

SENATE BILL No. 553

October 4, 1989, Introduced by Senators DILLINGHAM, NICHOLS, WELBORN, CROPSEY and N. SMITH and referred to the Committee on Education and Mental Health.

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:

6 Sec. 7410. (1) Except as otherwise provided in
7 ~~subsections (2) and (3)~~ THIS SECTION, an individual 18 years of

1 age or over who violates section 7401(2)(a)(iv) by delivering or
 2 distributing a controlled substance listed in schedule 1 or 2
 3 which is either a narcotic drug or described in section
 4 7214(a)(iv) to an individual under 18 years of age who is at
 5 least 3 years the deliverer's or distributor's junior may be pun-
 6 ished by the fine authorized by section 7401(2)(a)(iv) or by a
 7 term of imprisonment of not less than 1 year ~~nor~~ OR more than
 8 twice that authorized by section 7401(2)(a)(iv), or both. An
 9 individual 18 years of age or over who violates section 7401 by
 10 delivering or distributing any other controlled substance listed
 11 in schedules 1 to 5 to an individual under 18 years of age who is
 12 at least 3 years the distributor's junior may be punished by the
 13 fine authorized by section 7401(2)(b), (c), or (d), or by a term
 14 of imprisonment not more than twice that authorized by section
 15 7401(2)(b), (c), or (d), or both.

16 (2) ~~An~~ EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (3), AN
 17 individual ~~18 years of age or over~~ who violates section
 18 ~~7401(2)(a)(iv)~~ 7401(2)(A)(iv), (B), OR (C) OR 7402(2)(A), (B),
 19 (C), OR (E) by delivering OR POSSESSING WITH INTENT TO DELIVER a
 20 controlled substance ~~described~~ OR COUNTERFEIT SUBSTANCE
 21 CLASSIFIED in schedule 1, ~~or~~ 2, ~~which is either a narcotic~~
 22 ~~drug or described in section 7214(a)(iv) to a minor who is a~~
 23 ~~student~~ 3, OR 4, OR A CONTROLLED SUBSTANCE ANALOGUE on or within
 24 ~~500~~ 1,000 feet of school property shall be punished ~~, subject~~
 25 ~~to subsection (5),~~ by a term of imprisonment of not less than
 26 ~~2~~ 3 years ~~nor~~ OR more than 3 times that authorized by section
 27 ~~7401(2)(a)(iv)~~ 7401(2)(A)(iv), (B), OR (C) OR 7402(2)(A), (B),

1 (C), OR (E) and, in addition, may be punished by a fine of not
2 more than 3 times that authorized by section ~~7401(2)(a)(iv)~~
3 7401(2)(A)(iv), (B), OR (C) OR 7402(2)(A), (B), (C), OR (E).

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).~~ IF THE ONLY CONTROLLED SUBSTANCE INVOLVED IN THE
14 VIOLATION OF SUBSECTION (2) IS LESS THAN 25 GRAMS OF MARIJUANA,
15 THE MINIMUM TERM OF IMPRISONMENT IMPOSED ON THE INDIVIDUAL SHALL
16 BE NOT LESS THAN 1 YEAR.

17 (4) An individual ~~18 years of age or over~~ who violates
18 section 7403(2)(a)(v), (b), (c), or (d) by possessing a con-
19 trolled substance on OR WITHIN 1,000 FEET OF school property
20 shall be punished by a term of imprisonment or a fine, or both,
21 of not more than twice that authorized by section
22 7403(2)(a)(v), (b), (c), or (d).

23 (5) AN INDIVIDUAL SUBJECT TO A MANDATORY MINIMUM TERM OF
24 IMPRISONMENT UNDER SUBSECTION (2) OR (3) SHALL NOT BE ELIGIBLE
25 FOR PROBATION, SUSPENSION OF THE SENTENCE, OR PAROLE DURING THAT
26 MANDATORY MINIMUM TERM AND SHALL NOT RECEIVE A REDUCTION IN THAT

1 MANDATORY TERM OF IMPRISONMENT BY DISCIPLINARY CREDITS OR ANY
2 OTHER TYPE OF SENTENCE CREDIT REDUCTION.

3 (6) IT IS NOT A DEFENSE TO A PROSECUTION FOR A VIOLATION OF
4 SUBSECTION (2), (3), OR (4) THAT THE DEFENDANT DID NOT KNOW THAT
5 THE PROHIBITED CONDUCT TOOK PLACE ON OR WITHIN 1,000 FEET OF
6 SCHOOL PROPERTY.

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

11 (8) ~~(6)~~ As used in this section, "school property" means a
12 building, playing field, or property used for school purposes to
13 impart instruction to children in grades kindergarten through 12,
14 when provided by a public, private, denominational, or parochial
15 school, except those buildings used primarily for adult education
16 or college extension courses.

17 ~~(7) A person who distributes marihuana without remuneration~~
18 ~~and not to further commercial distribution and who does not vio-~~
19 ~~late subsection (1) is guilty of a misdemeanor, punishable by~~
20 ~~imprisonment for not more than 1 year, or a fine of not more than~~
21 ~~\$1,000.00, or both, unless the distribution is in accordance with~~
22 ~~the federal law or the law of this state.~~

23 Sec. 7413. (1) An individual who was convicted previously
24 for a violation of any of the following offenses and is thereaf-
25 ter convicted of a second or subsequent violation of any of the
26 following offenses shall be imprisoned for life and shall not be

1 eligible for probation, suspension of sentence, or parole during
2 that mandatory term:

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

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

5 (c) Conspiracy to commit an offense proscribed by section
6 7401(2)(a)(ii) or (iii) or section 7403(2)(a)(ii) or (iii).

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

12 (3) An individual convicted of a second or subsequent
13 offense under section 7410(2) ~~or (3)~~ shall be punished, subject
14 to subsection (4), by a term of imprisonment of not less than 5
15 years ~~nor~~ OR more than twice that authorized under
16 section 7410(2) ~~or (3)~~ and, in addition, may be punished by a
17 fine of not more than 3 times that authorized by section 7410(2);
18 ~~or (3)~~, and shall not be eligible for probation or suspension
19 of sentence during the term of imprisonment.

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

24 (5) For purposes of subsection (2), an offense is considered
25 a second or subsequent offense, if, before conviction of the
26 offense, the offender has at any time been convicted under this
27 article or under any statute of the United States or of any state

1 relating to a narcotic drug, marihuana, depressant, stimulant, or
2 hallucinogenic drug.