

HOUSE BILL No. 6095

May 21, 2002, Introduced by Reps. Faunce, Meyer, Kowall, Tabor, Shackleton, Hager, Julian, Gilbert, Rocca, Patterson, LaSata, Kuipers, Vander Roest, Middaugh, Caul, Vander Veen and Howell and referred to the Committee on Criminal Justice.

A bill to amend 1978 PA 368, entitled "Public health code," by amending sections 7214, 7401, 7402, 7403, and 7404 (MCL 333.7214, 333.7401, 333.7402, 333.7403, and 333.7404), section 7214 as amended by 1982 PA 352, sections 7401 and 7403 as amended by 2001 PA 236, and sections 7402 and 7404 as amended by 2000 PA 314.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 7214. The following controlled substances are included
2 in schedule 2:

3 (a) Any of the following substances, except those narcotic
4 drugs listed in other schedules, whether produced directly or
5 indirectly by extraction from substances of vegetable origin, or
6 independently by means of chemical synthesis, or by combination
7 of extraction and chemical synthesis:

1 (i) Opium and opiate, and any salt, compound, derivative, or
 2 preparation of opium or opiate excluding nalaxone and its salts,
 3 and excluding naltrexone and its salts, but including the
 4 following:

5

6	Raw opium	Etorphine hydrochloride
7	Opium extracts	Hydrocodone
8	Opium Fluid-extracts	Hydromorphone
9	Powdered opium	Metopon
10	Granulated opium	Morphine
11	Tincture of opium	Oxycodone
12	Codeine	Oxymorphone
13	Ethylmorphine	Thebaine

14 (ii) A salt, compound, derivative, or preparation thereof
 15 which is chemically equivalent to or identical with a substance
 16 referred to in subdivision (a), except that these substances do
 17 not include the isoquinoline alkaloids of opium.

18 (iii) Opium poppy, poppy straw, and concentrate of poppy
 19 straw, the crude extract of poppy straw in either liquid, solid,
 20 or powder form, which contains the phenanthrene alkaloids of the
 21 opium poppy.

22 (iv) Coca leaves and any salt, compound, derivative, or
 23 preparation thereof which is chemically equivalent to or identi-
 24 cal with any of these substances, except that the substances do
 25 not include decocainized coca leaves or extraction of coca leaves
 26 which extractions do not contain cocaine or ecgonine. The sub-
 27 stances include cocaine, its salts, stereoisomers, and salts of
 28 stereoisomers when the existence of the salts, stereoisomers, and
 29 salts of stereoisomers is possible within the specific chemical
 30 designation.

1 (b) Any of the following opiates, including their isomers,
 2 esters, ethers, salts, and salts of isomers, when the existence
 3 of these isomers, esters, ethers, and salts is possible within
 4 the specific chemical designation:

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6	Alphaprodine	Fentanyl
7	Anileridine	Isomethadone
8	Bezitramide	Levomethorphan
9	Dihydrocodeine	Levorphanol
10	Diphenoxylate	Metazocine
11		Methadone
12	Methadone-Intermediate, 4-cyano-2dimethylamino-4,	
13	4-diphenyl butane	
14	Moramide-Intermediate, 2-methyl-3-morpholino-1,	
15	1-diphenylpropane-carboxylic acid	
16		Pethidine
17	Pethidine-Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine	
18	Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate	
19	Pethidine-Intermediate-C, 1-methyl-4-phenylpiperidine-	
20	4-carboxylic acid	
21	Phenazocine	Racemethorphan
22	Piminodine	Racemorphan

23 (c) Unless listed in another schedule, any material, com-
 24 pound, mixture, or preparation which contains any quantity of the
 25 following substances having potential for abuse associated with a
 26 stimulant effect on the nervous system:

27 (i) Amphetamine, its salts, optical isomers, and salts of
 28 its optical isomers.

29 (ii) Any substance which contains any quantity of metham-
 30 phetamine, including its salts, stereoisomers, and salts of
 31 stereoisomers.

32 (iii) Phenmetrazine and its salts.

33 (iv) Methylphenidate and its salts.

34 (d) Any material, compound, mixture, or preparation,
 35 including its salts, isomers, and salts of isomers when the
 36 existence of the salts, isomers, and salts of isomers is possible

1 within the specific chemical designation as listed in schedule 2,
2 which contains any quantity of the following substances having a
3 potential for abuse associated with the depressant effect on the
4 central nervous system: methaqualone, amobarbital, pentobarbi-
5 tal, or secobarbital; or, any compound, mixture, or preparation
6 containing amobarbital, secobarbital, pentobarbital, or any salt
7 thereof in combination with itself, with another, or with 1 or
8 more other controlled substances.

9 (e) Marihuana, but only for use as provided in sections 7335
10 and 7336.

11 (F) 3,4-METHYLENEDIOXYMETHAMPHETAMINE.

12 SOME TRADE AND OTHER NAMES:

13 ECSTASY

14 MDMA

15 Sec. 7401. (1) Except as authorized by this article, a
16 person shall not manufacture, create, deliver, or possess with
17 intent to manufacture, create, or deliver a controlled substance,
18 a prescription form, or a counterfeit prescription form. A prac-
19 titioner licensed by the administrator under this article shall
20 not dispense, prescribe, or administer a controlled substance for
21 other than legitimate and professionally recognized therapeutic
22 or scientific purposes or outside the scope of practice of the
23 practitioner, licensee, or applicant.

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

25 (a) A controlled substance classified in schedule 1 or 2
26 that is a narcotic drug or a drug described in section
27 7214(a)(iv) and:

1 (i) Which is in an amount of 650 grams or more of any
2 mixture containing that substance is guilty of a felony punish-
3 able by imprisonment for life or any term of years but not less
4 than 20 years.

5 (ii) Which is in an amount of 225 grams or more, but less
6 than 650 grams, of any mixture containing that substance is
7 guilty of a felony and shall be imprisoned for not less than 20
8 years nor more than 30 years.

9 (iii) Which is in an amount of 50 grams or more, but less
10 than 225 grams, of any mixture containing that substance is
11 guilty of a felony and shall be imprisoned for not less than 10
12 years nor more than 20 years.

13 (iv) Which is in an amount less than 50 grams, of any mix-
14 ture containing that substance is guilty of a felony and shall be
15 imprisoned for not less than 1 year nor more than 20 years, and
16 may be fined not more than \$25,000.00, or placed on probation for
17 life.

18 (b) Either of the following:

19 (i) A substance described in section 7214(c)(ii) OR (F) is
20 guilty of a felony punishable by imprisonment for not more than
21 20 years or a fine of not more than \$25,000.00, or both.

22 (ii) Any other controlled substance classified in schedule
23 1, 2, or 3, except marihuana is guilty of a felony punishable by
24 imprisonment for not more than 7 years or a fine of not more than
25 \$10,000.00, or both.

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

4 (d) Marihuana or a mixture containing marihuana is guilty of
5 a felony punishable as follows:

6 (i) If the amount is 45 kilograms or more, or 200 plants or
7 more, by imprisonment for not more than 15 years or a fine of not
8 more than \$10,000,000.00, or both.

9 (ii) If the amount is 5 kilograms or more but less than 45
10 kilograms, or 20 plants or more but fewer than 200 plants, by
11 imprisonment for not more than 7 years or a fine of not more than
12 \$500,000.00, or both.

13 (iii) If the amount is less than 5 kilograms or fewer than
14 20 plants, by imprisonment for not more than 4 years or a fine of
15 not more than \$20,000.00, or both.

16 (e) A substance classified in schedule 5 is guilty of a
17 felony punishable by imprisonment for not more than 2 years or a
18 fine of not more than \$2,000.00, or both.

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

22 (3) A term of imprisonment imposed under subsection (2)(a)
23 or section 7403(2)(a)(i), (ii), (iii), or (iv) shall be imposed
24 to run consecutively with any term of imprisonment imposed for
25 the commission of another felony. An individual subject to a
26 mandatory term of imprisonment under subsection (2)(a) or section
27 7403(2)(a)(i), (ii), (iii), or (iv) is not eligible for

1 probation, suspension of that sentence, or parole during that
2 mandatory term, except to the extent that those provisions permit
3 probation for life, and shall not receive a reduction in that
4 mandatory term of imprisonment by disciplinary credits or any
5 other type of sentence credit reduction.

6 (4) The court may depart from the minimum term of imprison-
7 ment authorized under subsection (2)(a)(ii), (iii), or (iv) if
8 the court finds on the record that there are substantial and com-
9 pelling reasons to do so. In addition, if any of the following
10 apply, the court may depart from the minimum term of imprisonment
11 authorized under subsection (2)(a)(ii), (iii), or (iv) if the
12 individual has not previously been convicted of a felony or an
13 assaultive crime and has not been convicted of another felony or
14 assaultive crime arising from the same transaction as the viola-
15 tion of this section:

16 (a) The person is within the jurisdiction of the circuit
17 court under section 606 of the revised judicature act of 1961,
18 1961 PA 236, MCL 600.606, or section 4 of chapter XIIIA of the
19 probate code of 1939, 1939 PA 288, MCL 712A.4.

20 (b) The person is being sentenced under section 18(1)(n) of
21 chapter XIIIA of the probate code of 1939, 1939 PA 288,
22 MCL 712A.18.

23 (5) As used in this section:

24 (a) "Assaultive crime" means a violation of sections 81 to
25 90 of the Michigan penal code, 1931 PA 328, MCL 750.81 to
26 750.90.

1 (b) "Plant" means a marihuana plant that has produced
2 cotyledons or a cutting of a marihuana plant that has produced
3 cotyledons.

4 Sec. 7402. (1) Except as authorized by this article, a
5 person shall not create, manufacture, deliver, or possess with
6 intent to deliver a counterfeit substance or a controlled sub-
7 stance analogue intended for human consumption. This section
8 does not apply to a person who manufactures or distributes a sub-
9 stance in conformance with the provisions of an approved new drug
10 application or an exemption for investigational use within the
11 meaning of section 505 of the federal food, drug, and cosmetic
12 act, 21 U.S.C. 355. For purposes of this section, section 505 of
13 the federal food, drug, and cosmetic act shall be applicable to
14 the introduction or delivery for introduction of any new drug
15 into intrastate, interstate, or foreign commerce.

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

17 (a) A counterfeit substance classified in schedule 1 or 2
18 which is either a narcotic drug or A DRUG described in section
19 7214(a)(iv), ~~or~~ (c)(ii), OR (F), is guilty of a felony ~~—~~ pun-
20 ishable by imprisonment for not more than 10 years ~~—~~ or a fine
21 of not more than \$10,000.00, or both.

22 (b) Any other counterfeit substance classified in schedule
23 1, 2, or 3, is guilty of a felony ~~—~~ punishable by imprisonment
24 for not more than 5 years ~~—~~ or a fine of not more than
25 \$5,000.00, or both.

1 (c) A counterfeit substance classified in schedule 4, is
2 guilty of a felony ~~—~~ punishable by imprisonment for not more
3 than 4 years ~~—~~ or a fine of not more than \$2,000.00, or both.

4 (d) A counterfeit substance classified in schedule 5, is
5 guilty of a felony ~~—~~ punishable by imprisonment for not more
6 than 2 years ~~—~~ or a fine of not more than \$2,000.00, or both.

7 (e) A controlled substance analogue, is guilty of a felony
8 ~~—~~ punishable by imprisonment for not more than 15 years ~~—~~ or
9 a fine of not more than \$250,000.00, or both.

10 Sec. 7403. (1) A person shall not knowingly or intention-
11 ally possess a controlled substance, a controlled substance anal-
12 ogue, or a prescription form unless the controlled substance,
13 controlled substance analogue, or prescription form was obtained
14 directly from, or pursuant to, a valid prescription or order of a
15 practitioner while acting in the course of the practitioner's
16 professional practice, or except as otherwise authorized by this
17 article.

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

19 (a) A controlled substance classified in schedule 1 or 2
20 that is a narcotic drug or a drug described in section
21 7214(a)(iv), and:

22 (i) Which is in an amount of 650 grams or more of any mix-
23 ture containing that substance is guilty of a felony and shall be
24 imprisoned for life except as otherwise provided in this
25 subparagraph. A person convicted of violating this subparagraph
26 may be punished as provided by law by imposing a sentence of

1 imprisonment for any term of years but not less than 25 years if
2 any of the following apply:

3 (A) The person is within the jurisdiction of the circuit
4 court under section 606 of the revised judicature act of 1961,
5 1961 PA 236, MCL 600.606, or section 4 of chapter XIIA of the
6 probate code of 1939, 1939 PA 288, MCL 712A.4.

7 (B) The person is being sentenced under section 18(1)(n) of
8 chapter XIIA of the probate code of 1939, 1939 PA 288,
9 MCL 712A.18.

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

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

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

23 (v) Which is in an amount less than 25 grams of any mixture
24 containing that substance is guilty of a felony punishable by
25 imprisonment for not more than 4 years or a fine of not more than
26 \$25,000.00, or both.

1 (b) Either of the following:

2 (i) A substance described in section 7214(c)(ii) OR (F) is
3 guilty of a felony punishable by imprisonment for not more than
4 10 years or a fine of not more than \$15,000.00, or both.

5 (ii) A controlled substance classified in schedule 1, 2, 3,
6 or 4, except a controlled substance for which a penalty is pre-
7 scribed in subdivision (a), (b)(i), (c), or (d), or a controlled
8 substance analogue is guilty of a felony punishable by imprison-
9 ment for not more than 2 years or a fine of not more than
10 \$2,000.00, or both.

11 (c) Lysergic acid diethylamide, peyote, mescaline, dimethyl-
12 tryptamine, psilocyn, psilocybin, or a controlled substance clas-
13 sified in schedule 5 is guilty of a misdemeanor punishable by
14 imprisonment for not more than 1 year or a fine of not more than
15 \$2,000.00, or both.

16 (d) Marihuana is guilty of a misdemeanor punishable by
17 imprisonment for not more than 1 year or a fine of not more than
18 \$2,000.00, or both.

19 (e) A prescription form is guilty of a misdemeanor punish-
20 able by imprisonment for not more than 1 year or a fine of not
21 more than \$1,000.00, or both.

22 (3) The court may depart from the minimum term of imprison-
23 ment authorized under subsection (2)(a)(ii), (iii), or (iv) if
24 the court finds on the record that there are substantial and com-
25 pelling reasons to do so. In addition, if any of the following
26 apply, the court may depart from the minimum term of imprisonment
27 authorized under subsection (2)(a)(ii), (iii), or (iv) if the

1 individual has not previously been convicted of a felony or an
2 assaultive crime and has not been convicted of another felony or
3 assaultive crime arising from the same transaction as the viola-
4 tion of this section:

5 (a) The person is within the jurisdiction of the circuit
6 court under section 606 of the revised judicature act of 1961,
7 1961 PA 236, MCL 600.606, or section 4 of chapter XIIIA of the
8 probate code of 1939, 1939 PA 288, MCL 712A.4.

9 (b) The person is being sentenced under section 18(1)(n) of
10 chapter XIIIA of the probate code of 1939, 1939 PA 288,
11 MCL 712A.18.

12 (4) As used in subsection (3), "assaultive crime" means a
13 violation of sections 81 to 90 of the Michigan penal code, 1931
14 PA 328, MCL 750.81 to 750.90.

15 Sec. 7404. (1) A person shall not use a controlled sub-
16 stance or controlled substance analogue unless the substance was
17 obtained directly from, or pursuant to, a valid prescription or
18 order of a practitioner while acting in the course of the
19 practitioner's professional practice, or except as otherwise
20 authorized by this article.

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

22 (a) A controlled substance classified in schedule 1 or 2
23 ~~is~~ AS a narcotic drug or a drug described in section
24 7214(a)(iv), ~~or~~ (c)(ii), OR (F), is guilty of a misdemeanor
25 punishable by imprisonment for not more than 1 year ~~—~~ or a fine
26 of not more than \$2,000.00, or both.

1 (b) A controlled substance classified in schedule 1, 2, 3,
2 or 4, except a controlled substance for which a penalty is
3 prescribed in subdivision (a), (c), or (d), or a controlled sub-
4 stance analogue, is guilty of a misdemeanor ~~—~~ punishable by
5 imprisonment for not more than 1 year ~~—~~ or a fine of not more
6 than \$1,000.00, or both.

7 (c) Lysergic acid diethylamide, peyote, mescaline, dimethyl-
8 tryptamine, psilocyn, psilocybin, or a controlled substance clas-
9 sified in schedule 5, is guilty of a misdemeanor ~~—~~ punishable
10 by imprisonment for not more than 6 months ~~—~~ or a fine of not
11 more than \$500.00, or both.

12 (d) Marihuana, is guilty of a misdemeanor ~~—~~ punishable by
13 imprisonment for not more than 90 days ~~—~~ or a fine of not more
14 than \$100.00, or both.