

SUBSTITUTE FOR
SENATE BILL NO. 280

A bill to amend 1978 PA 368, entitled
"Public health code,"
by amending sections 7401 and 7403 (MCL 333.7401 and 333.7403),
as amended by 1996 PA 249.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 7401. (1) Except as authorized by this article, a
2 person shall not manufacture, create, deliver, or possess with
3 intent to manufacture, create, or deliver a controlled substance,
4 a prescription form, an official prescription form, or a counter-
5 feit prescription form. A practitioner licensed by the adminis-
6 trator under this article shall not dispense, prescribe, or
7 administer a controlled substance for other than legitimate and
8 professionally recognized therapeutic or scientific purposes or

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1 outside the scope of practice of the practitioner, licensee, or
2 applicant.

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

4 (a) A controlled substance classified in schedule 1 or 2
5 that is a narcotic drug or a drug described in section
6 7214(a)(iv) and:

7 (i) Which is in an amount of 650 grams or more of any mix-
8 ture containing that substance is guilty of a felony and shall be
9 imprisoned for life except as otherwise provided in this
10 subparagraph. A person convicted of violating this subparagraph
11 may be punished as provided by law by imposing a sentence of
12 imprisonment for any term of years but not less than 25 years if
13 any of the following apply:

14 (A) The person is within the jurisdiction of the circuit
15 court or recorder's court of the city of Detroit under
16 section 606 of the revised judicature act of 1961, ~~Act No. 236~~
17 ~~of the Public Acts of 1961, being section 600.606 of the Michigan~~
18 ~~Compiled Laws~~ 1961 PA 236, MCL 600.606, section 4 of chapter
19 XIIIA of ~~Act No. 288 of the Public Acts of 1939, being~~
20 ~~section 712A.4 of the Michigan Compiled Laws~~ 1939 PA 288, MCL
21 712A.4, or section ~~10A(1)(c) of Act No. 369 of the Public Acts~~
22 ~~of 1919, being section 725.10A of the Michigan Compiled Laws~~
23 10A(1)(C) OF 1919 PA 369, 725.10A.

24 (B) The person is being sentenced under section 18(1)(n) of
25 chapter XIIIA of ~~Act No. 288 of the Public Acts of 1939, being~~
26 ~~section 712A.18 of the Michigan Compiled Laws~~ 1939 PA 288, MCL
27 712A.18.

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

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

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

14 (b) Any other controlled substance classified in schedule 1,
15 2, or 3, except marihuana, is guilty of a felony punishable by
16 imprisonment for not more than 7 years or a fine of not more than
17 \$10,000.00, or both.

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

21 (d) Marihuana or a mixture containing marihuana, is guilty
22 of a felony punishable as follows:

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

26 (ii) If the amount is 5 kilograms or more but less than 45
27 kilograms, or 20 plants or more but fewer than 200 plants, by

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1 imprisonment for not more than 7 years or a fine of not more than
2 \$500,000.00, or both.

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

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

9 (f) An official prescription form or a counterfeit official
10 prescription form, is guilty of a felony punishable by imprison-
11 ment for not more than 20 years or a fine of not more than
12 \$25,000.00, or both.

13 (g) A prescription form or a counterfeit prescription form
14 other than an official prescription form or a counterfeit offi-
15 cial prescription form, is guilty of a felony punishable by
16 imprisonment for not more than 7 years or a fine of not more than
17 \$5,000.00, or both.

18 (3) A term of imprisonment imposed pursuant to subsection
19 (2)(a) or section 7403(2)(a)(i), (ii), (iii), or (iv) shall be
20 imposed to run consecutively with any term of imprisonment
21 imposed for the commission of another felony. ~~An~~ EXCEPT AS
22 OTHERWISE PROVIDED IN THIS SECTION, AN individual subject to a
23 mandatory term of imprisonment under subsection (2)(a) or section
24 7403(2)(a)(i), (ii), (iii), or (iv) ~~shall~~ IS not ~~be~~ eligible
25 for probation, suspension of that sentence, or parole during that
26 mandatory term, except and only to the extent that those
27 provisions permit probation for life, and shall not receive a

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1 reduction in that mandatory term of imprisonment by disciplinary
2 credits or any other type of sentence credit reduction.

3 (4) A PERSON CONVICTED OF VIOLATING SUBSECTION (2)(A)(i) IS
4 ELIGIBLE FOR PAROLE UPON THE EXPIRATION OF 15 YEARS OF HIS OR HER
5 SENTENCE IF ALL OF THE FOLLOWING CIRCUMSTANCES EXIST:

6 (A) THE PROSECUTING ATTORNEY OR HIS OR HER SUCCESSOR IN
7 OFFICE HAS CERTIFIED TO THE COURT IN WRITING THAT THE INDIVIDUAL
8 COOPERATED WITH LAW ENFORCEMENT AUTHORITIES. THIS SUBDIVISION
9 DOES NOT CONFER A RIGHT TO ANY INDIVIDUAL TO BE CERTIFIED UNDER
10 THIS SUBSECTION.

11 (B) THE COURT CERTIFIES TO THE DEPARTMENT OF CORRECTIONS IN
12 WRITING THAT THE COURT HAS DETERMINED THAT ALL OF THE FOLLOWING
13 CIRCUMSTANCES EXIST:

14 (i) THE PROSECUTING ATTORNEY OR HIS OR HER SUCCESSOR IN
15 OFFICE HAS CERTIFIED TO THE COURT IN WRITING THAT THE INDIVIDUAL
16 COOPERATED WITH LAW ENFORCEMENT AUTHORITIES.

17 (ii) THE PERSON HAS NOT BEEN CONVICTED OF ANY OF THE FOLLOW-
18 ING

19 :

20 (A) A VIOLENT FELONY. AS USED IN THIS SUB-SUBPARAGRAPH,
21 "VIOLENT FELONY" MEANS AN OFFENSE AGAINST A PERSON DESCRIBED IN
22 SECTION 82, 83, 84, 86, 87, 88, 89, 316, 317, 321, 349, 349A,
23 350, 397, 520B, 520C, 520D, 520E, 520G, 529, 529A, OR 530 OF THE
24 MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.82, 750.83, 750.84,
25 750.86, 750.87, 750.88, 750.89, 750.316, 750.317, 750.321,
26 750.349, 750.349A, 750.350, 750.397, 750.520B, 750.520C,
27 750.520D, 750.520E, 750.520G, 750.529, 750.529A, AND 750.530.

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1 (B) A VIOLATION OF ARTICLE 7 THAT IS PUNISHABLE BY
2 IMPRISONMENT FOR 4 OR MORE YEARS.

3 (C) A VIOLATION OF A LAW OF ANOTHER STATE, A POLITICAL SUB-
4 DIVISION OF ANOTHER STATE, OR OF THE UNITED STATES SUBSTANTIALLY
5 CORRESPONDING TO A VIOLATION DESCRIBED IN SUB-SUBPARAGRAPH (A) OR
6 (B).

7 (iii) THE PERSON HAS NEVER ORGANIZED OR MAINTAINED AN ILLEGAL
8 DRUG ENTERPRISE OF 2 OR MORE PERSONS.

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12 (C) IF THE PERSON IS TO BE RELEASED UNDER SUBSECTION (6),
13 THE SENTENCING JUDGE OR HIS OR HER SUCCESSOR IN OFFICE HAS CERTI-
14 FIED TO THE DEPARTMENT OF CORRECTIONS THAT HE OR SHE DOES NOT
15 OBJECT TO THE INDIVIDUAL'S RELEASE ON PAROLE.

16 (5) FOR A PERSON CONVICTED OF VIOLATING SUBSECTION (2)(A)(i)
17 BEFORE THE EFFECTIVE DATE OF THE 1997 AMENDATORY ACT THAT AMENDED
18 THIS SECTION, UPON MOTION OF THE PROSECUTING ATTORNEY, THE COURT
19 MAY CERTIFY TO THE DEPARTMENT OF CORRECTIONS THAT THE PERSON IS
20 ELIGIBLE FOR PAROLE UPON THE EXPIRATION OF 15 YEARS OF HIS OR HER
21 SENTENCE AS PROVIDED IN SUBSECTION (4)(A) AND (B).

22 (6) FOR A PERSON CONVICTED OF VIOLATING SUBSECTION (2)(A)(i)
23 SENTENCED ON OR AFTER THE EFFECTIVE DATE OF THE 1997 AMENDATORY
24 ACT THAT AMENDED THIS SECTION, UPON MOTION OF THE PROSECUTING
25 ATTORNEY MADE WITHIN 1 YEAR AFTER SENTENCING, THE COURT MAY CER-
26 TIFY TO THE DEPARTMENT OF CORRECTIONS THAT THE PERSON IS ELIGIBLE
27 FOR PAROLE UPON THE EXPIRATION OF 15 YEARS OF HIS OR HER SENTENCE

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1 AS PROVIDED IN SUBSECTION (4)(A) TO (C). UPON MOTION OF THE
2 PROSECUTING ATTORNEY MADE 1 YEAR OR MORE AFTER SENTENCING, THE
3 COURT MAY CERTIFY TO THE DEPARTMENT OF CORRECTIONS THAT THE
4 PERSON IS ELIGIBLE FOR PAROLE UPON EXPIRATION OF 15 YEARS OF HIS
5 OR HER SENTENCE AS PROVIDED IN SUBSECTION (4)(A) TO (C) ONLY IF
6 THE COOPERATION INVOLVED INFORMATION OR EVIDENCE NOT KNOWN BY
7 THAT PERSON UNTIL 1 YEAR OR MORE AFTER SENTENCING.

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

18 (a) The person is within the jurisdiction of the circuit
19 court or recorder's court of the city of Detroit under
20 section 606 of the revised judicature act of 1961, ~~Act No. 236~~
21 ~~of the Public Acts of 1961, being section 600.606 of the Michigan~~
22 ~~Compiled Laws~~ 1961 PA 236, MCL 600.606, section 4 of chapter
23 XIIIA of ~~Act No. 288 of the Public Acts of 1939, being~~
24 ~~section 712A.4 of the Michigan Compiled Laws,~~ 1939 PA 288, MCL
25 712A.4, or section 10a(1)(c) of ~~Act No. 369 of the Public Acts~~
26 ~~of 1919, being section 725.10a of the Michigan Compiled Laws~~
27 1919 PA 369, MCL 715.10A.

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1 (b) The person is being sentenced under section 18(1)(n) of
2 chapter XIIIA of ~~Act No. 288 of the Public Acts of 1939, being~~
3 ~~section 712A.18 of the Michigan Compiled Laws~~ 1939 PA 288, MCL
4 712A.18.

5 (8) ~~(5)~~ As used in this section:

6 (a) "Assaultive crime" means a violation of chapter XI of
7 the Michigan penal code, ~~Act No. 328 of the Public Acts of 1931,~~
8 ~~being sections 750.81 to 750.90 of the Michigan Compiled Laws~~
9 1931 PA 328, MCL 750.81 TO 750.90.

10 (b) "Plant" means a marihuana plant that has produced coty-
11 ledons or a cutting of a marihuana plant that has produced
12 cotyledons.

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

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

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

26 (i) Which is in an amount of 650 grams or more of any
27 mixture containing that substance is guilty of a felony and shall

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1 be imprisoned for life ~~except as otherwise provided in this~~
2 ~~subparagraph. A person convicted of violating this subparagraph~~
3 ~~may be punished as provided by law by imposing a sentence of~~
4 ~~imprisonment for any term of years but not less than 25 years if~~
5 ~~any of the following apply:~~ OR ANY TERM OF YEARS BUT NOT LESS
6 THAN 25 YEARS.

7 ~~(A) The person is within the jurisdiction of the circuit~~
8 ~~court or recorder's court of the city of Detroit under~~
9 ~~section 606 of the revised judicature act of 1961, Act No. 236 of~~
10 ~~the Public Acts of 1961 being section 600.606 of the Michigan~~
11 ~~Compiled Laws, section 4 of chapter XIIIA of Act No. 288 of the~~
12 ~~Public Acts of 1939, being section 712A.4 of the Michigan~~
13 ~~Compiled Laws, or section 10a(1)(c) of Act No. 369 of the Public~~
14 ~~Acts of 1919, being section 725.10a of the Michigan Compiled~~
15 ~~Laws.~~

16 ~~(B) The person is being sentenced under section 18(1)(n) of~~
17 ~~chapter XIIIA of Act No. 288 of the Public Acts of 1939, being~~
18 ~~section 712A.18 of the Michigan Compiled Laws.~~

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

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

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1 (iv) Which is in an amount of 25 grams or more, but less
2 than 50 grams of any mixture containing that substance is guilty
3 of a felony and shall be imprisoned for not less than 1 year ~~and~~
4 ~~not~~ OR more than 4 years, and may be fined not more than
5 \$25,000.00 or placed on probation for life.

6 (v) Which is in an amount less than 25 grams of any mixture
7 containing that substance is guilty of a felony punishable by
8 imprisonment for not more than 4 years or a fine of not more than
9 \$25,000.00, or both.

10 (b) A controlled substance classified in schedule 1, 2, 3,
11 or 4, except a controlled substance for which a penalty is pre-
12 scribed in subdivision (a), (c), or (d), or a controlled sub-
13 stance analogue is guilty of a felony punishable by imprisonment
14 for not more than 2 years or a fine of not more than \$2,000.00,
15 or both.

16 (c) Lysergic acid diethylamide, peyote, mescaline, dimethyl-
17 tryptamine, psilocyn, psilocybin, or a controlled substance clas-
18 sified in schedule 5, is guilty of a misdemeanor punishable by
19 imprisonment for not more than 1 year or a fine of not more than
20 \$2,000.00, or both.

21 (d) Marihuana, is guilty of a misdemeanor punishable by
22 imprisonment for not more than 1 year or a fine of not more than
23 \$2,000.00, or both.

24 (e) An official prescription form, is guilty of a felony
25 punishable by imprisonment for not more than 1 year or a fine of
26 not more than \$2,000.00, or both.

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1 (f) A prescription form other than an official prescription
2 form, is guilty of a misdemeanor punishable by imprisonment for
3 not more than 1 year or a fine of not more than \$1,000.00, or
4 both.

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

15 (a) ~~The person is within the jurisdiction of the circuit~~
16 ~~court or recorder's court of the city of Detroit under~~
17 ~~section 606 of the revised judicature act of 1961, Act No. 236 of~~
18 ~~the Public Acts of 1961, being section 600.606 of the Michigan~~
19 ~~Compiled Laws, section 4 of chapter XIIA of Act No. 288 of the~~
20 ~~Public Acts of 1939, being section 712A.4 of the Michigan~~
21 ~~Compiled Laws, or section 10a(1)(c) of Act No. 369 of the Public~~
22 ~~Acts of 1919, being section 725.10a of the Michigan Compiled~~
23 ~~Laws.~~

24 (b) ~~The person is being sentenced under section 18(1)(n) of~~
25 ~~chapter XIIA of Act No. 288 of the Public Acts of 1939, being~~
26 ~~section 712A.18 of the Michigan Compiled Laws.~~

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1 ~~(4) As used in subsection (3) "assaultive crime" means a~~
2 ~~violation of chapter XI of the Michigan penal code, Act No. 328~~
3 ~~of the Public Acts of 1931, being sections 750.81 to 750.90 of~~
4 ~~the Michigan Compiled Laws.~~

5 Enacting section 1. This amendatory act does not take effect
6 unless all of the following bills of the 89th Legislature are
7 enacted into law:

- (a) Senate Bill No. 278.
- (b) Senate Bill No. 279.
- (c) Senate Bill No. 281.