

# Legislative Analysis



## CONTROLLED SUBSTANCES AMENDMENTS

Phone: (517) 373-8080  
<http://www.house.mi.gov/hfa>

**House Bill 5627 as introduced**  
**Sponsor: Rep. Brian K. Elder**

Analysis available at  
<http://www.legislature.mi.gov>

**House Bills 5657 and 5658 as introduced**  
**Sponsor: Rep. Gary Howell**

**Committee: Judiciary**  
**Complete to 5-26-20**

### SUMMARY:

House Bill 5627 would repeal a provision in the Public Health Code that limits plea bargaining for certain controlled substance violations. House Bills 5657 and 5658 are companion bills that would revise provisions in different acts to account for the repeal proposed by HB 5627.

**House Bill 5627** would repeal section 7415 of the Public Health Code, which limits plea bargaining in certain drug cases. Section 7415 provides that, for a defendant charged with an offense (or conspiracy to commit an offense) specified in section 7401(2)(a)(i) or (ii) or 7403(2)(a)(i) or (ii), an examining magistrate cannot dismiss the case on motion of the prosecutor unless the dismissal is with prejudice (that is, a dismissal that precludes any further action on the same charge). The prosecuting attorney cannot reduce the charge if at the end of the preliminary examination it appears to the examining magistrate that one or more of the offenses has been committed and there is probable cause to charge the defendant. The section also prohibits the court from dismissing the case on motion of the prosecuting attorney, unless the dismissal is with prejudice, and prohibits the court from accepting a plea of guilty, guilty but mentally ill, or nolo contendere unless the defendant enters such a plea to at least one of the felony offenses under section 7401(2)(a)(i) to (iv) or 7403(2)(a)(i) to (iv) or to conspiracy to commit such an offense. The consent of the prosecuting attorney on the record is required for such a plea.

The offenses referenced in section 7401(2)(a)(i) and (ii) are for the unlawful manufacture, delivery, and possession with intent to manufacture or deliver, and section 7403(2)(a)(i) and (ii) for simple possession of, a Schedule 1 or 2 controlled substance that is a narcotic drug, or a drug described in section 7214(a)(iv) (cocaine), that is in an amount of 450 grams or more of any mixture containing that substance.

MCL 333.7415 (repealed)

**House Bill 5657** would amend 1909 PA 17, which prohibits or limits the access of prisoners and employees of correctional facilities to certain items such as weapons, cell phones, and controlled substances. A person who violates the act is guilty of a felony punishable by imprisonment for up to five years or a fine of up to \$1,000, or both.

However, this penalty does not apply, and a person cannot be prosecuted under the act for giving, selling, or furnishing a controlled substance in violation of the act, if delivery of that

controlled substance is a felony punishable by imprisonment for more than five years under sections 7401 to 7415 of the Public Health Code. The bill would eliminate the reference to offenses under sections 7401 to 7415 (section 7415 would be repealed by HB 5627) and instead refer to felony offenses involving a controlled substance for which the maximum term of imprisonment exceeds five years under Part 74 of the Public Health Code.

The bill would retain, unchanged, a similar provision specifying that if the possession of a controlled substance is a felony punishable by imprisonment for more than five years under Part 74 of the Public Health Code, a person who possesses, or brings into a correctional facility, a controlled substance in violation of 1909 PA 17 could not be prosecuted under 1909 PA 17 for that possession.

MCL 800.285

**House Bill 5658** would amend the Code of Criminal Procedure to eliminate a reference to section 7415 of the Public Health Code (which would be repealed by HB 5627). Under the act, a prosecuting attorney cannot dismiss a charge without stating on the record the reasons for the discontinuance or abandonment and without the leave of the court having jurisdiction to try the offense charged, entered in its minutes. The bill would retain this provision.

However, the act also specifies that, if a defendant is charged with a major controlled substance offense, the requirements of section 7415 of the Public Health Code must apply upon the prosecuting attorney's motion to dismiss the charge. The bill would eliminate this provision.

MCL 767.29

House Bills 5657 and 5658 are tie-barred to HB 5627, which means that they could not take effect unless HB 5627 were also enacted into law.

#### **FISCAL IMPACT:**

House Bills 5627, 5657, and 5658 are companion bills to HBs 5137, 5138, and 5299. House Bills 5627, 5657, and 5658 are technical in nature and would have no fiscal impact on the state or on local units of government. HB 5627 would repeal a section of the Public Health Code that limits plea bargaining in drug cases including possession of a Schedule 1 or 2 controlled substance that is a narcotic drug, or cocaine. HB 5657 would change citation references to the Public Health Code, as described above. HB 5658 would amend the Code of Criminal Procedure to remove a reference to the section being repealed in HB 5627.

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