

HOUSE BILL NO. 5477

February 11, 2020, Introduced by Reps. Bellino and Garrett and referred to the Committee on Judiciary.

A bill to amend 1978 PA 368, entitled "Public health code," by amending sections 7403 and 7404 (MCL 333.7403 and 333.7404), section 7403 as amended by 2016 PA 307 and section 7404 as amended by 2016 PA 308, and by adding section 7412.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

- 1 Sec. 7403. (1) A person shall not knowingly or intentionally
- 2 possess a controlled substance, a controlled substance analogue, or
- 3 a prescription form unless the controlled substance, controlled



1 substance analogue, or prescription form was obtained directly
2 from, or pursuant to, a valid prescription or order of a
3 practitioner while acting in the course of the practitioner's
4 professional practice, or except as otherwise authorized by this
5 article.

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

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

9 (i) That is in an amount of 1,000 grams or more of any mixture
10 containing that substance is guilty of a felony punishable by
11 imprisonment for life or any term of years or a fine of not more
12 than \$1,000,000.00, or both.

13 (ii) That is in an amount of 450 grams or more, but less than
14 1,000 grams, of any mixture containing that substance is guilty of
15 a felony punishable by imprisonment for not more than 30 years or a
16 fine of not more than \$500,000.00, or both.

17 (iii) That is in an amount of 50 grams or more, but less than
18 450 grams, of any mixture containing that substance is guilty of a
19 felony punishable by imprisonment for not more than 20 years or a
20 fine of not more than \$250,000.00, or both.

21 (iv) That is in an amount of 25 grams or more, but less than 50
22 grams of any mixture containing that substance is guilty of a
23 felony punishable by imprisonment for not more than 4 years or a
24 fine of not more than \$25,000.00, or both.

25 (v) That is in an amount less than 25 grams of any mixture
26 containing that substance is guilty of a felony punishable by
27 imprisonment for not more than 4 years or a fine of not more than
28 \$25,000.00, or both.

29 (b) Either of the following:



1 (i) A substance described in section 7212(1)(h) or 7214(c)(ii)
2 is guilty of a felony punishable by imprisonment for not more than
3 10 years or a fine of not more than \$15,000.00, or both.

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

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

15 (d) Marihuana or a substance listed in section 7212(1)(d) is
16 guilty of a misdemeanor punishable by imprisonment for not more
17 than 1 year or a fine of not more than \$2,000.00, or both.

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

21 (3) The following individuals are not in violation of this
22 section:

23 (a) An individual who ~~seeks medical assistance for himself or~~
24 ~~herself or who~~ requires medical assistance and is presented for
25 assistance by another individual if he or she is incapacitated
26 because of a drug overdose or other perceived medical emergency
27 arising from the use of a controlled substance or a controlled
28 substance analogue that he or she possesses or possessed in an
29 amount sufficient only for personal use and the evidence of his or



1 her violation of this section is obtained as a result of ~~the~~
2 ~~individual's seeking or being~~ presented for medical assistance.

3 (b) An individual who in good faith attempts to procure
4 medical assistance for another individual or who accompanies
5 another individual who requires medical assistance for a drug
6 overdose or other perceived medical emergency arising from the use
7 of a controlled substance or a controlled substance analogue that
8 he or she possesses or possessed in an amount sufficient only for
9 personal use and the evidence of his or her violation of this
10 section is obtained as a result of the individual's attempting to
11 procure medical assistance for another individual or as a result of
12 the individual's accompanying another individual who requires
13 medical assistance to a health facility or agency.

14 (4) A health facility or agency shall develop a process for
15 notification of the parent or parents, guardian, or custodian of a
16 minor under the age of 18 who is not emancipated under 1968 PA 293,
17 MCL 722.1 to 722.6, and who ~~voluntarily presents himself or~~
18 ~~herself, or is~~ **incapacitated and is** presented by another individual
19 ~~if he or she is incapacitated,~~ to a health facility or agency for
20 emergency medical treatment as provided in subsection (3). A health
21 facility or agency shall not provide notification to a parent or
22 parents, guardian, or custodian under this subsection for
23 nonemergency treatment without obtaining the minor's consent.

24 (5) The exemption from prosecution under this section provided
25 in subsection (3) does not prevent the investigation, arrest,
26 charging, or prosecution of an individual for any other violation
27 of the laws of this state or be grounds for suppression of evidence
28 in the prosecution of any other criminal charges.

29 (6) If an individual was sentenced to lifetime probation under



1 subsection (2) (a) (iv) as it existed before March 1, 2003 and the
2 individual has served 5 or more years of that probationary period,
3 the probation officer for that individual may recommend to the
4 court that the court discharge the individual from probation. If an
5 individual's probation officer does not recommend discharge as
6 provided in this subsection, with notice to the prosecutor, the
7 individual may petition the court seeking resentencing under the
8 court rules. The court may discharge an individual from probation
9 as provided in this subsection. An individual may file more than 1
10 motion seeking resentencing under this subsection.

11 (7) As used in this section:

12 (a) "Drug overdose" means a condition including, but not
13 limited to, extreme physical illness, decreased level of
14 consciousness, respiratory depression, coma, mania, or death, that
15 is the result of consumption or use of a controlled substance or a
16 controlled substance analogue or a substance with which the
17 controlled substance or controlled substance analogue was combined,
18 or that a layperson would reasonably believe to be a drug overdose
19 that requires medical assistance.

20 (b) "Seeks medical assistance" means reporting a drug overdose
21 or other medical emergency to law enforcement, the 9-1-1 system, a
22 poison control center, or a medical provider, or assisting someone
23 in reporting a drug overdose or other medical emergency.

24 Sec. 7404. (1) A person shall not use a controlled substance
25 or controlled substance analogue unless the substance was obtained
26 directly from, or pursuant to, a valid prescription or order of a
27 practitioner while acting in the course of the practitioner's
28 professional practice, or except as otherwise authorized by this
29 article.



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

2 (a) A controlled substance classified in schedule 1 or 2 as a
3 narcotic drug or a drug described in section 7212(1)(h) or
4 7214(a)(iv) or (c)(ii) is guilty of a misdemeanor punishable by
5 imprisonment for not more than 1 year or a fine of not more than
6 \$2,000.00, or both.

7 (b) A controlled substance classified in schedule 1, 2, 3, or
8 4, except a controlled substance for which a penalty is prescribed
9 in subdivision (a), (c), or (d), or a controlled substance
10 analogue, is guilty of a misdemeanor punishable by imprisonment for
11 not more than 1 year or a fine of not more than \$1,000.00, or both.

12 (c) Lysergic acid diethylamide, peyote, mescaline,
13 dimethyltryptamine, psilocyn, psilocybin, or a controlled substance
14 classified in schedule 5 is guilty of a misdemeanor punishable by
15 imprisonment for not more than 6 months or a fine of not more than
16 \$500.00, or both.

17 (d) Marihuana, catha edulis, salvia divinorum, or a substance
18 described in section 7212(1)(d) or (i) is guilty of a misdemeanor
19 punishable by imprisonment for not more than 90 days or a fine of
20 not more than \$100.00, or both.

21 (3) The following individuals are not in violation of this
22 section:

23 (a) An individual who ~~seeks medical assistance for himself or~~
24 ~~herself or who requires medical assistance and is~~ presented for
25 assistance by another individual if he or she is incapacitated
26 because of a drug overdose or other perceived medical emergency
27 arising from the use of a controlled substance or a controlled
28 substance analogue that he or she possesses or possessed in an
29 amount sufficient only for personal use and the evidence of his or



1 her violation of this section is obtained as a result of ~~the~~
2 ~~individual's seeking or being~~ presented for medical assistance.

3 (b) An individual who in good faith attempts to procure
4 medical assistance for another individual or who accompanies
5 another individual who requires medical assistance for a drug
6 overdose or other perceived medical emergency arising from the use
7 of a controlled substance or a controlled substance analogue that
8 he or she possesses or possessed in an amount sufficient only for
9 personal use and the evidence of his or her violation of this
10 section is obtained as a result of the individual's attempting to
11 procure medical assistance for another individual or as a result of
12 the individual's accompanying another individual who requires
13 medical assistance to a health facility or agency.

14 (4) A health facility or agency shall develop a process for
15 notification of the parent or parents, guardian, or custodian of a
16 minor under the age of 18 who is not emancipated under 1968 PA 293,
17 MCL 722.1 to 722.6, and who ~~voluntarily presents himself or~~
18 ~~herself, or is~~ **incapacitated and is** presented by another individual
19 ~~if he or she is incapacitated,~~ to a health facility or agency for
20 emergency medical treatment as provided in subsection (3). A health
21 facility or agency shall not provide notification to a parent or
22 parents, guardian, or custodian under this subsection for
23 nonemergency treatment without obtaining the minor's consent.

24 (5) The exemption from prosecution under this section provided
25 in subsection (3) does not prevent the investigation, arrest,
26 charging, or prosecution of an individual for any other violation
27 of the laws of this state, or be grounds for suppression of
28 evidence in the prosecution of any other criminal charges.

29 (6) As used in this section:



1 (a) "Drug overdose" means a condition including, but not
2 limited to, extreme physical illness, decreased level of
3 consciousness, respiratory depression, coma, mania, or death, that
4 is the result of consumption or use of a controlled substance or a
5 controlled substance analogue or a substance with which the
6 controlled substance or controlled substance analogue was combined,
7 or that a layperson would reasonably believe to be a drug overdose
8 that requires medical assistance.

9 (b) "Seeks medical assistance" means reporting a drug overdose
10 or other medical emergency to law enforcement, the 9-1-1 system, a
11 poison control center, or a medical provider, or assisting someone
12 in reporting a drug overdose or other medical emergency.

13 **Sec. 7412. (1) If an individual described in subsection (4)**
14 **pleads guilty to or is found guilty of possession of a controlled**
15 **substance under section 7403 or of use of a controlled substance**
16 **under section 7404, the court, without entering a judgment of guilt**
17 **with the consent of the accused, may defer further proceedings and**
18 **place the individual on probation upon terms and conditions that**
19 **must include, but are not limited to, payment of a probation**
20 **supervision fee as prescribed in section 3c of chapter XI of the**
21 **code of criminal procedure, 1927 PA 175, MCL 771.3c, and the**
22 **completion of a screening and assessment by a substance use**
23 **disorder services program within 30 days after the deferment of the**
24 **proceedings under this section to determine whether the individual**
25 **is likely to benefit from substance use disorder services. Upon**
26 **violation of a term or condition, the court may enter an**
27 **adjudication of guilt and proceed as otherwise provided. Upon**
28 **fulfillment of the terms and conditions, the court shall discharge**
29 **the individual and dismiss the proceedings. Discharge and dismissal**



1 under this section must be without adjudication of guilt and,
2 except as otherwise provided by law, is not a conviction for
3 purposes of this section or for purposes of disqualifications or
4 disabilities imposed by law upon conviction of a crime, including
5 the additional penalties imposed for second or subsequent
6 convictions under section 7413. There may be only 2 discharges and
7 dismissals under this section as to an individual.

8 (2) All court proceedings under this section must be open to
9 the public. Except as provided in subsection (3), if the record of
10 proceedings as to the defendant is deferred under this section, the
11 record of proceedings during the period of deferral must be closed
12 to public inspection.

13 (3) Unless the court enters a judgment of guilt under this
14 section, the department of state police shall retain a nonpublic
15 record of the arrest, court proceedings, and disposition of the
16 criminal charge under this section. However, the nonpublic record
17 must be open to the following individuals and entities for the
18 purposes noted:

19 (a) The courts of this state, law enforcement personnel, the
20 department of corrections, and prosecuting attorneys for use only
21 in the performance of their duties or to determine whether an
22 employee of the court, law enforcement agency, department of
23 corrections, or prosecutor's office has violated his or her
24 conditions of employment or whether an applicant meets criteria for
25 employment with the court, law enforcement agency, department of
26 corrections, or prosecutor's office.

27 (b) The courts of this state, law enforcement personnel, and
28 prosecuting attorneys for the purpose of showing that a defendant
29 has already twice availed himself or herself of this section.



1 (c) The department of health and human services for enforcing
2 child protection laws and vulnerable adult protection laws or
3 ascertaining the preemployment criminal history of any individual
4 who will be engaged in the enforcement of child protection laws or
5 vulnerable adult protection laws.

6 (d) The Michigan commission on law enforcement standards
7 created in section 3 of the Michigan commission on law enforcement
8 standards act, 1965 PA 203, MCL 28.603, as follows:

9 (i) The court placed the individual on probation.

10 (ii) If, at the time of the request, the individual is seeking
11 licensure as a law enforcement officer under the Michigan
12 commission on law enforcement standards act, 1965 PA 203, MCL
13 28.601 to 28.615, the Michigan commission on law enforcement
14 standards may use the record to determine whether the individual
15 meets the requirements for licensure as provided in that act.

16 (iii) If the individual is licensed as a law enforcement officer
17 under the Michigan commission on law enforcement standards act,
18 1965 PA 203, MCL 28.601 to 28.615, the Michigan commission on law
19 enforcement standards may use the record to determine whether the
20 license may be revoked as provided in that act.

21 (iv) If the individual is seeking admission to a law
22 enforcement training academy, the Michigan commission on law
23 enforcement standards may use the record to determine whether the
24 individual meets the requirements for admission to the academy as
25 provided in the Michigan commission on law enforcement standards
26 act, 1965 PA 203, MCL 28.601 to 28.615.

27 (v) If the individual is seeking a waiver from the law
28 enforcement officer minimum standards regarding training
29 requirements, the Michigan commission on law enforcement standards

1 may use the record to determine whether the individual meets the
2 requirements for the waiver as provided in the Michigan commission
3 on law enforcement standards act, 1965 PA 203, MCL 28.601 to
4 28.615.

5 (4) This section only applies to an individual whose violation
6 of section 7403 or 7404 arose under all of the following
7 circumstances:

8 (a) The individual was incapacitated because of a drug
9 overdose or other perceived medical emergency arising from the use
10 of a controlled substance or controlled substance analogue that he
11 or she possessed in an amount sufficient only for personal use.

12 (b) The individual sought medical assistance for his or her
13 incapacitation.

14 (c) The evidence of the violation of section 7403 or 7404 was
15 obtained as a result of the individual's seeking medical
16 assistance.

17 (5) As used in this section:

18 (a) "Drug overdose" means a condition including, but not
19 limited to, extreme physical illness, decreased level of
20 consciousness, respiratory depression, coma, mania, or death, that
21 is the result of consumption or use of a controlled substance or a
22 controlled substance analogue or a substance with which the
23 controlled substance or controlled substance analogue was combined,
24 or that a layperson would reasonably believe to be a drug overdose
25 that requires medical assistance.

26 (b) "Seeking medical assistance" means reporting a drug
27 overdose or other medical emergency to law enforcement, the 9-1-1
28 system, a poison control center, or a medical provider, or
29 assisting someone in reporting a drug overdose or other medical



1 **emergency.**

2 Enacting section 1. This amendatory act takes effect 90 days
3 after the date it is enacted into law.

