

**SUBSTITUTE FOR
HOUSE BILL NO. 5178**

A bill to amend 1978 PA 368, entitled
"Public health code,"
by amending sections 7401, 7403, 7453, and 7457 (MCL 333.7401,
333.7403, 333.7453, and 333.7457), section 7401 as amended by 2016
PA 548, section 7403 as amended by 2016 PA 307, section 7453 as
amended by 2024 PA 18, and section 7457 as amended by 2006 PA 458,
and by adding section 5137.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 **Sec. 5137. (1) A person that receives authorization from the**
2 **department or a local government agency may establish a needle and**
3 **hypodermic syringe access program for the purposes of distributing**
4 **sterile needles or hypodermic syringes to individuals or providing**
5 **additional services, items, or equipment to individuals to decrease**



1 the spread of communicable diseases.

2 (2) The department may promulgate rules to implement
3 subsection (1), including, but not limited to, rules on
4 requirements for obtaining an authorization to establish and
5 implement a program.

6 (3) An individual is participating in a program if the
7 individual is served by a program or the individual is acting as an
8 employee or volunteer for the program. An individual who
9 participates in a program established under this section is not in
10 violation of section 7401 or 7403 or under a local ordinance
11 substantially corresponding to section 7401 or 7403, or a local
12 ordinance that provides criminal penalties for the possession of
13 drug paraphernalia, for the possession, distribution, or delivery
14 of any of the following:

15 (a) A needle or hypodermic syringe, including a needle or
16 hypodermic syringe that is empty or has not yet been used, or drug
17 paraphernalia.

18 (b) A controlled substance that is contained in a used needle,
19 used hypodermic syringe, or used drug paraphernalia, if the amount
20 of the controlled substance contained in the needle, syringe, or
21 drug paraphernalia is in a trace or residual amount.

22 (c) Drug testing equipment, including, but not limited to, a
23 test strip or reagent.

24 (4) Participation in a program established under this section
25 may be established through any evidence that is otherwise
26 admissible, including, but not limited to, either of the following:

27 (a) Testimony from a third party regarding the individual's
28 participation in a program.

29 (b) A program card or sign-in sheet.



(5) As used in this section:

(a) "Controlled substance" means that term as defined in section 7104.

(b) "Drug paraphernalia" means that term as defined in section 7451.

(c) "Local government agency" means a local health officer or a local health department or other governmental entity.

(d) "Needle and hypodermic syringe access program" or "program" means a program established under subsection (1).

Sec. 7401. (1) Except as authorized by this article, a person shall not manufacture, create, deliver, or possess with intent to manufacture, create, or deliver a controlled substance, a prescription form, or a counterfeit prescription form. A practitioner licensed by the administrator under this article shall not dispense, prescribe, or administer a controlled substance for other than legitimate and professionally recognized therapeutic or scientific purposes or outside the scope of practice of the practitioner, licensee, or applicant.

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

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

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

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



1 (iii) Which is in an amount of 50 grams or more, but less than
2 450 grams, of any mixture containing that substance is guilty of a
3 felony punishable by imprisonment for not more than 20 years or a
4 fine of not more than \$250,000.00, or both.

5 (iv) Which is in an amount less than 50 grams, of any mixture
6 containing that substance is guilty of a felony punishable by
7 imprisonment for not more than 20 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 7212(1)(h) or 7214(c) (ii)
11 is guilty of a felony punishable by imprisonment for not more than
12 20 years or a fine of not more than \$25,000.00, or both.

13 (ii) Any other controlled substance classified in schedule 1,
14 2, or 3, except marihuana or a substance listed in section
15 7212(1)(d), is guilty of a felony punishable by imprisonment for
16 not more than 7 years or a fine of not more than \$10,000.00, or
17 both.

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

21 (d) Marihuana, a mixture containing marihuana, or a substance
22 listed in section 7212(1)(d) is guilty of a felony punishable as
23 follows:

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

27 (ii) If the amount is 5 kilograms or more but less than 45
28 kilograms, or 20 plants or more but fewer than 200 plants, by
29 imprisonment for not more than 7 years or a fine of not more than



1 \$500,000.00, or both.

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

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

8 (f) A prescription form or a counterfeit prescription form is
9 guilty of a felony punishable by imprisonment for not more than 7
10 years or a fine of not more than \$5,000.00, or both.

11 (3) A term of imprisonment imposed under subsection (2)(a) may
12 be imposed to run consecutively with any term of imprisonment
13 imposed for the commission of another felony.

14 (4) If an individual was sentenced to lifetime probation under
15 subsection (2)(a)(iv) as it existed before March 1, 2003 and the
16 individual has served 5 or more years of that probationary period,
17 the probation officer for that individual may recommend to the
18 court that the court discharge the individual from probation. If an
19 individual's probation officer does not recommend discharge as
20 provided in this subsection, with notice to the prosecutor, the
21 individual may petition the court seeking resentencing under the
22 court rules. The court may discharge an individual from probation
23 as provided in this subsection. An individual may file more than 1
24 motion seeking resentencing under this subsection.

25 **(5) An individual who meets the requirements of section**
26 **5137(3) is not in violation of this section.**

27 (6) ~~(5)~~ As used in this section, "plant" means a marihuana
28 plant that has produced cotyledons or a cutting of a marihuana
29 plant that has produced cotyledons.



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

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

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

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

16 (ii) That is in an amount of 450 grams or more, but less than
17 1,000 grams, of any mixture containing that substance is guilty of
18 a felony punishable by imprisonment for not more than 30 years or a
19 fine of not more than \$500,000.00, or both.

20 (iii) That is in an amount of 50 grams or more, but less than
21 450 grams, of any mixture containing that substance is guilty of a
22 felony punishable by imprisonment for not more than 20 years or a
23 fine of not more than \$250,000.00, or both.

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

28 (v) That is in an amount less than 25 grams of any mixture
29 containing that substance is guilty of a felony punishable by



1 imprisonment for not more than 4 years or a fine of not more than
2 \$25,000.00, or both.

3 (b) Either of the following:

4 (i) A substance described in section 7212(1)(h) or 7214(c)(ii)
5 is guilty of a felony punishable by imprisonment for not more than
6 10 years or a fine of not more than \$15,000.00, or both.

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

13 (c) Lysergic acid diethylamide, peyote, mescaline,
14 dimethyltryptamine, psilocyn, psilocybin, or a controlled substance
15 classified in schedule 5 is guilty of a misdemeanor punishable by
16 imprisonment for not more than 1 year or a fine of not more than
17 \$2,000.00, or both.

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

21 (e) A prescription form is guilty of a misdemeanor punishable
22 by imprisonment for not more than 1 year or a fine of not more than
23 \$1,000.00, or both.

24 (3) The following individuals are not in violation of this
25 section:

26 (a) An individual who seeks medical assistance for ~~himself or~~
27 ~~herself~~ **the individual's self** or who requires medical assistance
28 and is presented for assistance by another individual if ~~he or she~~
29 **the individual** is incapacitated because of a drug overdose or other



perceived medical emergency arising from the use of a controlled substance or a controlled substance analogue that ~~he or she the~~ **individual** possesses or possessed in an amount sufficient only for personal use and the evidence of ~~his or her the~~ **individual's** violation of this section is obtained as a result of the individual's seeking or being presented for medical assistance.

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

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



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

(6) An individual who meets the requirements of section 5137(3) is not in violation of this section.

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

(8) ~~(7)~~—As used in this section:

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

(b) "Seeks medical assistance" means reporting a drug overdose or other medical emergency to law enforcement, the 9-1-1 system, a



1 poison control center, or a medical provider, or assisting someone
2 in reporting a drug overdose or other medical emergency.

3 Sec. 7453. (1) Subject to ~~subsection~~**subsections** (2) **and (4)**,
4 a person shall not sell or offer for sale an object specifically
5 designed for inhaling nitrous oxide for recreational purposes or
6 drug paraphernalia, knowing that the object specifically designed
7 for inhaling nitrous oxide for recreational purposes will be used
8 to inhale nitrous oxide for recreational purposes or that the drug
9 paraphernalia will be used to plant, propagate, cultivate, grow,
10 harvest, manufacture, compound, convert, produce, process, prepare,
11 test, analyze, pack, repack, store, contain, conceal, inject,
12 ingest, inhale, or otherwise introduce into the human body a
13 controlled substance.

14 (2) Before a person is arrested for a violation of subsection
15 (1), the attorney general or a prosecuting attorney shall notify
16 the person in writing, not less than 2 business days before the
17 person is to be arrested, that the person is in possession of
18 specific, defined material that has been determined by the attorney
19 general or prosecuting attorney to be an object specifically
20 designed for inhaling nitrous oxide for recreational purposes or
21 drug paraphernalia. The notice also must request that the person
22 refrain from selling or offering for sale the material and must
23 state that if the person complies with the notice, no arrest will
24 be made for a violation of subsection (1).

25 (3) If a person complies with a notice sent under subsection
26 (2), the compliance is a complete defense in a prosecution under
27 this section, as long as the compliance continues.

28 **(4) A health professional who is licensed, registered, or**
29 **otherwise authorized to engage in the practice of a health**



1 **profession under article 15, who sells or offers for sale drug**
 2 **paraphernalia in the health professional's professional capacity is**
 3 **not in violation of this section.**

4 Sec. 7457. Sections 7451 to 7455 do not apply to any of the
 5 following:

6 (a) An object sold or offered for sale to a person licensed
 7 under article 15 or under the occupational code, 1980 PA 299, MCL
 8 339.101 to ~~339.2721~~, **339.2677**, or any intern, trainee, apprentice,
 9 or assistant in a profession licensed under article 15 or under the
 10 occupational code, 1980 PA 299, MCL 339.101 to ~~339.2721~~, **339.2677**,
 11 for use in that profession.

12 (b) An object sold or offered for sale to any hospital,
 13 sanitarium, clinical laboratory, or other health care institution
 14 including a penal, correctional, or juvenile detention facility for
 15 use in that institution.

16 (c) An object sold or offered for sale to a dealer in medical,
 17 dental, surgical, or pharmaceutical supplies.

18 (d) A blender, bowl, container, spoon, or mixing device not
 19 specifically designed for a use described in section 7451.

20 (e) A hypodermic syringe or needle sold or offered for sale
 21 for the purpose of injecting or otherwise treating livestock or
 22 other animals.

23 (f) An object ~~sold, offered for sale, or given away~~ **that is**
 24 **provided** by a state or local governmental ~~agency~~ **program** or by a
 25 ~~person specifically authorized by a state or local governmental~~
 26 ~~agency to prevent the transmission of infectious agents.~~ **needle and**
 27 **hypodermic syringe access program created under section 5137.**

