

# HOUSE BILL No. 5394

November 1, 2001, Introduced by Reps. McConico, Julian, Kowall and Hardman and referred to the Committee on Criminal Justice.

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 2000 PA 314.

## 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  
9 outside the scope of practice of the practitioner, licensee, or  
10 applicant.

04746'01

TVD

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

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

5 (i) Which is in an amount of 650 grams or more of any mix-  
6 ture containing that substance is guilty of a felony punishable,  
7 EXCEPT AS PROVIDED IN SUBSECTION (4), by imprisonment for life or  
8 any term of years but not less than 20 years.

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

19 (iv) Which is in an amount less than 50 grams, of any mix-  
20 ture containing that substance is guilty of a felony and shall,  
21 EXCEPT AS PROVIDED IN SUBSECTION (4), be imprisoned for not less  
22 than 1 year nor more than 20 years, and may be fined not more  
23 than \$25,000.00, or placed on probation for ~~life~~ A PERIOD OF  
24 NOT MORE THAN 5 YEARS.

25 (b) Either of the following:

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

4        (ii) Any other controlled substance classified in schedule  
5 1, 2, or 3, except marihuana is guilty of a felony punishable by  
6 imprisonment for not more than 7 years or a fine of not more than  
7 \$10,000.00, or both.

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

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

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

16       (ii) If the amount is 5 kilograms or more but less than 45  
17 kilograms, or 20 plants or more but fewer than 200 plants, by  
18 imprisonment for not more than 7 years or a fine of not more than  
19 \$500,000.00, or both.

20       (iii) If the amount is less than 5 kilograms or fewer than  
21 20 plants, by imprisonment for not more than 4 years or a fine of  
22 not more than \$20,000.00, or both.

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

26       (f) An official prescription form or a counterfeit official  
27 prescription form is guilty of a felony punishable by

1 imprisonment for not more than 20 years or a fine of not more  
2 than \$25,000.00, or both.

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

8 (3) A term of imprisonment imposed under subsection (2)(a)  
9 or section 7403(2)(a)(i), (ii), OR (iii) ~~, or (iv) shall~~ MAY be  
10 imposed to run consecutively with any term of imprisonment  
11 imposed for ~~the commission of another felony~~ ANOTHER VIOLATION  
12 OF SUBSECTION (2)(A) OR SECTION 7403(2)(A)(i), (ii), OR (iii) IF  
13 THE COURT FINDS BY CLEAR AND CONVINCING EVIDENCE THAT THE  
14 DEFENDANT WAS A PRINCIPAL ADMINISTRATOR, LEADER, OR ORGANIZER OF  
15 AT LEAST 5 OTHER INDIVIDUALS IN EACH OF THE VIOLATIONS AND THAT  
16 THE DEFENDANT RECEIVED SUBSTANTIAL INCOME WITHIN A 12-MONTH  
17 PERIOD FROM THOSE VIOLATIONS. IN DETERMINING WHETHER THE  
18 DEFENDANT WAS A PRINCIPAL ADMINISTRATOR, LEADER, OR ORGANIZER,  
19 THE COURT SHALL CONSIDER WHETHER THE DEFENDANT EXERCISED SIGNIFI-  
20 CANT DECISION-MAKING AUTHORITY, THE NATURE OF THE DEFENDANT'S  
21 PARTICIPATION IN THE COMMISSION OF THE CRIME, WHETHER THE  
22 DEFENDANT EXERCISED A SIGNIFICANT DEGREE OF PARTICIPATION IN  
23 PLANNING OR ORGANIZING THE OFFENSE, THE NATURE AND SCOPE OF THE  
24 ILLEGAL ACTIVITY, AND WHETHER THE DEFENDANT EXERCISED A SIGNIFI-  
25 CANT DEGREE OF CONTROL AND AUTHORITY OVER OTHERS. THE COURT  
26 SHALL NOT IMPOSE CONSECUTIVE TERMS OF IMPRISONMENT UNDER THIS  
27 SUBSECTION IF THE DEFENDANT IS CONVICTED OF ATTEMPTING TO VIOLATE

1 OR CONSPIRING TO VIOLATE SUBSECTION (2)(A)(i), (ii), OR (iii) OR  
2 SECTION 7403(2)(A)(i), (ii), OR (iii) AND ALSO VIOLATING SUBSEC-  
3 TION (2)(A)(i), (ii), OR (iii) OR SECTION 7403(2)(A)(i), (ii), OR  
4 (iii) IF THE CONVICTIONS ARISE OUT OF THE SAME COURSE OF CRIMINAL  
5 CONDUCT. An individual subject to a mandatory term of imprison-  
6 ment under subsection (2)(a) or section 7403(2)(a)(i), (ii),  
7 (iii), or (iv) is not eligible for probation, suspension of that  
8 sentence, or parole during that mandatory term, except to the  
9 extent that those provisions permit probation, ~~for life,~~ and  
10 shall not receive a reduction in that mandatory term of imprison-  
11 ment by disciplinary credits or any other type of sentence credit  
12 reduction.

13       (4) The court may depart from the minimum term of imprison-  
14 ment authorized under subsection ~~(2)(a)(ii)~~ (2)(A)(i), (ii),  
15 (iii), or (iv) if the court finds on the record that there are  
16 substantial and compelling reasons to do so. IF THE STATUTORY  
17 MINIMUM SENTENCE FOR THAT VIOLATION IS WITHIN THE SENTENCING  
18 RANGE APPLICABLE TO THAT DEFENDANT UNDER SENTENCING GUIDELINES,  
19 OR EXCEEDS THAT RANGE, THE COURT SHALL IMPOSE A SENTENCE WITHIN  
20 THE SENTENCING RANGE ESTABLISHED UNDER SENTENCING GUIDELINES. In  
21 addition, if any of the following apply, the court may depart  
22 from the minimum term of imprisonment authorized under subsection  
23 ~~(2)(a)(ii)~~ (2)(A)(i), (ii), (iii), or (iv) if the individual  
24 has not previously been convicted of a felony or an assaultive  
25 crime and has not been convicted of another felony or assaultive  
26 crime arising from the same transaction as the violation of this  
27 section:

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

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

8 (5) As used in this section:

9 (a) "Assaultive crime" means a violation of sections 81 to  
10 90 of the Michigan penal code, 1931 PA 328, MCL 750.81 to  
11 750.90.

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

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

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 and shall  
3 be imprisoned for life except as otherwise provided in this  
4 subparagraph. A person convicted of violating this subparagraph  
5 may, EXCEPT AS PROVIDED IN SUBSECTION (4), be punished as pro-  
6 vided by law by imposing a sentence of imprisonment for any term  
7 of years but not less than 25 years if any of the following  
8 apply:

9       (A) The person is within the jurisdiction of the circuit  
10 court under section 606 of the revised judicature act of 1961,  
11 1961 PA 236, MCL 600.606, or section 4 of chapter XIIA of the  
12 probate code of 1939, 1939 PA 288, MCL 712A.4.

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

16       (ii) Which is in an amount of 225 grams or more, but less  
17 than 650 grams, of any mixture containing that substance is  
18 guilty of a felony and shall, EXCEPT AS PROVIDED IN SUBSECTION  
19 (4), be imprisoned for not less than 20 years nor more than 30  
20 years.

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

26       (iv) Which is in an amount of 25 grams or more, but less  
27 than 50 grams of any mixture containing that substance is guilty

1 of a felony and shall, EXCEPT AS PROVIDED IN SUBSECTION (4), be  
2 imprisoned for not less than 1 year and not more than 4 years,  
3 and may be fined not more than \$25,000.00 or placed on probation  
4 for ~~life~~ A PERIOD OF NOT MORE THAN 5 YEARS.

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

9 (b) Either of the following:

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

13 (ii) A controlled substance classified in schedule 1, 2, 3,  
14 or 4, except a controlled substance for which a penalty is pre-  
15 scribed in subdivision (a), (b)(i), (c), or (d), or a controlled  
16 substance analogue is guilty of a felony punishable by imprison-  
17 ment for not more than 2 years or a fine of not more than  
18 \$2,000.00, or both.

19 (c) Lysergic acid diethylamide, peyote, mescaline, dimethyl-  
20 tryptamine, psilocyn, psilocybin, or a controlled substance clas-  
21 sified in schedule 5, 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 (d) Marihuana, is guilty of a misdemeanor punishable by  
25 imprisonment for not more than 1 year or a fine of not more than  
26 \$2,000.00, or both.



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

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

8 (3) The court may depart from the minimum term of imprison-  
 9 ment authorized under subsection ~~-(2)(a)(ii)-~~ (2)(A)(i), (ii),  
 10 (iii), or (iv) if the court finds on the record that there are  
 11 substantial and compelling reasons to do so. FOR A VIOLATION OF  
 12 SUBSECTION (2)(A)(i), (ii), (iii), OR (iv), IF THE STATUTORY MIN-  
 13 IMUM SENTENCE FOR THAT VIOLATION IS WITHIN THE SENTENCING RANGE  
 14 APPLICABLE TO THAT DEFENDANT UNDER SENTENCING GUIDELINES, OR  
 15 EXCEEDS THAT RANGE, THE COURT SHALL IMPOSE A SENTENCE WITHIN THE  
 16 SENTENCING RANGE ESTABLISHED UNDER SENTENCING GUIDELINES. In  
 17 addition, if any of the following apply, the court may depart  
 18 from the minimum term of imprisonment authorized under subsection  
 19 ~~-(2)(a)(ii)-~~ (2)(A)(i), (ii), (iii), or (iv) if the individual  
 20 has not previously been convicted of a felony or an assaultive  
 21 crime and has not been convicted of another felony or assaultive  
 22 crime arising from the same transaction as the violation of this  
 23 section:

24 (a) The person is within the jurisdiction of the circuit  
 25 court under section 606 of the revised judicature act of 1961,  
 26 1961 PA 236, MCL 600.606, or section 4 of chapter XIIA of the  
 27 probate code of 1939, 1939 PA 288, MCL 712A.4.

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

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