

HOUSE BILL NO. 5178

October 18, 2023, Introduced by Reps. Rheingans, Brabec, Hood, Price, Morse, Byrnes, Wilson, Wegela, Arbit, Dievendorf, Hill, Morgan and Miller and referred to the Committee on Health Policy.

A bill to amend 1978 PA 368, entitled "Public health code," by amending sections 7401, 7403, 7404, 7453, and 7457 (MCL 333.7401, 333.7403, 333.7404, 333.7453, and 333.7457), section 7401 as amended by 2016 PA 548, section 7403 as amended by 2016 PA 307, section 7404 as amended by 2016 PA 308, section 7453 as added by 1988 PA 139, 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**

1 hypodermic syringe access program for the purposes of distributing
2 sterile needles or hypodermic syringes to individuals or providing
3 additional services, items, or equipment to individuals to decrease
4 the spread of communicable diseases.

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

9 (3) An individual who participates in a program or who is
10 employed by or volunteering for a program established under this
11 section is not in violation of section 7401, 7403, 7404, or 7453,
12 or under a local ordinance substantially corresponding to section
13 7401, 7403, 7404, or 7453, or a local ordinance that provides
14 criminal penalties for the possession of drug paraphernalia, for
15 the possession, use, distribution, or delivery of any of the
16 following:

17 (a) A needle, hypodermic syringe, or drug 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 an amount sufficient only for personal
22 use.

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

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

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

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

2 (5) As used in this section:

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

5 (b) "Drug paraphernalia" means that term as defined in section
6 7451.

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

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

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

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

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

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

27 (ii) Which is in an amount of 450 grams or more, but less than
28 1,000 grams, of any mixture containing that substance is guilty of
29 a felony and punishable by imprisonment for not more than 30 years

1 or a fine of not more than \$500,000.00, or both.

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

6 (iv) Which is in an amount less than 50 grams, of any mixture
7 containing that substance is guilty of a felony punishable by
8 imprisonment for not more than 20 years or a fine of not more than
9 \$25,000.00, or both.

10 (b) Either of the following:

11 (i) A substance described in section 7212(1)(h) or 7214(c) (ii)
12 is guilty of a felony punishable by imprisonment for not more than
13 20 years or a fine of not more than \$25,000.00, or both.

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

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

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

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

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

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 20
4 plants, by imprisonment for not more than 4 years or a fine of not
5 more than \$20,000.00, or both.

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

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

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

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

26 **(5) An individual who manufactures, creates, delivers, or**
27 **possesses with intent to manufacture, create, or deliver a**
28 **controlled substance who would otherwise be in violation of this**
29 **section is not in violation of this section if the individual is a**

1 **program participant in or an employee of or volunteer for a program**
2 **established under section 5137.**

3 (6) ~~(5)~~—As used in this section, "plant" means a marihuana
4 plant that has produced cotyledons or a cutting of a marihuana
5 plant that has produced cotyledons.

6 Sec. 7403. (1) A person shall not knowingly or intentionally
7 possess a controlled substance, a controlled substance analogue, or
8 a prescription form unless the controlled substance, controlled
9 substance analogue, or prescription form was obtained directly
10 from, or pursuant to, a valid prescription or order of a
11 practitioner while acting in the course of the practitioner's
12 professional practice, or except as otherwise authorized by this
13 article.

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

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

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

21 (ii) That is in an amount of 450 grams or more, but less than
22 1,000 grams, of any mixture containing that substance is guilty of
23 a felony punishable by imprisonment for not more than 30 years or a
24 fine of not more than \$500,000.00, or both.

25 (iii) That is in an amount of 50 grams or more, but less than
26 450 grams, of any mixture containing that substance is guilty of a
27 felony punishable by imprisonment for not more than 20 years or a
28 fine of not more than \$250,000.00, or both.

29 (iv) That is in an amount of 25 grams or more, but less than 50

1 grams of any mixture containing that substance is guilty of a
2 felony punishable by imprisonment for not more than 4 years or a
3 fine of not more than \$25,000.00, or both.

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

8 (b) Either of the following:

9 (i) A substance described in section 7212(1)(h) or 7214(c) (ii)
10 is guilty of a felony punishable by imprisonment for not more than
11 10 years or a fine of not more than \$15,000.00, or both.

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

18 (c) Lysergic acid diethylamide, peyote, mescaline,
19 dimethyltryptamine, psilocyn, psilocybin, or a controlled substance
20 classified in schedule 5 is guilty of a misdemeanor punishable by
21 imprisonment for not more than 1 year or a fine of not more than
22 \$2,000.00, or both.

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

26 (e) A prescription form is guilty of a misdemeanor punishable
27 by imprisonment for not more than 1 year or a fine of not more than
28 \$1,000.00, or both.

29 (3) The following individuals are not in violation of this

1 section:

2 (a) An individual who seeks medical assistance for ~~himself or~~
3 ~~herself~~ **the individual's self** or who requires medical assistance
4 and is presented for assistance by another individual if ~~he or she~~
5 **the individual** is incapacitated because of a drug overdose or other
6 perceived medical emergency arising from the use of a controlled
7 substance or a controlled substance analogue that ~~he or she~~ **the**
8 **individual** possesses or possessed in an amount sufficient only for
9 personal use and the evidence of ~~his or her~~ **the individual's**
10 violation of this section is obtained as a result of the
11 individual's seeking or being presented for medical assistance.

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

24 (4) A health facility or agency shall develop a process for
25 notification of the parent or parents, guardian, or custodian of a
26 minor under the age of 18 who is not emancipated under 1968 PA 293,
27 MCL 722.1 to 722.6, and who voluntarily presents ~~himself or~~
28 ~~herself,~~ **the individual's self**, or is presented by another
29 individual if ~~he or she~~ **the individual** is incapacitated, to a

1 health facility or agency for emergency medical treatment as
2 provided in subsection (3). A health facility or agency shall not
3 provide notification to a parent or parents, guardian, or custodian
4 under this subsection for nonemergency treatment without obtaining
5 the minor's consent.

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

11 **(6) An individual who possesses a controlled substance who**
12 **would otherwise be in violation of this section is not in violation**
13 **of this section if the individual is a program participant in or an**
14 **employee of or volunteer for a program established under section**
15 **5137.**

16 (7) ~~(6)~~—If an individual was sentenced to lifetime probation
17 under subsection (2)(a)(iv) as it existed before March 1, 2003 and
18 the individual has served 5 or more years of that probationary
19 period, the probation officer for that individual may recommend to
20 the court that the court discharge the individual from probation.
21 If an individual's probation officer does not recommend discharge
22 as provided in this subsection, with notice to the prosecutor, the
23 individual may petition the court seeking resentencing under the
24 court rules. The court may discharge an individual from probation
25 as provided in this subsection. An individual may file more than 1
26 motion seeking resentencing under this subsection.

27 (8) ~~(7)~~—As used in this section:

28 (a) "Drug overdose" means a condition including, but not
29 limited to, extreme physical illness, decreased level of

1 consciousness, respiratory depression, coma, mania, or death, that
2 is the result of consumption or use of a controlled substance or a
3 controlled substance analogue or a substance with which the
4 controlled substance or controlled substance analogue was combined,
5 or that a layperson would reasonably believe to be a drug overdose
6 that requires medical assistance.

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

11 Sec. 7404. (1) A person shall not use a controlled substance
12 or controlled substance analogue unless the substance was obtained
13 directly from, or pursuant to, a valid prescription or order of a
14 practitioner while acting in the course of the practitioner's
15 professional practice, or except as otherwise authorized by this
16 article.

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

18 (a) A controlled substance classified in schedule 1 or 2 as a
19 narcotic drug or a drug described in section 7212(1)(h) or
20 7214(a)(iv) or (c)(ii) is guilty of a misdemeanor punishable by
21 imprisonment for not more than 1 year or a fine of not more than
22 \$2,000.00, or both.

23 (b) A controlled substance classified in schedule 1, 2, 3, or
24 4, except a controlled substance for which a penalty is prescribed
25 in subdivision (a), (c), or (d), or a controlled substance
26 analogue, is guilty of a misdemeanor punishable by imprisonment for
27 not more than 1 year or a fine of not more than \$1,000.00, or both.

28 (c) Lysergic acid diethylamide, peyote, mescaline,
29 dimethyltryptamine, psilocyn, psilocybin, or a controlled substance

1 classified in schedule 5 is guilty of a misdemeanor punishable by
2 imprisonment for not more than 6 months or a fine of not more than
3 \$500.00, or both.

4 (d) Marihuana, ~~eatha edulis, salvia divinorum,~~ **Catha edulis,**
5 **Salvia divinorum,** or a substance described in section 7212(1)(d) or
6 (i) is guilty of a misdemeanor punishable by imprisonment for not
7 more than 90 days or a fine of not more than \$100.00, or both.

8 (3) The following individuals are not in violation of this
9 section:

10 (a) An individual who seeks medical assistance for ~~himself or~~
11 ~~herself~~ **the individual's self** or who requires medical assistance
12 and is presented for assistance by another individual if ~~he or she~~
13 **the individual** is incapacitated because of a drug overdose or other
14 perceived medical emergency arising from the use of a controlled
15 substance or a controlled substance analogue that ~~he or she~~ **the**
16 **individual** possesses or possessed in an amount sufficient only for
17 personal use and the evidence of ~~his or her~~ **the individual's**
18 violation of this section is obtained as a result of the
19 individual's seeking or being presented for medical assistance.

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

1 another individual who requires medical assistance to a health
2 facility or agency.

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

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

19 **(6) An individual who uses a controlled substance who would**
20 **otherwise be in violation of this section is not in violation of**
21 **this section if the individual is a program participant in or an**
22 **employee of or volunteer for a program established under section**
23 **5137.**

24 (7) ~~(6)~~—As used in this section:

25 (a) "Drug overdose" means a condition including, but not
26 limited to, extreme physical illness, decreased level of
27 consciousness, respiratory depression, coma, mania, or death, that
28 is the result of consumption or use of a controlled substance or a
29 controlled substance analogue or a substance with which the

1 controlled substance or controlled substance analogue was combined,
2 or that a layperson would reasonably believe to be a drug overdose
3 that requires medical assistance.

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

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

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

25 (3) If a person complies with a notice sent under subsection
26 (2), the compliance is a complete defense for the person against a
27 prosecution under **this** section 7453, as long as the compliance
28 continues.

29 (4) **An individual who sells or offers for sale drug**

1 **paraphernalia who would otherwise be in violation of this section**
2 **is not in violation of this section if the individual is a program**
3 **participant in or an employee of or volunteer for a program**
4 **established under section 5137.**

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

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

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

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

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

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

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