4) If an individual is placed on probation for a
21 listed offense enumerated in section 2 of the sex offenders reg-
22 istration act, 1994 PA 295, MCL 28.722, the individual's proba-
23 tion officer shall register the individual or accept the
24 individual's registration as provided in that act.

25 ~~(5) Subsections~~ SUBSECTION (1) ~~and (3) do~~ DOES not
26 apply to a juvenile placed on probation and committed under
27 section 1(3) or (4) of chapter IX to an institution or agency

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1 described in the youth rehabilitation services act, 1974 PA 150,
2 MCL 803.301 to 803.309.

3 CHAPTER XVII

4 Sec. 13m. This chapter applies to the following felonies
5 enumerated in chapter 333 of the Michigan Compiled Laws:

6	M.C.L.	Category	Class	Description	Stat Max
7	333.7341(8)	CS	G	Delivery or manufacture	
8				of imitation controlled	
9				substance	2
10	333.7401(2)(a)(i)	CS	A	Delivery or manufacture	
11				of 650 1,000 or more	
12				grams of certain sched-	
13				ule 1 or 2 controlled	
14				substances	Life
15	333.7401(2)(a)(ii)	CS	A	Delivery or manufacture	
16				of 225 450 or more	
17				but less than 650	
18				1,000 grams of certain	
19				schedule 1 or 2 con-	
20				trolled substances	30
21	333.7401(2)(a)(iii)	CS	B	Delivery or manufacture	
22				of 50 or more but less	
23				than 225 450 grams of	
24				certain schedule 1 or 2	
25				controlled substances	20
26	333.7401(2)(a)(iv)	CS	D	Delivery or manufacture	
27				of less than 50 grams	
28				of certain schedule 1	
29				or 2 controlled	
30				substances	20
31	333.7401(2)(b)(i)	CS	B	Delivery or manufacture	
32				of methamphetamine	20
33	333.7401(2)(b)(ii)	CS	E	Delivery or manufacture	
34				of certain schedule 1,	
35				2, or 3 controlled	
36				substances	7
37	333.7401(2)(c)	CS	F	Delivery or manufacture	
38				of schedule 4 con-	
39				trolled substance	4

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1	333.7401(2)(d)(i)	CS	C	Delivery or manufacture	
2				of 45 or more kilograms	
3				of marijuana	15
4	333.7401(2)(d)(ii)	CS	D	Delivery or manufacture	
5				of 5 or more but less	
6				than 45 kilograms of	
7				marijuana	7
8	333.7401(2)(d)(iii)	CS	F	Delivery or manufacture	
9				of less than 5 kilo-	
10				grams or 20 plants of	
11				marijuana	4
12	333.7401(2)(e)	CS	G	Delivery or manufacture	
13				of schedule 5 con-	
14				trolled substance	2
15	333.7401(2)(f)	CS	D	Delivery or manufacture	
16				of an official or coun-	
17				terfeit prescription	
18				form	20
19	333.7401(2)(g)	CS	D	Delivery or manufacture	
20				of prescription or	
21				counterfeit form (other	
22				than official)	7
23	333.7401a	Person	B	Delivering a controlled	
24				substance or GBL with	
25				intent to commit crimi-	
26				nal sexual conduct	20
27	333.7401b(3)(a)	CS	E	Delivery or manufacture	
28				of GBL	7
29	333.7401b(3)(b)	CS	G	Possession of GBL	2
30	333.7401c(2)(a)	CS	D	Operating or maintaining	
31				controlled substance	
32				laboratory	10
33	333.7401c(2)(b)	CS	B	Operating or maintaining	
34				controlled substance	
35				laboratory in presence	
36				of minor	20
37	333.7401c(2)(c)	CS	B	Operating or maintaining	
38				controlled substance	
39				laboratory involving	
40				hazardous waste	20
41	333.7401c(2)(d)	CS	B	Operating or maintaining	
42				controlled substance	

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1				laboratory near certain	
2				places	20
3	333.7401c(2)(e)	CS	A	Operating or maintaining	
4				controlled substance	
5				laboratory involving	
6				firearm or other harm-	
7				ful device	25
8	333.7402(2)(a)	CS	D	Delivery or manufacture	
9				of certain imitation	
10				controlled substances	10
11	333.7402(2)(b)	CS	E	Delivery or manufacture	
12				of schedule 1, 2, or 3	
13				imitation controlled	
14				substance	5
15	333.7402(2)(c)	CS	F	Delivery or manufacture	
16				of imitation schedule 4	
17				controlled substance	4
18	333.7402(2)(d)	CS	G	Delivery or manufacture	
19				of imitation schedule 5	
20				controlled substance	2
21	333.7402(2)(e)	CS	C	Delivery or manufacture	
22				of controlled substance	
23				analogue	15
24	333.7403(2)(a)(i)	CS	A	Possession of 650 1,000	
25				or more grams of cer-	
26				tain schedule 1 or 2	
27				controlled substances	
28				by juvenile	Life
29	333.7403(2)(a)(ii)	CS	A	Possession of 225 450	
30				or more but less than	
31				650 1,000 grams of	
32				certain schedule 1 or 2	
33				controlled substances	30
34	333.7403(2)(a)(iii)	CS	B	Possession of 50 or more	
35				but less than 225 450	
36				grams of certain sched-	
37				ule 1 or 2 controlled	
38				substances	20
39	333.7403(2)(a)(iv)	CS	G	Possession of 25 or more	
40				but less than 50 grams	
41				of certain schedule 1	
42				or 2 controlled	
43				substances	4

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1	333.7403(2)(a)(v)	CS	G	Possession of less than		
2				25 grams of certain		
3				schedule 1 or 2 con-		
4				trolled substances	4	
5	333.7403(2)(b)(i)	CS	D	Possession of		
6				methamphetamine	10	
7	333.7403(2)(b)(ii)	CS	G	Possession of certain		
8				schedule 1, 2, 3, or 4		
9				controlled substances		
10				or controlled sub-		
11				stances analogue	2	
12	333.7403(2)(e)	CS	H	Possession of official		
13				prescription form	1	
14	333.7405(a)	CS	G	Controlled substance vio-		
15				lations by licensee	2	
16	333.7405(b)	CS	G	Manufacturing or distri-		
17				bution violations by		
18				licensee	2	
19	333.7405(c)	CS	G	Refusing lawful		
20				inspection	2	
21	333.7405(d)	CS	G	Maintaining drug house	2	
22	333.7407(1)(a)	CS	G	Controlled substance vio-		
23				lations by licensee	4	
24	333.7407(1)(b)	CS	G	Use of fictitious,		
25				revoked, or suspended		
26				license number	4	
27	333.7407(1)(c)	CS	G	Obtaining controlled sub-		
28				stance by fraud	4	
29	333.7407(1)(d)	CS	G	False reports under con-		
30				trolled substance		
31				article	4	
32	333.7407(1)(e)	CS	G	Possession of counter-		
33				feiting implements	4	
34	333.7407(1)(f)	CS	F	Disclosing or obtaining		
35				prescription		
36				information	4	
37	333.7407(1)(g)	CS	F	Possession of counterfeit		
38				prescription form	4	

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1	333.7407(2)	CS	G	Refusing to furnish	
2				records under	
3				controlled substance	
4				article	4

5	333.7410a	CS	G	Controlled substance	
6				offense or offense	
7				involving GBL in or	
8				near a park	2

9 Sec. 43. (1) Offense variable 13 is continuing pattern of
10 criminal behavior. Score offense variable 13 by determining
11 which of the following apply and by assigning the number of
12 points attributable to the one that has the highest number of
13 points:

14 (a) The offense was part of a pattern of feloni-
15 ous criminal activity involving 3 or more sexual pene-
16 trations against a person or persons less than 13
17 years of age..... 50 points

18 (b) The offense was part of a pattern of feloni-
19 ous criminal activity involving 3 or more crimes
20 against a person..... 25 points

21 (c) The offense was part of a pattern of feloni-
22 ous criminal activity involving a combination of 3 or
23 more crimes against a person or property OR A VIOLA-
24 TION OF SECTION 7401(2)(A)(i) TO (iii) OR SECTION
25 7403(2)(A)(i) TO (iii)..... 10 points

26 (d) The offense was part of a pattern of feloni-
27 ous criminal activity directly related to membership
28 in an organized criminal group..... 10 points

29 (E) THE OFFENSE WAS PART OF A PATTERN OF
30 FELONIOUS CRIMINAL ACTIVITY INVOLVING A COMBINATION OF

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1 3 OR MORE VIOLATIONS OF SECTION 7401(2)(A)(i) TO (iii)
2 OR SECTION 7403(2)(A)(i) TO (iii)..... 10 POINTS
3 (F) ~~-(e)-~~ The offense was part of a pattern of
4 felonious criminal activity involving 3 or more crimes
5 against property..... 5 points
6 (G) ~~-(f)-~~ No pattern of felonious criminal activ-
7 ity existed..... 0 points
8 (2) All of the following apply to scoring offense
9 variable 13:
10 (a) For determining the appropriate points under this vari-
11 able, all crimes within a 5-year period, including the sentencing
12 offense, shall be counted regardless of whether the offense
13 resulted in a conviction.
14 (b) The presence or absence of multiple offenders, the age
15 of the offenders, or the degree of sophistication of the orga-
16 nized criminal group is not as important as the fact of the
17 group's existence, which may be reasonably inferred from the
18 facts surrounding the sentencing offense.
19 (c) Except for offenses related to membership in an orga-
20 nized criminal group, do not score conduct scored in offense
21 variable 11 or 12.
22 (d) Score 50 points only if the sentencing offense is first
23 degree criminal sexual conduct.
24 (E) DO NOT COUNT MORE THAN 1 CONTROLLED SUBSTANCE OFFENSE
25 ARISING OUT OF THE CRIMINAL EPISODE FOR WHICH THE PERSON IS BEING
26 SENTENCED.

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(F) DO NOT COUNT MORE THAN 1 CRIME INVOLVING THE SAME CONTROLLED SUBSTANCE. FOR EXAMPLE, DO NOT COUNT CONSPIRACY AND A SUBSTANTIVE OFFENSE INVOLVING THE SAME AMOUNT OF CONTROLLED SUBSTANCES OR POSSESSION AND DELIVERY OF THE SAME AMOUNT OF CONTROLLED SUBSTANCES.

Sec. 45. (1) Offense variable 15 is aggravated controlled substance offenses. Score offense variable 15 by determining which of the following apply and by assigning the number of points attributable to the one that has the highest number of points:

~~(a) The offense involved the sale or delivery of a controlled substance other than marihuana or a mixture containing a controlled substance other than marihuana by the offender who was 18 years of age or older to a minor who was 3 or more years younger than the offender..... 25 points~~

(A) THE OFFENSE INVOLVED THE MANUFACTURE, CREATION, DELIVERY, POSSESSION, OR POSSESSION WITH INTENT TO MANUFACTURE, CREATE, OR DELIVER OF 1,000 OR MORE GRAMS OF ANY MIXTURE CONTAINING A CONTROLLED SUBSTANCE CLASSIFIED IN SCHEDULE 1 OR 2 THAT IS A NARCOTIC DRUG OR A DRUG DESCRIBED IN SECTION 7214(A)(iv)..... 100 POINTS

(b) The offense involved the ~~sale, delivery, or possession with intent to sell or deliver 225 grams or more~~ MANUFACTURE, CREATION, DELIVERY, POSSESSION, OR POSSESSION WITH INTENT TO MANUFACTURE, CREATE, OR DELIVER OF 450 GRAMS OR MORE BUT LESS THAN 1,000 GRAMS

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1 of ANY MIXTURE CONTAINING a controlled substance
2 classified in schedule 1 or 2 ~~or a mixture containing~~
3 ~~a controlled substance classified in schedule 1 or 2~~
4 THAT IS A NARCOTIC DRUG OR A DRUG DESCRIBED IN SECTION
5 7214(A)(iv)..... ~~-20-~~ 75
6 points
7 (c) The offense involved the ~~sale, delivery, or~~
8 ~~possession with intent to sell~~ MANUFACTURE, CREATION,
9 DELIVERY, POSSESSION, OR POSSESSION WITH INTENT TO
10 MANUFACTURE, CREATE, or deliver OF 50 or more grams
11 but less than ~~-225-~~ 450 grams of ANY MIXTURE
12 CONTAINING a controlled substance classified in sched-
13 ule 1 or 2 ~~or a mixture containing a controlled sub-~~
14 ~~stance classified in schedule 1 or 2~~ THAT IS A NAR-
15 COTIC DRUG OR A DRUG DESCRIBED IN SECTION 7214(A)(iv). ~~-15-~~ 50
16 points
17 (D) THE OFFENSE INVOLVED THE SALE OR DELIVERY OF
18 A CONTROLLED SUBSTANCE OTHER THAN MARIHUANA OR A MIX-
19 TURE CONTAINING A CONTROLLED SUBSTANCE OTHER THAN MAR-
20 IHUANA BY THE OFFENDER WHO WAS 18 YEARS OF AGE OR
21 OLDER TO A MINOR WHO WAS 3 OR MORE YEARS YOUNGER THAN
22 THE OFFENDER..... 25 POINTS
23 (E) ~~-(d)-~~ The offense involved the sale, deliv-
24 ery, or possession with intent to sell or deliver 45
25 kilograms or more of marihuana or 200 or more of mari-
26 huana plants..... 10 points

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1 (F) THE OFFENSE IS A VIOLATION OF SECTION
2 7401(2)(A)(i) TO (iii) PERTAINING TO A CONTROLLED
3 SUBSTANCE CLASSIFIED IN SCHEDULE 1 OR 2 THAT IS A NAR-
4 COTIC DRUG OR A DRUG DESCRIBED IN SECTION 7214(A)(iv)
5 AND WAS COMMITTED IN A MINOR'S ABODE, SETTLED HOME, OR
6 DOMICILE, REGARDLESS OF WHETHER THE MINOR WAS PRESENT. 10 POINTS

7 (G) ~~(e)~~ The offense involved the delivery or
8 possession with intent to deliver marihuana or any
9 other controlled substance or a counterfeit controlled
10 substance or possession of controlled substances or
11 counterfeit controlled substances having a value or
12 under such circumstances as to indicate trafficking... 5 points

13 (H) ~~(f)~~ The offense was not an offense
14 described in subdivisions (a) through ~~(e)~~ (G)..... 0 points

15 (2) As used in this section:

16 (a) "Deliver" means the actual or constructive transfer of a
17 controlled substance from 1 individual to another regardless of
18 remuneration.

19 (b) "Minor" means an individual 17 years of age or less.

20 (c) "Trafficking" means the sale or delivery of controlled
21 substances or counterfeit controlled substances on a continuing
22 basis to 1 or more other individuals for further distribution.

23 Sec. 57. (1) Prior record variable 7 is subsequent or con-
24 current felony convictions. Score prior record variable 7 by
25 determining which of the following apply and by assigning the
26 number of points attributable to the one that has the highest
27 number of points:

1 (a) The offender has 2 or more subsequent or
2 concurrent convictions..... 20 points

3 (b) The offender has 1 subsequent or concurrent
4 conviction..... 10 points

5 (c) The offender has no subsequent or concurrent
6 convictions..... 0 points

7 (2) All of the following apply to scoring record variable
8 7:

9 (a) Score the appropriate point value if the offender was
10 convicted of multiple felony counts or was convicted of a felony
11 after the sentencing offense was committed.

12 (b) Do not score a felony firearm conviction in this
13 variable.

14 (c) Do not score a concurrent felony conviction if a manda-
15 tory consecutive sentence OR A CONSECUTIVE SENTENCE IMPOSED UNDER
16 SECTION 7401(3) OF THE PUBLIC HEALTH CODE, 1978 PA 368, MCL
17 333.7401. will result from that conviction.

18 Enacting section 1. This amendatory act takes effect March 1, 2003.
19 Enacting section 2. This amendatory act does not take
20 effect unless all of the following bills of the 91st Legislature
21 are enacted into law:

21 (a) House Bill No. 5394.

22 (b) House Bill No. 6510.