

HB

479

# Rural Alaska Community Action Program, Inc.

February 1, 1980

Thelma Buchholdt, Chairperson  
House Health, Education &  
Social Services Committee  
Pouch V  
Juneau, AK 99811

Dear Representative Buchholdt:

We have reviewed with interest two bills pertaining to alcohol and drugs that have or will be coming before your committee: namely, HB 479 and the bill drafted by Governor Hammond's office (draft dated 8/27/79). We have also followed the testimony before the House HESS Committee and find ourselves in agreement with much of what was said about the seriousness of drug and alcohol problems, and the need to establish stiffer penalties for those who participate in illegal traffic and/or use of these substances.

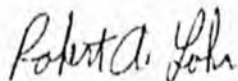
Rather than comment on the pharmacological classification and the method by which substances have been classified and penalties proposed, we want to make some general statements concerning this problem.

1. For several years Rural CAP has advocated enforcement of existing laws against illegal drug/alcohol traffic yet so far no legal or effective means has been established to support those villages whose Councils vote "dry" in enforcing their communities decision.
2. We support Governor Hammond in his classification of alcohol as a controlled substance equivalent to marijuana.
3. Proposed legislation speaks to the need to "prevent and deter abuse", but makes no statement as to how such education will be carried out or how it will be funded. There is little point in paying lip service to education. Neither bill speaks to the need for alternatives to imprisonment. We see a real need for legislation to provide a means to educate the convicted offender in a positive alternative lifestyle rather than simply sentencing him/her to jail.

5. Both bills propose to set up controlled Substances Committees, but these committees seem to be mainly designed to hold public hearings and decide on classification or re-classification of abused substances. The Parr bill specifically excludes alcohol from the considerations of this committee, yet alcohol for many people is as addictive and abused as the opium derivatives.

We would like to see your committee and other legislative committees consider these points and, if they do not seem to belong in this type of legislation, work towards some sort of legislation (including funding) which will. It will do little good to mount a massive criminal detection and prosecution program against substance abuse unless some provision is made for realistic statewide education, treatment, and enforcement, especially in rural areas, and for rehabilitation of convicted offenders. By the time most substance abuses reach this point, they are no longer using alcohol and other drugs because they want to but because they are dependent on them. Mere enforced abstinence during incarceration is not enough to change their way of dealing with problems.

Sincerely,



for Phil Smith  
Executive Director



January 2, 1980

Honorable Thelma Buchholdt, Chairwoman  
Health, Education & Social Services Committee  
Pouch V  
Juneau, Alaska 99811

Dear Representative Buchholdt,

On 1-17-80, I had the privilege of attending a teleconference conducted by your committee on HB 479. It was very encouraging to hear the testimony and the obvious interest with which it was received by yourself and your committee.

As I was unable to testify because of prior scheduling commitments, the following comments are made for your consideration:

- 1) The designation of possession quantity differentiations, for most substances, other than marijuana, is unrealistic. An example would be that 1/4 ounce of cocaine 50-60% pure would be equivalent to 1 ounce in normal street usage purity. This also applies to other chemical drugs versus marijuana where a quantity designation in Statute may be appropriate. The amount of a chemical drug in possession, purity, and intended use (sale versus individual use) are matters more readily addressed at sentencing than by Statutory proscription.
- 2) The attempt to address this type of issue, reducing possessions in small quantities of the narcotic drugs to misdemeanors, by Statute, also created the expressions of "liberalism" that was heard throughout the conference on this Bill.

While your committee is faced with hard decisions in addressing this area of social policy enforcement in face of considerable social change, further studies of this and other proposed bills are necessary. I do not feel this Bill, in the area just discussed, reflects the mainstream of citizen opinion on the issues.


BOX 580  
KENAI, ALASKA 99611  
telephone: 283-7535

City of Kenai

Having reveiwed, at some length, this Bill, Senate Bill 65, and the Governor's proposed legislation, in light of my experience in dealing with this issue in the Kenai area, I believe the proposed legislation of the Governor's to be more reflective of the majority of public opinion on the issues while still giving recognition to social realities.

Thank you for your time and consideration of these remarks.

Respectfully,

  
Chief Richard A. Ross  
Kenai Police Department  
Box 3173  
Kenai, Alaska

RAR/cd

HOUSE RESEARCH AGENCY  
Pouch Y - State Capitol  
Juneau, Alaska 99811  
465-3991

MEMORANDUM

January 28, 1980

TO: Representative Charles Parr

FROM: Jack Fagnoli, Issues Analyst  
House Research Agency

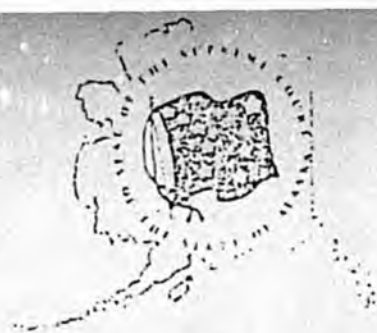
RE: Research Request No. 23  
(Drug Possession and Sales: Hawaii)

Prosecutor Lee Nakamura of the Prosecutor's Office, Department of the Attorney General in Honolulu, confirmed in a January 25 telephone conversation that the purity or concentration of controlled substances is not addressed specifically in Hawaii statutes and that, further, it is not considered as a factor in enforcement or in judicial proceedings. The purity or concentration of a drug is not used as the basis for determining the "amount" of a drug held in possession, as described in the Hawaii statutes; nor is it used as a basis in decisions to prosecute or in setting criminal sentences. However, occasionally a decision not to proceed with prosecution is reached in cases where extremely small, i.e., "trace," amounts of a controlled substance have been found in a mixture.

Mr. Nakamura informed us that all decisions to prosecute in Hawaii drug cases are made on a case by case basis, and that to date the question of drug purity has not produced any problems (or even been raised as an issue) in the federal courts. Should the courts object in the future, he said, adjustments would be made in the statutes; he did not view this as likely to occur, however.

Please let us know if you have any additional questions.

/dp



# Alaska Judicial Council

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CHAIRMAN EX OFFICIO  
JAN A. RUBINOWITZ  
CHIEF JUSTICE  
SUPREME COURT

January 11, 1980

## MEMORANDUM

TO: Michael Rubinstein

FROM: Nick Maroules

RE: Relationship of Drug and Alcohol Use to Crime

Our new felony sentencing data, which includes most felony convictions in all ten Superior Court locations from July, 1976 to July, 1979, contains information from presentence reports about drug and alcohol use. The information includes (1) indications of past (or ongoing) drug and/or alcohol addiction, (2) drug and/or alcohol use at the time of the offense, and (3) the defendant's record of previous (or current) treatment for drug and/or alcohol problems. This memorandum outlines some preliminary findings regarding relationships between drug and alcohol use and crime.

Table I below indicates that a significant positive relationship exists between drug or alcohol addiction and severity of the defendant's prior record. Specifically, those defendants identified by the presentence reporter as having had alcohol or drug problems also had substantially more serious criminal histories than those without such problems.

TABLE I

Severity of Prior Record By  
Drug/Alcohol Addiction

(N=1669)

	<u>Drug Addiction History</u>	<u>Alcohol Addiction History</u>	<u>Neither</u>	
<u>No Prior Record</u>	12.8%	14.0%	49.6%	
<u>Misdem. Only</u>	37.6%	52.0%	30.7%	
<u>One Prior Felony</u>	25.2%	21.1%	13.7%	significant at .001 (missing cases=232)
<u>Two/more Felonies</u>	24.3%	12.9%	6.1%	
	100.0% (218)	100.0% (450)	100.0% (1001)	

The above contingency distributions indicate that defendants with no histories of drug or alcohol problems were four times more likely to have been first offenders than those with a history of drug/alcohol abuse. Nearly half (49.6%) of those with no histories of substance abuse were first offenders, compared to 12.8% and 14.0%, respectively, for those with drug and alcohol problems. At the other end of the scale, those with a drug or alcohol problem were substantially more likely to have prior felony convictions than those with no such history. These observed differences are statistically significant at the .001 level which means that there is only one chance in a thousand that the differences were due to chance.

Table I indicates the overall relationship between prior record and drug/alcohol use for all defendants without regard to the type (or class) of their offense. Table A, in the appendix to this memorandum sets forth the relationship between these two variables for each of five broad classes of offense -- violent felonies, property felonies (burglary, larceny, etc.), frauds/forgeries/embezzlements, drug crimes, and "morals" offenses. An examination of these tables reveals that the relationship observed in Table I persists among all offense classes.

As noted above, our data also includes information on drug or alcohol use at the time of the offense. Table II, below, indicates the proportion of cases in which the defendant was reported to have used drugs, drugs in combination with alcohol, or alcohol alone at the time of his offense, for each of four classes of offenses (drug offenses are eliminated from this aspect of the analysis).

TABLE II

Frequency of Use of Drugs and Alcohol  
 At Time of Offense for Four Offense Classes

	<u>Used Drugs</u>	<u>Used Drugs &amp; Alcohol</u>	<u>Used Alcohol</u>
<u>Violent Offenses</u>	3.2% (19)	4.9% (29)	56.3% (330)
<u>Property Offenses</u>	4.0% (29)	4.4% (32)	39.2% (286)
<u>Forgery/Fraud Offenses</u>	2.7% (7)	0.8% (2)	9.1% (24)
<u>"Morals" Offenses</u>	1.1% (1)	9.9% (9)	46.2% (42)

Table II shows that a defendant was much more likely to have been under the influence of alcohol than drugs at the time of the offense. The magnitude of alcohol use is staggering in comparison with drugs. It should be mentioned, however, that the relative difficulty in detecting drug intoxication as compared with alcohol use probably accounts for at least a portion of this difference.

APPENDIX

TABLE A

SEVERITY OF PRIOR RECORD BY PAST  
DRUG/ALCOHOL USE FOR EACH OFFENSE CLASS

I. Violent Felonies (N=586)

	<u>Past Drug Problem</u>	<u>Past Alcohol Problem</u>	<u>Neither</u>
<u>No Priors</u>	9.3%	16.0%	47.1%
<u>Misdms. Only</u>	40.0%	53.1%	28.6%
<u>One Felony</u>	16.0%	17.8%	16.8%
<u>Two/More Felonies</u>	34.7%	13.1%	7.6%
	100.0%	100.0%	100.0%
	(75)	(213)	(238)

(60 Missing Cases)\*  
Significant at .001

II. Burglary, Larceny Offenses (N=729)

	<u>Past Drug Problem</u>	<u>Past Alcohol Problem</u>	<u>Neither</u>
<u>No Priors</u>	7.1%	10.9%	54.8%
<u>Misdms. Only</u>	27.1%	52.4%	28.5%
<u>One Felony</u>	40.0%	23.6%	11.4%
<u>Two/More Felonies</u>	25.7%	12.9%	5.3%
	100.0%	100.0%	100.0%
	(70)	(147)	(376)

(136 Missing Cases)\*  
Significant at .001

TABLE A, (Cont.)

III. Fraud, Forgery, Embezzlement Offenses (N=264)

	<u>Past Drug Problem</u>	<u>Past Alcohol Problem</u>	<u>Neither</u>
<u>No Priors</u>	26.1%	10.3%	49.2%
<u>Misdms. Only</u>	39.1%	35.9%	26.0%
<u>One Felony</u>	26.1%	35.9%	17.7%
<u>Two/More Felonies</u>	6.7%	17.9%	7.2%
	100.0%	100.0%	100.0%
	(23)	(39)	(161)

(21 Missing Cases)\*  
Significant at .001

IV. Drug Offenses (N=231)

	<u>Past Drug Problem</u>	<u>Past Alcohol Problem</u>	<u>Neither</u>
<u>No Priors</u>	23.8%	7.1%	41.3%
<u>Misdms. Only</u>	50.0%	64.3%	41.9%
<u>One Felony</u>	11.9%	21.4%	12.0%
<u>Two/More Felonies</u>	14.3%	7.1%	4.8%
	100.0%	100.0%	100.0%
	(42)	(14)	(167)

(8 Missing Cases)\*  
Significant at .05

TABLE A, (Cont.)

V. "Morals" Offenses (N=91)

	<u>Past Drug Problem</u>	<u>Past Alcohol Problem</u>	<u>Neither</u>
<u>No Priors</u>	0%	21.6%	51.3%
<u>Misdmsrs. Only</u>	37.5%	56.8%	38.5%
<u>One Felony</u>	50.0%	13.5%	5.1%
<u>Two/More Felonies</u>	<u>12.5%</u>	<u>8.1%</u>	<u>5.1%</u>
	100.0%	100.0%	100.0%
	(8)	(37)	(39)

Significant at .01

\* Cases noted as missing from the breakdown analysis concern theft for which past drug/alcohol histories or prior record information was unascertainable.

from PARR

Treatment of Marijuana

Parr Bill

Existing Law

Delivery to Minors - Class C Felony (0-5 yrs.)

0-life, \$25,000

Sale of Marijuana - 2 and 2/10 lbs or more (class C Felony)  
1/2 lb or more (3 yrs unclassified)  
less than above amounts (Class A Misdemeanor)  
one oz. or less for nonremuneration (Class B Misdemeanor)

0-25, \$20,000 1st.  
0-life, \$25,000 2nd.

Mfg. (cultivating) for other than personal use - Class C Felony

would probably fall under possession with intent to sell; see distribution penalties

-----  
\_\_\_\_\_

Possession

2 and 2/10 lbs or more (3 yr., unclassified)

would probably fall under possession with intent to distribute; see distribution penalti

one lb. or more (class A misdemeanor)

might possibly """".

display or use in public (violation)

guilty of misdemeanor and is punishable by fine of \$1000.

in immediate control while operating a motor vehicle, airplane, watercraft. (class B misdemeanor)

"" ""

minor in possession (violation)

"" ""

Penalties Under the New Criminal Code:

Class A Felony -\$50,000 or 0- 20 years or both.

Class B Felony -\$50,000 or 0- 10 years or both.

Class C Felony - \$50,000 or 0-5 years or both.

Class A Misdemeanor - \$5000 or 0-1 year or both.

Class B Misdemeanor - \$1000 or 0 - 90 days or both.

Violation - \$300 (no possible prison sentence)

Analysis of Penalty Scheme submitted to Legislative Affairs for  
Your Drug Bill

1. Delivery to Minors:

	<u>Parr Draft</u>	<u>Gov Draft</u>	<u>Fed. Law</u>	<u>Hawaii Law</u>
Schedule I ----- ----- -----	0-20 yrs. \$50,000	5-99, \$75,000	0-30 yrs. \$50,000	0-20 yrs. \$10,000
Schedule II ----- ----- -----	0-20 yrs. \$50,000	6-20 \$50,000	0-10 yrs \$30,000	0-20 yrs. \$10,000
Schedule III ----- ----- -----	0-20 yrs. \$50,000	0-20 \$50,000	0-10 yrs. \$30,000	0-20 yrs. \$10,000
Schedule IV ----- ----- -----	0-10 yrs. \$50,000	0-10 \$50,000	0 to 6 yrs. \$20,000	0-20 yrs. \$10,000
Schedule V ----- ----- -----	0-5 yrs. \$50,000	0-10 \$50,000	0-2 yrs. \$10,000	0-5 yrs. \$10,000
Schedule VI ----- ----- -----	0-5 yrs. \$50,000	0-10 \$50,000	0-2 yrs.* \$10,000	0-5 yrs.** \$10,000

\*Note: Feds don't have a Schedule VI, but this is their penalty for pot, which is the only substance in our Schedule VI. \*\* The same is true for Hawaii statutes.



TO: Charlie  
 From: Peggy Berck  
 Date: April 17, 1979

Analysis of Penalty Scheme submitted to Legislative Affairs for  
 Your Drug Bill

2. Manufacturing of Drugs.

	<u>Parr Draft</u>	<u>Gov Dr</u>	<u>Fed. Law*</u>	<u>Hawaii Law**</u>
Schedule I ----- ----- -----	0-20 yrs. \$50,000	0-20	0-15 yrs \$25,000	
Schedule II ----- ----- -----	0-20 yrs. \$50,000	0-10 \$50,000	0-5 yrs. \$15,000	
Schedule III ----- ----- -----	0-10 yrs. \$50,000	0-10 \$50,000	0-5 yrs. \$15,000	
Schedule IV ----- ----- -----	0-10 yrs. \$50,000	0-5 \$50,000	0-3 yrs. \$1,000	
Schedule V ----- ----- -----	0-5 yrs. \$50,000	0-5 \$50,000	0-1 yr. \$5000	
Schedule VI ----- ----- -----	0-5 yrs. \$50,000	0-5 \$50,000		

\*Note: Fed. law makes no distinction between mfg., distribution, or possession with intent to mfg. or distribute.

\*\*Note: Hawaii law only provides criminal penalties for distribution and possession.

TO: Charlie  
 From: Peggy  
 Date: April 18, 1979

Analysis of Penalty Scheme submitted to Legislative Affairs for Your Drug Bill

3. Distribution of Drugs.

	<u>Parr Draft</u>	<u>Fed. Law</u> <sup>Gov</sup> <sup>Dr.</sup>	<u>Hawaii Law</u>
SCHEDULE I ----- ----- ----- (opium, opiates)	50 or more caps; or 1/8 oz. or more of heroin or morphine; or 1/2 oz. or more of other Sched. I drugs= 0-20 yrs. \$50,000  If less than above= 0-10 yrs. \$50,000	0-15 yrs. <sup>0-20</sup> \$25,000 <sup>\$5,000</sup>	same amounts and same penalties as Parr Draft.  (But fines in each case are \$10,000.)
Schedule II----- ----- ----- (cocaine, amphetamines)	50 or more caps; or 1/2 oz. or more = 0-20 yrs. \$50,000  If less than above= 0-10 yrs. \$50,000	If cocaine= <sup>Gov</sup> 0-15 <sup>0-10</sup> \$25,000 <sup>\$5,000</sup> ..... If other drugs= 0-5 yrs. \$15,000	same amounts and same penalties, but for cocaine. Hawaii law treats cocaine like heroin and morphine, ie, if 1/8 oz. or more= 0-20 yrs \$10,000; if less = 0-10 yrs. \$10,000
Schedule III ----- ----- -----	50 or more caps; or 1/2 oz. or more = 0-10 yrs. \$50,000  If less than above = 0-5 yrs. \$50,000	0-5 yrs. <sup>0-10</sup> \$15,000 <sup>\$5,000</sup>	50 or more caps; or 1/8 oz. or more= 0-20 yrs. \$10,000  If less than above = 0-10. \$10,000

	<u>Parr Draft</u>	<u>Fed. Law</u>	<u>Hawaii Law</u>
Schedule IV ----- ----- -----	50 or more caps; or 1/2 oz. or more= 0- 5 yrs. \$50,000	0-3 yrs. <sup>0-5</sup> \$10,000 <sup>\$12,000</sup>	50 or more caps; or 1/8 oz. or more = 0-20 yrs. \$10,000
	If less than above= 3 yrs. \$10,000		If less than above= 0-10 yrs. \$10,000
Schedule V ----- ----- -----	50 or more caps; or 1/2 oz. or more = 3 yrs. \$10,000	0-1 yr. <sup>0-5</sup> \$5000 <sup>\$50,000</sup>	50 or more caps; or 1/8 oz. or more = 0-5 yrs. \$5000
	If less than above= 0-1 yr. \$5000		If less than above= 0-1 yr. \$1000
Schedule VI ----- ----- -----	2 and 2/10 lbs. or more= 0-5 yrs. \$50,000	0-5 yrs. <sup>0-5</sup> \$5,000 <sup>\$50,000</sup>	two ounces or more= 0-5 yrs. \$5000
	1/2 lb. or more= 0-3 yrs. \$10,000	If distribution is for small amount and for nonremuneration= 0-1 yr. \$5000	If less than above = 0-1 yr. \$1000
	If less than above = 0-1 yr. \$5000		
	Notwithstanding above, if nonremuneration distribution of one oz. or less= 0-90 days \$1000		

TO: Charlie  
 From: Peggy  
 Date: April 17, 1979

Analysis of Penalty Scheme submitted to Legislative Affairs for Your Drug Bill

4. Possession of Drugs.

	<u>Parr Draft</u>	<u>Fed. Law</u> <sup>Gov</sup>	<u>Hawaii Law</u>
Schedule I ----- ----- -----	100 or more caps; or 1 oz. or more heroin or morphine; or 2 oz. or more other Sched. I drug = 0-20 yrs. \$50,000	0-1 yr. <sup>0-5</sup> \$5000 <sup>\$50,000</sup> (If evidence of intent to distribute, ie, scales, packaging equipment, etc., = 0-15 yrs. \$25,000)	1 oz. or more heroin or morphine; 2 oz. or more other Sched. I drug = 0-20 yrs. \$10,000
	50 or more caps; or 1/4 oz. or more of heroin or morphine; or 1/2 oz. or more other Sched. I drug = 0-10 yrs. \$50,000		50 caps or more; or 1/8 oz. or more heroin or morphine; or 1/2 oz. or more other Sched. I drug = 0-10 yrs. \$10,000
	25 or more caps; or 1/8 oz. or more of heroin or morphine; or 1/4 oz. or more other Sched. I drug = 0-5 yrs. \$50,000		If less than above = 0-5 yrs. \$5000
	If less than above = 0-1 yr. \$5000		

	<u>Parr Draft</u>	<u>Fed. Law</u>	<u>Hawaii Law</u>
Schedule II -----	200 or more caps; or 2 oz. or more = 0-20 yrs. \$50,000	0-1 yr. \$5000 (If evidence of intent to distribute, ie, packaging equipment, scales, etc., the penalties are: if, cocaine = 0-15 yrs. \$25,000 if, other drugs = 0-5 yrs. \$15,000)	1 oz. or more of cocaine; or 2 oz. or more of the other Sched. II drugs = 0-20 yrs. \$10,000  50 caps or more; or 1/8 oz. or more of cocaine; or 1/2 oz. or more of other Sched. II drugs = 0-10 yrs. \$10,000
	100 or more caps; or 1/2 oz. or more = 0-10 yrs. \$50,000		
	50 or more caps; or 1/4 oz. or more = 0-5 yrs. \$50,000		
	If less than above specified amounts = 0-1 yr. \$5000		If less than above specified amounts = 0-5 yrs. \$5000
Schedule III ----- (HA.-Hash) -----	400 or more caps; or 2 oz. or more = 0-10 yrs. \$50,000	0-1 yr. \$5000 (If evidence of intent to distribute, ie, scales, packaging equipment, tec., the penalties are: 0-5 yrs. \$15,000.)	400 or more caps = 0-20 yrs. \$10,000.  50 or more caps; or 1/8 of oz. or more = 0-10 yrs. \$10,000.
	100 or more caps; or 1/2 oz. or more = 0-5 yrs. \$50,000		
	If less than the above specified amounts = 0-1 yr. \$5000		If less than the above specified amounts = 0-1 yr. \$1000

*Gov*  
*0-5*  
*\$50,000*

*0-1*  
*\$5000*

	<u>Parr Draft</u>	<u>Fed. Law</u>	<sup>Gov</sup>	<u>Hawaii Law</u>
Schedule IV -----	400 or more caps; or	0-1 yr.	0-1	400 or more caps =
-----	2 oz. or more =	\$5000	\$5000	0-20 yrs.
-----	0-5 yrs.	(If evidence		\$10,000.
	\$50,000	of intent to		
		distribute, ie,		50 or more caps;
	100 or more caps; or	scales, packaging		or 1/8 oz. or
	1/2 oz. or more =	equipment, etc.,		more = 0-10 yrs.
	0-3 yrs.	penalty is:		\$10,000.
	\$10,000	0-3 yrs.		
		\$10,000.)		
	If less than the			If less than the
	above specified			above specified
	amounts =			amounts = 0-1 yr.
	0-1 yr.			\$1000.
	\$5000			

Schedule V -----	400 or more caps; or	0-1 yr.	0-1	400 or more caps;
-----	1 oz. or more =	\$5000	\$5,000	or 1 oz. or more =
-----	0-3 yrs.	(If evidence		0-5 yrs.
	\$10,000	of intent to		\$5000.
		distribute =		
		0-1 yr.		50 or more caps;
		\$5000.)		or 1/8 oz. or
	If less than the			more = 0-1 yr.
	above specified			\$1000.
	amounts = 0-1 yr.			
	\$5000.			If less than the
				above specified
				amounts = petty
				misdemeanor =
				0-30 days
				\$500.

Schedule VI -----  
-----  
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<u>Parr Draft</u>	<u>Fed. Law</u>	<u>Gov's</u>	<u>Hawaii Law</u>
2 and 2/10 lbs. or more = 6-3 yrs. \$10,000.	0-1 yr. \$5000. (If evidence of intent to distribute = 0-5 yrs. \$15,000.)	1 lb. or more = 5 yrs	2 and 2/10 lbs. or more = 5 yrs. \$5000.
1 lb. or more = 0-1 yr. \$5000.			1 oz. or more = 0-1 yr. \$1000.
Any amount while operating convey- ance = 0-90 days \$1000.	←→	0-90 days \$1000	If less than the above specified amounts = petty misdemeanor =
Display or use in public = \$300	←→	0-90 days \$1000	0-30 days \$500.
Any amount if minor = \$300.	←→	0-90 days \$1000	

Existing Alaska Drug Law--Penalites for certain offenses.  
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1. Delivery to Minors.

- A. Heroin (Schedule I)\*-- first: 10-30 years; \$5000 to \$10,000.  
second: 15-30 years; up to \$25,000.  
third: life
  
  - B. Cocaine (Schedule II) -- same as heroin
  - C. Marijuana (Schedule VI) -- 0-life; \$25,000.
  - D. Amphetamines (Schedule II) -- 0-life; \$25,000
  - E. Hallucinogens (Schedule II) -- 0-life; \$25,000
- 

2. Distribution of Controlled Substances.

- A. Heroin (Schedule I) -- first: 2-10 years; \$5000  
second: 10-20 years; \$7500  
third: 20-40 years; \$10,000

(note: these are the same penalties as provided for the possession of heroin.)

- B. Cocaine (Schedule II) -- first: 2-10 years; \$5000  
second: 10-20 years; \$7500  
third: 20-40 years; \$10,000

(note: these are the same penalties as provided for the possession of heroin or cocaine and also the same as the penalties as provided for the sale of heroin.)

- C. Marijuana (Schedule VI) -- first: 0-25 years; \$20,000.  
second: 0-life; \$25,000.

(these are the same penalties as provided for the sale of hallucinogens.)

- D. Amphetamines (Schedule II) -- first: 0-25 years; \$20,000  
second: 0-life; \$ 25,000

- E. Hallucinogens (Schedule II) -- first: 0-25 years; \$20,000  
second: 0-life; \$25,000

\*Note: Existing Alaska law does not break out various drugs into schedules. Schedule notations on this memo are denoted for purposes of comparing penalties under existing law with those proposed in HB 479.

3. Possession of Controlled Substances.

A. Heroin (Schedule I) -- first: 2-10 years; \$5000  
second: 10-20 years; \$7500  
third: 20-40 years; \$10,000

B. Cocaine (Schedule II) -- first: 2-10 years; \$5000  
second: 10-20 years; \$7500  
third: 20-40 years; \$10,000

C. Hallucinogens (Schedule II) -- Misdemeanor  
0-1 year; \$1000

D. Amphetamines (Schedule II) -- Misdemeanor  
0-1 year; \$1000

3. Possession of Controlled Substances.

A. Heroin (Schedule I) -- first: 2-10 years; \$5000  
second: 10-20 years; \$7500  
third: 20-40 years; \$10,000

B. Cocaine (Schedule II) -- first: 2-10 years; \$5000  
second: 10-20 years; \$7500  
third: 20-40 years; \$10,000

C. Hallucinogens (Schedule II) -- Misdemeanor  
0-1 year; \$1000

D. Amphetamines (Schedule II) -- Misdemeanor  
0-1 year; \$1000

FISCAL NOTE

I. REQUEST

Bill/Resolution No. House Bill 479  
 Title An act revising the drug laws of the state.  
 Requested by House HESS Date 1/21/80

II. FISCAL DETAIL

Agency Affected Department of Health and Social Services  
 Program Category Affected Justice, Social Services  
 BRU, Program, or Subprogram(s) Affected Adult Confinement; Office of Alcoholism & Drug Abuse  
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 80	FY 81	FY 82	FY 83	FY 84	FY 85
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS	-0-	-0-	-0-	-0-	-0-	-0-
OTHER (Specify Fund Source)	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS

FULL TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART TIME	-0-	-0-	-0-	-0-	-0-	-0-
TEMPORARY	-0-	-0-	-0-	-0-	-0-	-0-

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

The bill as presently written does not address public health concerns. Therefore, we see minimal impact on our Department. Also our Division of Corrections reports that there is little likelihood of serious impact on prison population in the State apart from the more general impact of the presumptive provisions of the Criminal Code revision. The Department believes it would be extremely difficult to predict the effects of these provisions with any degree of reliability. If the bill were amended in line with the recommendations set forth in the attached department position paper, there would be a fiscal impact on our department and a revised fiscal note would be prepared and submitted.

*Charles Campbell*  
 Charles Campbell, Director

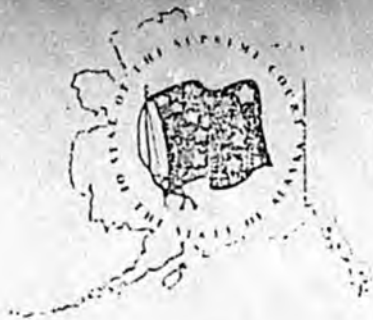
Division of Corrections 465-3376

Original: Legislative Finance  
 cc: Budget and Management  
 Prime Sponsor (First Legislator Named)

Prepared by: Robert Cole Date: 1/21/80  
~~XXXXXXXXXX~~/Office: Alco. & Drug Abuse PH: 586-6201  
 Department of Health & Social Services

33-001 (Rev. 12/79)  
 Modify by DHSS (11-28-79)

Approval DHSS Mgt. & Bdgt *McDulore* Date: 1/21/80



## Alaska Judicial Council

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420 L Street, Suite 502  
ANCHORAGE, ALASKA  
99501  
(907) 279-2526

January 11, 1980

### MEMORANDUM

TO: Michael Rubinstein

FROM: Nick Maroules

RE: Relationship of Drug and Alcohol Use to Crime

Our new felony sentencing data, which includes most felony convictions in all ten Superior Court locations from July, 1976 to July, 1979, contains information from presentence reports about drug and alcohol use. The informatic includes (1) indications of past (or ongoing) drug and/or alcohol addiction, (2) drug and/or alcohol use at the time of the offense, and (3) the defendant's record of previous (or current) treatment for drug and/or alcohol problems. This memorandum outlines some preliminary findings regarding relationships between drug and alcohol use and crime.

Table I below indicates that a significant positive relationship exists between drug or alcohol addiction and severity of the defendant's prior record. Specifically, those defendants identified by the presentence reporter as having had alcohol or drug problems also had substantially more serious criminal histories than those without such problems.

TABLE I

Severity of Prior Record By  
Drug/Alcohol Addiction. (N=1669)

	<u>Drug Addiction History</u>	<u>Alcohol Addiction History</u>	<u>Neither</u>	
No Prior <u>Record</u>	12.8%	14.0%	49.6%	
Misdem. <u>Only</u>	37.6%	52.0%	30.7%	
One Prior <u>Felony</u>	25.2%	21.1%	13.7%	significant at .001 (missing cases=232)
Two/more <u>Felonies</u>	24.3%	12.9%	6.1%	
	100.0% (218)	100.0% (450)	100.0% (1001)	

The above contingency distributions indicate that defendants with no histories of drug or alcohol problems were four times more likely to have been first offenders than those with a history of drug/alcohol abuse. Nearly half (49.6%) of those with no histories of substance abuse were first offenders, compared to 12.8% and 14.0%, respectively, for those with drug and alcohol problems. At the other end of the scale, those with a drug or alcohol problem were substantially more likely to have prior felony convictions than those with no such history. These observed differences are statistically significant at the .001 level which means that there is only one chance in a thousand that the differences were due to chance.

Table I indicates the overall relationship between prior record and drug/alcohol use for all defendants without regard to the type (or class) of their offense. Table A, in the appendix to this memorandum sets forth the relationship between these two variables for each of five broad classes of offense -- violent felonies, property felonies (burglary, larceny, etc.), frauds/forgeries/embezzlements, drug crimes, and "morals" offenses. An examination of these tables reveals that the relationship observed in Table I persists among all offense classes.

As noted above, our data also includes information on drug or alcohol use at the time of the offense. Table II, below, indicates the proportion of cases in which the defendant was reported to have used drugs, drugs in combination with alcohol, or alcohol alone at the time of his offense, for each of four classes of offenses (drug offenses are eliminated from this aspect of the analysis).

TABLE II

Frequency of Use of Drugs and Alcohol  
 At Time of Offense for Four Offense Classes

	<u>Used Drugs</u>	<u>Used Drugs &amp; Alcohol</u>	<u>Used Alcohol</u>
<u>Violent Offenses</u>	3.2% (19)	4.9% (29)	56.3% (330)
<u>Property Offenses</u>	4.0% (29)	4.4% (32)	39.2% (286)
<u>Forgery/Fraud Offenses</u>	2.7% ( 7)	0.8% ( 2)	9.1% ( 24)
<u>"Morals" Offenses</u>	1.1% ( 1)	9.9% ( 9)	46.2% ( 42)

Table II shows that a defendant was much more likely to have been under the influence of alcohol than drugs at the time of the offense. The magnitude of alcohol use is staggering in comparison with drugs. It should be mentioned, however, that the relative difficulty in detecting drug intoxication as compared with alcohol use probably accounts for at least a portion of the difference.

## APPENDIX

TABLE A

SEVERITY OF PRIOR RECORD BY PAST  
DRUG/ALCOHOL USE FOR EACH OFFENSE CLASSI. Violent Felonies (N=586)

	<u>Past Drug Problem</u>	<u>Past Alcohol Problem</u>	<u>Neither</u>
<u>No Priors</u>	9.3%	16.0%	47.1%
<u>Misdmsrs. Only</u>	40.0%	53.1%	28.6%
<u>One Felony</u>	16.0%	17.8%	16.8%
<u>Two/More Felonies</u>	<u>34.7%</u>	<u>13.1%</u>	<u>7.6%</u>
	100.0%	100.0%	100.0%
	(75)	(213)	(238)

(60 Missing Cases)\*  
Significant at .001

II. Burglary, Larceny Offenses (N=729)

	<u>Past Drug Problem</u>	<u>Past Alcohol Problem</u>	<u>Neither</u>
<u>No Priors</u>	7.1%	10.9%	54.6%
<u>Misdmsrs. Only</u>	27.1%	52.4%	28.5%
<u>One Felony</u>	40.0%	23.8%	11.4%
<u>Two/More Felonies</u>	<u>25.7%</u>	<u>12.9%</u>	<u>5.3%</u>
	100.0%	100.0%	100.0%
	(70)	(147)	(376)

(136 Missing Cases)\*  
Significant at .001

TABLE A, (Cont.)

III. Fraud, Forgery, Embezzlement Offenses (N=264)

	<u>Past Drug Problem</u>	<u>Past Alcohol Problem</u>	<u>Neither</u>
<u>No Priors</u>	26.1%	10.3%	49.2%
<u>Misdms. Only</u>	39.1%	35.9%	26.0%
<u>One Felony</u>	26.1%	35.9%	17.7%
<u>Two/More Felonies</u>	8.7%	17.9%	7.2%
	100.0%	100.0%	100.0%
	(23)	(39)	(181)

(21 Missing Cases)\*  
Significant at .001

IV. Drug Offenses (N=231)

	<u>Past Drug Problem</u>	<u>Past Alcohol Problem</u>	<u>Neither</u>
<u>No Priors</u>	23.8%	7.1%	41.3%
<u>Misdms. Only</u>	50.0%	64.3%	41.9%
<u>One Felony</u>	11.9%	21.4%	12.0%
<u>Two/More Felonies</u>	14.3%	7.1%	4.8%
	100.0%	100.0%	100.0%
	(42)	(14)	(167)

(8 Missing Cases)\*  
Significant at .05

TABLE A, (Cont.)

V. "Morals" Offenses (N=91)

	<u>Past Drug Problem</u>	<u>Past Alcohol Problem</u>	<u>Neither</u>
<u>No Priors</u>	0%	21.6%	51.3%
<u>Misdms. Only</u>	37.5%	56.8%	38.5%
<u>One Felony</u>	50.0%	13.5%	5.1%
<u>Two/More Felonies</u>	12.5%	8.1%	5.1%
	100.0%	100.0%	100.0%
	(8)	(37)	(39)

Significant at .01

\* Cases noted as missing from the breakdown analysis concern theft for which past drug/alcohol histories or prior record information was unascertainable.

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To: Charles [unclear]  
 from: Margaret W. Berch, Staff  
 Date: April, 1979

Matrix - Drug Bills

	HB 65 (1979)	Federal Controlled Substances Act	HB 549 (1978)	Recommendation of Criminal Code Revision Commission	Existing Law	Uniform Act	Hawaii
Responsibility for scheduling, classification, and adding controlled substances.	Legislature	Attorney General upon recommendation of Secretary of HHS.	Commissioner of Health and Social Services upon advice of Controlled Substances Advisory Committee.	Commissioner of Health and Social Services consultant with advice of Controlled Substances Advisory Committee.	Legislature and Commissioner of Health & Social Services.	Recommends that classification be made by "appropriate person or agency."	Legislature upon advice of state advisory commission on drug abuse.
Criteria for deciding whether drug should be controlled.	Not specified.	Eight factors, including: (1) potential for abuse (2) pharmacological effect (3) risk to public health (4) risk of psychic or physiological dependence.	Factors listed are basically identical to Federal act but also including: (1) probable physical and impact of widespread abuse of substance (2) susceptibility of segments of population	Factors listed are basically identical to HB 549.	Not specified.	Factors listed are similar to Federal Act, HB 549, and recommendation of Criminal Code Revision Commission.	Factors listed are similar to Federal Act, HB 549, and recommendation of Criminal Code Revision Commission.
Criteria for deciding in which schedule drug should be classified.	Not specified.	Five schedule tests are specified - factors are: (1) potential for abuse (2) accepted medical use; and (3) psychological or physical dependence.	Criteria for deciding whether drug should be controlled are examined in determining "danger or probable danger of the substance." Drugs with highest danger are classified in most serious schedule. Drugs with less danger are classified in successively less serious schedules.	Adopts approach identical to HB 549.	Not specified.	Schedule tests similar to Federal Act.	Schedule tests similar to Federal Act.

	SH 65 (1979)	Federal Controlled Substances Act	SH 549 (1978)	Recommendation of Criminal Code Revision Commission	Existing Law	Uniform Act	Hawaii
Increased penalties for large scale drug trafficking.	"Continuing criminal enterprise" provision provides for increased penalties for defendant convicted of drug felony involving five or more persons if defendant is an organizer and obtains substantial income from activity.	SH 65 provision is taken from 18 USC §848.	Presumptive sentencing in criminal code provides that presumptive sentence may be increased if defendant is part of an organization which brings controlled substances into state or defendant has brought large amounts of controlled substances into state.	Did not consider. However, original code provides that if defendant was a member of a group of five or more persons and offense was committed to further goals of group, presumptive sentence may be increased to statutory maximum.	None	Not specifically, but second and subsequent offenses result in authorized sentence being doubled.	Not specifically, but increased sentence is authorized for second and subsequent offenses.
Authorization of unannounced entries into buildings pursuant to warrant.	"No-knock" allowed if probable cause shown that if notice is given (1) drugs will be easily destroyed; or (2) safety of officer in danger; and (3) court has authorized "no-knock" entry.	SH 65 provision is taken from 18 USC §879.	None	None	None	None	None

**PENALTIES**

	SB 65 (1979)	Federal Controlled Substances Act	HB 549 (1978)	Recommendation of Criminal Code Revision Commission	Existing Law	Uniform Act	Hawaii
Delivery of heroin to minor	0-11fo/\$25,000	0-30/\$50,000 - first 0-45/\$75,000- second	0-20/\$20,000 7 years presumptive for first 10-1/2 years presumptive for second 14 years presumptive for third.	Sale to minor is an aggravating factor at sentencing which increases the presumptive sentence up to the statutory maximum for an ordinary sale.	10-30/\$5,000-\$10,000 - first 15-30/\$25,000-second life - third	If defendant is 18 or older and minor is 18 or under and three years his junior, authorized penalties are doubled.	If minor is three years defendant's junior - 20 years/\$10,000.
Delivery of cocaine to minor	0-11fo/\$25,000	0-30/\$50,000 - first 0-45/\$75,000- second	0-15/\$20,000 5 year presumptive for first 7-1/2 year presumptive for second 10 year presumptive for third	Sale to minor is an aggravating factor at sentencing which increases the presumptive sentence up to the statutory maximum for an ordinary sale.	Same as heroin.	If defendant is 18 or older and minor is 18 or under and three years his junior, authorized penalties are doubled.	If minor is three years defendant's junior - 20 years/\$10,000.
Delivery of marijuana to minor	0-11fo/\$25,000	0-2/\$10,000 - first 0-4/\$20,000- second	0-1-1/2/\$5,000 6 month presumptive for first 9 month presumptive for second 12 month presumptive for third	Sale to minor is an aggravating factor at sentencing which increases the presumptive sentence up to the statutory maximum for an ordinary sale.	0-11fo/\$25,000	If defendant is 18 or older and minor is 18 or under and three years his junior, authorized penalties are doubled.	If minor is three years defendant's junior - 5 years/\$5,000.

STATUTES

Cocaine sale

Marijuana sale

	SB 65 (1979)	Federal Controlled Substances Act	HB 549 (1979)	Recommendation of Criminal Code Revision Commission	Existing Law	Uniform Act	Hawaii
Cocaine sale	2-25/\$20,000 - first 4-115c/\$25,000 - second	0-15/\$25,000 - first 0-30/\$50,000 - second	0-5/\$20,000 1-1/2 year presumptive for first, 2-1/4 year presumptive for second, 3 year presumptive for third. Higher penalty provided for "ongoing commercial enterprise." Presumptive sentences doubled.	0-10/\$50,000 4 year presumptive for second, 6 year presumptive for third.	Same penalties as possession of heroin.	Penalty not specified.	If one-fourth or more 20 years/\$10,000 If less than one-fourth ounce = 10 years/\$10,000
Marijuana sale	0-5/\$5,000 - first 0-10/\$10,000 - second	0-5/\$15,000 - first 0-10/\$10,000 - second if distribution in - without remuneration 0-1/\$5,000 0-2/\$10,000	0-6 months/\$1,000 Presumptive \$1,000-first 1,500-second 2,000-third 0-2/\$10,000 for "ongoing commercial enterprise." No penalty for distribution of one ounce or less to person 19 or older for no remuneration.	0-6 months/\$1,000 No penalty for distribution of one ounce or less to person 18 or older for no remuneration.	0-25/\$20,000 - first 0-115c/\$25,000 - second	No penalty for distribution of small amounts not involving a profit. Penalty not otherwise specified.	2oz. or more = 0-5 yrs. \$5000 If less than above = 0-1 yr. \$1000

Penalties

	SN 65 (1979)	Federal Controlled Substances Act	HM 549 (1970)	Recommendation of Criminal Code Revision Commission	Existing Law	Uniform Act	Hawaii
HEROIN possession	0-5/\$5,000	0-1/\$5,000 - first 0-2/\$10,000 - second	0-1/\$20,000 6 month presumptive for first, 9 month presumptive for second, 1 year presumptive for third.	0-5/\$50,000 1 year presumptive for second, 1 year presumptive for third.	2-10/65,000 - first 10-20/7,500 - second 20-40/10,000 - third	MISDEMEANOR	If less than one ounce - 20 years/\$10,000. If one-eighth ounce or more - 10 years/\$10,000. If less than one-eighth ounce - 5 years/\$5,000.
COCAINE possession	0-5/\$5,000	0-1/\$5,000 - first 0-2/\$10,000 - second	0-1/\$10,000 - first 0-2/\$10,000 - second \$2,000 presumptive for first, 3 month presumptive for second.	0-1/\$5,000 for first 0-5/\$50,000 for second	Same penalties as possession of heroin.	MISDEMEANOR	Same penalties as possession of heroin.
HEROIN sale	2-25/\$20,000 - first 4-110/\$25,000 - second	0-15/\$25,000 - first 0-30/\$50,000 - second	0-10/\$20,000 3 year presumptive for first, 4-1/2 year presumptive for second, 6 year presumptive for third. Higher penalties provided for "ongoing commercial enterprise"	0-20/650,000 10 year presumptive for second, 15 year presumptive for third.	Same penalties as possession of heroin.	Penalty not specified.	If one eighth ounce or more - 20 years/\$10,000. If less than one eighth ounce - 10 yrs/\$10,000.

4-

PENALTIES

Marijuana possession

SN 65 (1979)	Federal Controlled Substances Act	HM 549 (1970)	Recommendation of Criminal Code Revision Commission	Existing law	Uniform Act	Hawaii
Does not change existing law.	0-1/\$5,000 - first 0-2/\$10,000 - second	Display or smoking in motor vehicle, vessel or airplane - include monies - \$500.  Possession of mari- juana for personal use is not unlawful.	Same as HM 549	<ol style="list-style-type: none"> <li>(1) Use of marijuana in public places</li> <li>(2) possession of one ounce or more in public places</li> <li>(3) possession of any amount while oper- ating motor vehi- cle or airplane</li> <li>(4) while under 10 possess any mari- juana - include monies - \$1,000.</li> </ol> <p>Possession for own use in other than public place or pos- session of one ounce or less in public place - civil fine \$100.</p>	Misdemeanor unless pos- session for own use.	<p>2.2 lbs. OR MORE = 5 yrs. \$5000</p> <p>1 oz. or more 1 yr. \$1000</p> <p>If less than above = 0-30 days \$500.00</p>

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Penalties	S.B. 65 (1979)	Federal Controlled Substances Act	H.B. 549 (1978)	Existing AK. LAW	Uniform Act	Hawaii Law
SALE OF Amphetamines (Parr Sch. II)	0-15 yrs / \$15,000 - first. 0-30 yrs / \$30,000 - second.	0-5 yrs. / \$15,000 - first. 0-10 yrs. / \$30,000 - second.	If ongoing commercial enterprise: 0-8 yrs / \$50,000 presumptive sentence - 3 yrs. 0-5 yrs / \$20,000 presumptive sentence - 18 months	0-25 yrs / \$20,000 - first. 0-Life / \$25,000 - second.	Penalty not specified	If 50 or more caps = 20 yrs / \$10,000 If 1/2 oz or more = 20 yrs. / \$10,000 If less than above = \$10,000 / 10 yrs.
SALE OF Hallucinogens (Parr Sch. II)	0-15 yrs. / \$15,000 - first. 0-30 yrs. / \$30,000 - second.	0-5 yrs / \$15,000 - first. 0-10 yrs. / \$30,000 - second.	If ongoing commercial enterprise: 0-5 yrs / \$20,000 presumptive sentence - 2 yrs. 0-3 yrs. / \$5000 presumptive sentence - 1 yr.	0-25 yrs. / \$20,000 - first. 0-Life / \$25,000 second.	Penalty not specified	If 50 or more caps = 20 yrs / \$10,000 If 1/2 oz or more = 20 yrs. / \$10,000 If less than above = 10 yrs / \$10,000
SALE OF Methamphetamines (Parr Sch. II)	0-15 yrs. / \$15,000 - first. 0-30 yrs. / \$30,000 - second.	0-5 yrs. / \$15,000 - first. 0-10 yrs. / \$30,000 - second.			Penalty not specified	If 50 or more caps = 20 yrs / \$10,000 If 1/2 oz or more = 20 yrs. / \$10,000 If less than above = 10 yrs. / \$10,000

Penalties	S.B. 65 (1979)	Federal Controlled Substances Act	H.B. 549 (1978)	Existing AK. LAW	Uniform Act	HAWAII LAW
SALE of VALIUM  (Parr Sch. IV)	0-5 yrs. / \$5000 - first. 0-10 yrs. / \$10,000 - SECOND.	0-3 yrs. / \$10,000 - first. 0-6 yrs. / \$20,000 - SECOND.			Penalty not specified	If 50 CAPS OR MORE = 20 yrs / \$10,000 If 1/8 oz OR MORE = 20 yrs / \$10,000 If less than above: 10 yrs / \$10,000
SALE of HASH, HASH OIL  (Parr Sch. IV) (Hawaii-Sch. III.)		0-5 yrs. / \$15,000 - first. 0-10 yrs. / \$30,000 - SECOND.	If ongoing commercial enterprise: 0-5 yrs. / \$20,000 presumptive sentence - 2 yrs.  0-3 yrs. / \$5000 presumptive sentence - 1 yr.		Penalty not specified	If 50 OR MORE CAPS = 20 yrs / \$10,000 If 1/8 oz. OR MORE = 20 yrs. / \$10,000 If less than above: 10 yrs. / \$10,000

Penalties	SB 65 (1979)	Federal Controlled Substances Act	HB 549 (1978)	Existing AK. LAW	Uniform Act	HAWAII LAW
Delivery of Amphetamines to MINORS  (Parr Sch. II)	0 - life / \$ 25,000	0 - 10 yrs. / } 1st. \$ 30,000  0 - 15 yrs. / } 2nd. \$ 45,000	0 - 15 yrs. / \$ 20,000 5 yr. presumptive sentence for 1st.	0 - Life / \$ 25,000	If defendant is 18 or older and minor is 18 or under and 3 yrs. his junior, authorized prison penalties are doubled.	If MINOR is three yrs. Defendant's junior = 20 yrs / \$ 10,000
Delivery of Hallucinogens to MINORS  (Parr Sch. II)	0 - life / \$ 25,000	0 - 10 yrs. / } 1st. \$ 30,000  0 - 15 yrs. / } 2nd. \$ 45,000	0 - 7 yrs. / \$ 10,000 2 yr. presumptive sentence for 1st.	0 - Life / \$ 25,000	If defendant is 18 or older AND MINOR is 18 or under and 3 yrs. his junior, authorized imprisonment penalties are doubled.	If MINOR is three yrs. Defendant's junior = 20 yrs / \$ 10,000
Delivery of methagulones to MINORS  (Parr Sch. II)	0 - life \$ 25,000	0 - 10 yrs. / } 1st. \$ 30,000  0 - 15 yrs. / } 2nd. \$ 45,000			If defendant is 18 or older AND MINOR is 18 or under and 3 yrs. his junior, authorized imprisonment penalties are doubled.	If MINOR is three yrs. Defendant's junior = 20 yrs. / \$ 10,000

Penalties	SB 65 (1979)	Federal Controlled SUBSTANCES ACT	HB 549 (1978)	Existing AK. LAW	Uniform Act	HAWAII LAW
Delivery of VALIUM to MINORS  Parr Sch. IV)	0 - life / \$25,000	0 - 6 yrs. } 1st. \$20,000 }  0 - 9 yrs. } 2nd. \$30,000 }			If defendant is 18 yrs. or older AND MINOR is 18 or under AND 3 yrs. his junior, authorized imprison- ment penalties ARE doubled.	If MINOR is three yrs. Defendant's junior = 20 yrs. / \$10,000
Delivery of LASH, HASH OIL to MINORS  Parr Sch. IV) Hawaii-Sch. III)			0 - 7 yrs. / \$10,000 2 yr. presumptive sentence 1st.		If defendant is 18 yrs. or older AND MINOR is 18 or under AND 3 yrs. his junior, authorized imprison- ment penalties ARE doubled.	If MINOR is three yrs. Defendant's junior = 20 yrs. / \$10,000

Penalties	SB 65 (1979)	Federal Controlled Substances Act	H.B. 549 (1978)	Existing AK. LAW	Uniform Act	HAWAII LAW
Possession of Amphetamines (Parr Sch. II)	0-1 yr. / \$1000	0-1 yr. / \$5000 1st. 0-2 yr. / \$10,000 2nd.  If no prior convictions conditional discharge is permitted.	0-1 yr. / \$10,000 - 1st. 0-2 yr. / \$10,000 - 2nd. \$2,000 presumptive for 1st. 3 months presumptive for 2nd.	0-1 yr. / \$1000	Misdemeanor	If 2 oz. or more: 20 yrs. / \$10,000 If 50 caps or more or 1/2 oz. or more: 10 yrs. / \$10,000 If less than above: 5 yrs. / \$5000
Possession of Hallucinogens (Parr Sch. II)	0-1 yr. / \$1000	0-1 yr. / \$5000 1st. 0-2 yr. / \$10,000 2nd.  If no prior convictions conditional discharge is permitted.	0-1 yr. / \$2000 \$1,000 presumptive sentence	0-1 yr. / \$1000	Misdemeanor	SAME AS Amphetamines
Possession of Methagulones (Parr Sch. II)	0-1 yr. / \$1000	0-1 yr. / \$5000 1st. 0-2 yr. / \$10,000 2nd.  If no prior convictions conditional discharge is permitted.			Misdemeanor	SAME AS Amphetamines
Possession of Valium (Parr Sch. IV)	0-1 yr. / \$1000	0-1 yr. / \$5000 1st. 0-2 yr. / \$10,000 2nd.  If no prior convictions conditional discharge is permitted.			Misdemeanor	If 400 caps or more: 20 yrs. / \$10,000 If 50 caps or more: 10 yrs. / \$10,000 If less than above: 1 yr. / \$1000

Penalties	SB 65 (1974)	Federal Controlled Substances Act	H.B. 549 (1978)	Existing AK. LAW	Uniform Act	HAWAII LAW
Possession of Hash, Hash oil  (Parr Sch. IV) (Hawaii-Sch. III)		0-1 yr. / \$5000 1st. 0-2 yr. / \$10,000 2nd.  IF no prior convictions CONDITIONAL discharge is permitted.	0-1 yr. / \$2000 \$1,000 presumptive sentence		MISDEMEANOR	If 400 or more GRAMS OR 1 oz or more: 20 yrs / \$10,000  If 50 or more GRAMS or 1/8 oz or more: 10 yrs / \$10,000  If less than above: 1 yr. / \$1,000

STATE OF CALIFORNIA  
DEPARTMENT OF JUSTICE

UNIFORM CONTROLLED SUBSTANCES ACT



1978

DIVISION 10  
HEALTH AND SAFETY CODE

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Act includes Amendments through 1977

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UNIFORM CONTROLLED SUBSTANCES ACT

DIVISION 10. UNIFORM CONTROLLED SUBSTANCES ACT

CHAPTER 1. GENERAL PROVISIONS AND DEFINITIONS

11000. This division shall be known as the "California Uniform Controlled Substances Act."

11001. Unless the context otherwise requires, the definitions in this chapter govern the construction of this division.

11002. "Administer" means the direct application of a controlled substance, whether by injection, inhalation, ingestion, or any other means to the body of a patient for his immediate needs or to the body of a research subject by any of the following:

(a) A practitioner or, in his presence, by his authorized agent.

(b) The patient or research subject at the direction and in the presence of the practitioner.

11003. "Agent" means an authorized person who acts on behalf of another at the direction of a manufacturer, distributor, or dispenser. It does not include a common or contract carrier, public warehouseman, or employee of the carrier or warehouseman.

11004. "Attorney General" means the Attorney General of the State of California.

11005. "Board of Pharmacy" means the California State Board of Pharmacy.

11006. "Chief" means the Chief of the Bureau of Narcotics Enforcement of the State Department of Justice.

11006.5. "Concentrated cannabis" means the separated resin, whether crude or purified, obtained from marijuana.

11007. (a) Except for the purposes of Chapter 4 (commencing with Section 11150) of this division, "controlled substance" means a drug, substance, or immediate precursor which are included in Schedules I through V, inclusive, pursuant to Chapter 2 (commencing with Section 11053).

(b) As used in Chapter 4 (commencing with Section 11150) of this division and any provisions of this division specifying penalties for offenses defined in Chapter 4 (commencing with Section 11150), except for those offenses which are punishable under Section 11371, "controlled substance" means any drug, substance, or immediate precursor which is included in one of the five schedules contained in the Federal Controlled Substances Act (Title II, P.L. 91-513), as such schedules may be revised from time to time to add, delete, or transfer substances from one schedule to another, whether by congressional enactment or by administrative rule of the United States Attorney General adopted pursuant to Section 201 of such act. Whenever reference is made in Chapter 4 (commencing with Section 11150) of this division to a controlled substance classified in a particular schedule, the reference shall be deemed to be to a federal

controlled substance classified in the designated federal schedule, as such schedules may be so revised from time to time.

11008. "Customs broker" means a person in this state who is authorized to act as a broker for any of the following:

- (a) A person in this state who is licensed to sell, distribute, or otherwise possess any controlled substance.
- (b) A person in any other state who ships any controlled substance into this state.
- (c) A person in this state or any other state who ships or transfers any controlled substance through this state.

11009. "Deliver" or "delivery" means the actual, constructive, or attempted transfer from one person to another of a controlled substance, whether or not there is an agency relationship.

11010. "Dispense" means to deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, furnishing, packaging, labeling, or compounding necessary to prepare the substance for that delivery.

11011. "Dispenser" means a practitioner who dispenses.

11012. "Distribute" means to deliver other than by administering or dispensing a controlled substance.

11013. "Distributor" means a person who distributes. The term distributor also includes warehousemen handling or storing controlled substances and customs brokers.

11014. "Drug" means (a) substances recognized as drugs in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them; (b) substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or animals; (c) substances (other than food) intended to affect the structure or any function of the body of man or animals; and (d) substances intended for use as a component of any article specified in subdivision (a), (b), or (c) of this section. It does not include devices or their components, parts, or accessories.

11015. "Federal bureau" means the bureau of Narcotics and Dangerous Drugs of the United States Department of Justice, or its successor agency.

11016. "Furnish" has the same meaning as provided in Section 4048.5 of the Business and Professions Code.

11017. "Manufacturer" has the same meaning as provided in Section 4034 of the Business and Professions Code.

11018. "Marijuana" means all parts of the plant *Cannabis sativa* L., whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative,

mixture, or preparation of the plant, its seeds or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

11019. "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(a) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate.

(b) Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in subdivision (a), but not including the isoquinoline alkaloids of opium.

(c) Opium poppy and poppy straw.

(d) Coca leaves and any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions of coca leaves which do not contain cocaine or ecgonine.

11020. "Opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. It does not include, unless specifically designated as controlled under Chapter 2 (commencing with Section 11053) of this division, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). It does include its racemic and levorotatory forms.

11021. "Opium poppy" means the plant of the species *Papaver somniferum* L., except its seeds.

11022. "Person" means individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership, or association, or any other legal entity.

11023. "Pharmacy" has the same meaning as provided in Section 4035 of the Business and Professions Code.

11024. "Physician," "dentist," "podiatrist," "pharmacist," and "veterinarian" mean persons who are licensed to practice their respective professions in this state.

11025. "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.

11026. "Practitioner" means any of the following:

(a) A physician, dentist, veterinarian, podiatrist, or pharmacist acting within the scope of a project authorized under Article 18 (commencing with Section 429.70) of Chapter 2 of Part 1, of Division 1, or registered

nurse acting within the scope of a project authorized under Article 18 (commencing with Section 429.70) of Chapter 2 of Part 1 of Division 1, or physician's assistant acting within the scope of a project authorized under Article 18 (commencing with Section 429.70) of Chapter 2 of Part 1 of Division 1, scientific investigator, or other person licensed, registered or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a controlled substance in the course of professional practice or research in this state.

(b) A pharmacy, hospital, or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a controlled substance in the course of professional practice or research in this state.

11027. "Prescription" means an oral order for a controlled substance given individually for the person for whom prescribed, directly from the prescriber to the furnisher or indirectly by means of a written order of the prescriber.

11028. "State bureau" means the Bureau of Narcotic Enforcement of the State Department of Justice.

11029. "Production" includes the manufacture, planting, cultivation, growing, or harvesting of a controlled substance.

11030. "Ultimate user" means a person who lawfully possesses a controlled substance for his own use or for the use of a member of his household or for administering to an animal owned by him or by a member of his household.

11031. "Wholesaler" has the same meaning as provided in Section 4038 of the Business and Professions Code.

11032. Whenever reference is made to the term "narcotics" in any provision of law outside of this division, unless otherwise expressly provided, it shall be construed to mean controlled substances classified in Schedules I and II, as defined in this division. Whenever reference is made to "restricted dangerous drugs" outside of this division, unless otherwise expressly provided, it shall be construed to mean controlled substances classified in Schedules III and IV. Whenever reference is made to the term "marijuana" in any provision of law outside of this division, unless otherwise expressly provided, it shall be construed to mean marijuana as defined in this division.

## CHAPTER 2. STANDARDS AND SCHEDULES

11053. The controlled substances listed or to be listed in the schedules in this chapter are included by whatever official, common, usual, chemical, or trade name designated.

### SCHEDULE I

11054. (a) Except for purposes of Chapter 4 (commencing with

Section 11150) of this division, the controlled substances listed in this section are included in Schedule I.

(b) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers and salts is possible within the specific chemical designation:

- (1) Acetylmethadol.
- (2) Allylprodine.
- (3) Alphacetylmethadol.
- (4) Alphameprodine.
- (5) Alphamethadol.
- (6) Benzethidine.
- (7) Betacetylmethadol.
- (8) Betameprodine.
- (9) Betamethadol.
- (10) Betaprodine.
- (11) Clonitazene.
- (12) Dextromoramide.
- (13) Dextrorphan.
- (14) Diampromide.
- (15) Diethylthiambutene.
- (16) Dimenoxadol.
- (17) Dimepheptanol.
- (18) Dimethylthiambutene.
- (19) Dioxaphetyl butyrate.
- (20) Dipipanone.
- (21) Ethylmethylthiambutene.
- (22) Etonitazene.
- (23) Etexeridine.
- (24) Furethidine.
- (25) Hydroxypethidine.
- (26) Ketobemidone.
- (27) Levomoramide.
- (28) Levophenacetylmorphan.
- (29) Morpheridine.
- (30) Noracymethadol.
- (31) Norlevorphanol.
- (32) Normethadone.
- (33) Norpipanone.
- (34) Phenadoxone.
- (35) Phenampromide.
- (36) Phenomorphan.
- (37) Phenoperidine.
- (38) Piritramide.
- (39) Proheptazine.
- (40) Properidine.
- (41) Propiran.
- (42) ...moramide.
- (43) ...ridine.

(c) Any of the following opium derivatives, their salts, isomers and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers and salts of isomers is possible within the specific chemical designation:

- (1) Acetorphine.
- (2) Acetyldihydrocodeine.
- (3) Benzylmorphine.
- (4) Codeine methylbromide.
- (5) Codeine-N-oxide.
- (6) Cyprenorphine.
- (7) Desomorphine.
- (8) Dihydromorphine.
- (9) Etorphine.
- (10) Heroin.
- (11) Hydromorphinol.
- (12) Methyldesorphine.
- (13) Methyldihydromorphine.
- (14) Morphine methylbromide.
- (15) Morphine methylsulfonate.
- (16) Morphine-N-oxide.
- (17) Myrophine.
- (18) Nicocodeine.
- (19) Nicomorphine.
- (20) Normorphine.
- (21) Phocloidine.
- (22) Thebacon.

(d) Any material, compound, mixture, or preparation which contains any quantity of the following hallucinogenic substances, their salts, isomers and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (1) 3,4-methylenedioxy amphetamine.
- (2) 5-methoxy-3,4-methylenedioxy amphetamine.
- (3) 3,4,5-trimethoxy amphetamine.
- (4) Bufotenine.
- (5) Diethyltryptamine.
- (6) Dimethyltryptamine.
- (7) 4-methyl-2,5-dimethoxylamphetamine.
- (8) Ibogaine.
- (9) Lysergic acid diethylamide.
- (10) Marijuana.
- (11) Mescaline.
- (12) Peyote.
- (13) N-ethyl-3-piperidyl benzilate.
- (14) N-methyl-3-piperidyl benzilate.
- (15) Psilocybin.
- (16) Psilocyn.
- (17) Tetrahydrocannabinols.

## SCHEDULE II

11055. (a) Except for purposes of Chapter 4 (commencing with Section 11150) of this division, the controlled substances listed in this section are included in Schedule II.

(b) Any of the following substances, except those narcotic drugs listed in other schedules, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by combination of extraction and chemical synthesis:

(1) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate, with the exception of naloxone hydrochloride (N-allyl-14-hydroxy-nordihydromorphinone hydrochloride), but including the following:

- (i) Raw opium.
- (ii) Opium extracts.
- (iii) Opium fluid extracts.
- (iv) Powdered opium.
- (v) Granulated opium.
- (vi) Tincture of opium.
- (vii) Apomorphine.
- (viii) Codeine.
- (ix) Ethylmorphine.
- (x) Hydrocodone.
- (xi) Hydromorphone.
- (xii) Metopon.
- (xiii) Morphine.
- (xiv) Oxycodone.
- (xv) Oxymorphone.
- (xvi) Thebaine.

(2) Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in paragraph (1), but not including the isoquinoline alkaloids of opium.

(3) Opium poppy and poppy straw.

(4) Coca leaves and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions which do not contain cocaine or ecgonine:

(c) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, whenever the existence of these isomers, esters, ethers and salts is possible within the specific chemical designation:

- (1) Alphaprodine.
- (2) Anileridine.
- (3) Bezitramide.
- (4) Dihydrocodeine.
- (5) Diphenoxylate.
- (6) Fentanyl.

- (7) Isomethadone.
  - (8) Levomethorphan.
  - (9) Levorphanol.
  - (10) Metazocine.
  - (11) Methadone.
  - (12) Methadone—intermediate, 4-cyano-2-dimethyl-amino-4,4-diphenyl butane.
  - (13) Moramide—intermediate, 2-methyl-3-morpho-lino-1,1-diphenyl-propane-carboxylic acid.
  - (14) Pethidine.
  - (15) Pethidine—intermediate—A, 4-cyano-1-methyl-4-phenyl-piperidine.
  - (16) Pethidine—intermediate—B, ethyl-4-phenylpi-peridine-4-carboxylate.
  - (17) Pethidine—intermediate—C, 1-methyl-4-phenylpiperidine-4-carboxylic acid.
  - (18) Phenazocine.
  - (19) Piminodine.
  - (20) Racemethorphan.
  - (21) Racemorphan.
- (d) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a stimulant effect on the central nervous system:
- (1) Amphetamine, its salts, optical isomers, and salts of its optical isomers.
  - (2) Phenmetrazine and its salts.
  - (3) Any substance which contains any quantity of methamphetamine, including its salts, isomers, and salts of isomers.
  - (4) Methylphenidate.

### SCHEDULE III

11056. (a) Except for purposes of Chapter 4 (commencing with Section 11150) of this division, the controlled substances listed in this section are included in Schedule III.

(b) Unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system:

- (1) Any substance which contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid, except those substances which are specifically listed in other schedules.
- (2) Chlorhexadol.
- (3) Glutethimide.
- (4) Lysergic acid.
- (5) Lysergic acid amide.
- (6) Methaqualone and its salts.
- (7) Methypylon.
- (8) Phenylclidine.

- (9) Sulfondiethylmethane.
- (10) Sulfonethymethane.
- (11) Sulfonmethane.
- (c) Nalorphine.
- (d) Any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof:

(1) Not more than 1.8 grams of codeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium.

(2) Not more than 1.8 grams of codeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(3) Not more than 300 milligrams of dihydrocodeinone, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium.

(4) Not more than 300 milligrams of dihydrocodeinone, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(5) Not more than 1.8 grams of dihydrocodeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(6) Not more than 300 milligrams of ethylmorphine, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more ingredients in recognized therapeutic amounts.

(7) Not more than 500 milligrams of opium per 100 milliliters or per 100 grams, or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(8) Not more than 50 milligrams of morphine, or any of its salts, per 100 milliliters or per 100 grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

### SCHEDULE IV

11057. (a) Except for purposes of Chapter 4 (commencing with Section 11150) of this division, the controlled substances listed in this section are included in Schedule IV.

(b) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system:

- (1) Barbital.
- (2) Chloral betaine.
- (3) Chloral hydrate.
- (4) Ethchlorvynol.
- (5) Ethinamate.
- (6) Methohexital.
- (7) Meprobamate.

- (8) Methylphenobarbital.
- (9) Paraldehyde.
- (10) Petrichloral.
- (11) Phenobarbital.

### SCHEDULE V

11058. (a) Except for purposes of Chapter 4 (commencing with Section 11150) of this division, the controlled substances listed in this section are included in Schedule V.

(b) Any compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, which also contains one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation, valuable medicinal qualities other than those possessed by the narcotic drug alone:

- (1) Not more than 200 milligrams of codeine, or any of its salts, per 100 milliliters or per 100 grams.
- (2) Not more than 100 milligrams of dihydrocodeine, or any of its salts, per 100 milliliters or per 100 grams.
- (3) Not more than 100 milligrams of ethylmorphine, or any of its salts, per 100 milliliters or per 100 grams.
- (4) Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atrophine sulfate per dosage unit.
- (5) Not more than 100 milligrams of opium per 100 milliliters or per 100 grams.

## CHAPTER 3. REGULATION AND CONTROL

### Article 1. Reporting

11100. (a) Any manufacturer, wholesaler, retailer, or other person who sells, transfers, or otherwise furnishes any of the following substances to any person in this state shall submit a report to the State Department of Justice of all such transactions.

- (1) Phenyl-2-propanone
- (2) Methylamine
- (3) D-lysergic acid
- (4) Ergotamine Tartrate
- (5) Diethyl malonate
- (6) Malonic acid
- (7) Ethyl malonate
- (8) Barbituric acid
- (9) Piperidine

(b) The Department of Justice may adopt rules and regulations in accordance with Chapter 4.5 (commencing with Section 11371) of Division 3 of Title 2 of the Government Code that add substances to subdivision (a) if the substance is a precursor to a controlled substance and delete substances from subdivision (a). However, no regulation adding or deleting a substance shall have any effect beyond March 1 of the year

following the calendar year during which the regulation was adopted.

(c) This section shall not apply to any of the following:

(1) Any pharmacist or other authorized person who sells or furnishes such substance upon the prescription of a physician, dentist, podiatrist, or veterinarian.

(2) Any physician, dentist, podiatrist, or veterinarian who administers or furnishes such substance to his patients.

(3) Any manufacturer or wholesaler licensed by the Board of Pharmacy who sells, transfers, or otherwise furnishes such substance to a licensed pharmacy, physician, dentist, podiatrist, or veterinarian.

(d) Any manufacturer, wholesaler, retailer, or other person who sells, transfers, or otherwise furnishes any substance listed in subdivision (a) to a person in this state shall, within 72 hours thereafter, submit a report of such transaction to the Department of Justice. However, the Department of Justice may authorize the submission of such reports on a monthly basis with respect to repeated, regular transactions between the furnisher and the recipient involving the same substance if the Department of Justice determines that; (1) a pattern of regular supply of such substance exists as between the manufacturer, wholesaler, retailer, or other person who sells, transfers, or otherwise furnishes such substance and the recipient of the substance, and (2) the recipient has established a record of utilization of such substance for lawful purposes.

11101. The State Department of Justice shall provide a common reporting form for the substances in Section 11100 which contains at least the following information:

- (a) Name of the substance.
- (b) Quantity of the substance sold, transferred, or furnished.
- (c) The date the substance was sold, transferred, or furnished.
- (d) The name and address of the person buying or receiving such substance.
- (e) The name and address of the manufacturer, wholesaler.

11102. The Department of Justice may adopt all regulations necessary to carry out the provisions of this part.

11103. The theft or loss of any substance regulated pursuant to Section 11100 discovered by any licensee or any person regulated by the provisions of this chapter shall be reported to the Department of Justice within three days after such discovery.

Any difference between the quantity of any substance regulated pursuant to Section 11100 received and the quantity shipped shall be reported to the Department of Justice within three days of the receipt of actual knowledge of the discrepancy.

Any report made pursuant to this section shall also include the name of the common carrier or person who transports the substance and date of shipment of the substance.

## Article 2. Licenses: Customs Brokers and Warehouses

11120. Upon application, the Board of Pharmacy may issue a customs broker's license. Such license authorizes the transfer of a controlled substance to persons who are licensed to sell, distribute, or otherwise possess such controlled substance. The holder of such a license may receive, possess, export, and transfer such controlled substances to such persons.

11121. A customs broker in this state shall not ship or transfer any controlled substance to any of the following persons:

- (a) Any person in this state who is not licensed or authorized to sell, distribute, or otherwise possess the controlled substance.
- (b) Any person in any other state who is not licensed or authorized by such state to sell, distribute, or otherwise possess the controlled substance.
- (c) Any person in a foreign jurisdiction who does not have a legitimate reason to possess the controlled substance.

11122. (a) A controlled substance shall be stored only in a warehouse which is licensed by the Board of Pharmacy.

(b) This section shall not apply to any of the following persons:

(1) Any pharmacy or other person who is licensed or authorized by this state to sell or furnish the controlled substance upon the written prescription of a physician, dentist, podiatrist, or veterinarian, or pharmacist acting within the scope of a project authorized under Article 18 (commencing with Section 429.70) of Chapter 2 of Part 1 of Division 1, or registered nurse acting within the scope of a project authorized under Article 18 (commencing with Section 429.70) of Chapter 2 of Part 1 of Division 1, or physician's assistant acting within the scope of a project authorized under Article 18 (commencing with Section 429.70) of Chapter 2 of Part 1 of Division 1.

(2) Any physician, dentist, podiatrist, or veterinarian, or pharmacist acting within the scope of a project authorized under Article 18 (commencing with Section 429.70) of Chapter 2 of Part 1 of Division 1, or registered nurse acting within the scope of a project authorized under Article 18 (commencing with Section 429.70) of Chapter 2 of Part 1 of Division 1, or physician's assistant acting within the scope of a project authorized under Article 18 (commencing with Section 429.70) of Chapter 2 of Part 1 of Division 1 who possesses a controlled substance for administration to his patients.

(3) Any licensed laboratory in this state which is authorized to receive and use the controlled substance.

(4) Any licensed hospital in this state.

(5) Any person who obtains the controlled substance upon the prescription of a physician, dentist, podiatrist, or veterinarian, or pharmacist acting within the scope of a project authorized under Article 18 (commencing with Section 429.70) of Chapter 2 of Part 1 of Division 1, or registered nurse acting within the scope of a project authorized under Article 18 (commencing with Section 429.70) of Chapter 2 of Part 1 of Division 1, or physician's assistant acting within the scope of a project

authorized under Article 18 (commencing with Section 429.70) of Chapter 2 of Part 1 of Division 1 for his personal use.

(6) Any agent or employee of any licensed manufacturer or wholesaler who possesses the controlled substance for display purposes or furnishes such controlled substances as a sample at no cost to a licensed pharmacist, physician, dentist, podiatrist, or veterinarian, or registered nurse acting within the scope of a project authorized under Article 18 (commencing with Section 429.70) of Chapter 2 of Part 1 of Division 1, or physician's assistant acting within the scope of a project authorized under Article 18 (commencing with Section 429.70) of Chapter 2 of Part 1 of Division 1.

(7) A manufacturer licensed pursuant to Section 26685 of this code or Section 4084 or 4084.6 of the Business and Professions Code.

(8) A wholesaler licensed pursuant to Section 4084 or 4084.6 of the Business and Professions Code.

11123. (a) Upon application, the Board of Pharmacy may issue a license to store controlled substances to a warehouseman who maintains a warehouse suitable for the proper storage of the controlled substances.

(b) The Board of Pharmacy shall by regulation establish security measures in order to prevent unauthorized persons from gaining access to any area, place or premises in which controlled substances are stored, kept or maintained. Prior to the issuance of a license under this article, the Board of Pharmacy shall inspect an applicant's establishment to determine compliance with security regulations adopted by the Board of Pharmacy.

(c) As a condition to the granting of the license, the warehouseman shall agree to comply with the provisions of this division and any rules and regulations which are adopted by the Board of Pharmacy.

11124. On or before the effective date of this chapter, each licensed warehouseman shall make a complete and accurate record of all stocks of such controlled substances on hand. Thereafter, a current inventory shall be kept and preserved for at least two years from the date of making such inventory. Records and inventories shall contain such information as shall be provided by the rules and regulations promulgated by the Board of Pharmacy.

Such records shall be submitted in summary form to the Board of Pharmacy on or before July 1, 1973, and every two years thereafter.

The Board of Pharmacy shall have the right to inspect such records at the business office of the licensee at any time during business hours.

11125. Each warehouseman who applies for a license to store a controlled substance shall execute and file with the Board of Pharmacy a bond to the state as a condition to the granting of the license. The bond shall secure the faithful performance of the warehouseman of his obligations under the laws of the state and the rules and regulations which are adopted pursuant to this division and such additional obligations which he may assume under a contract with the depositor of the drug. The Board of Pharmacy may prescribe the form, amount, terms, and conditions of the bond.

11126. Any person who is injured by the breach of any obligation secured by the bond which is executed and filed pursuant to Section 11125 may sue on the bond in his own name in any court of competent jurisdiction to recover any damages he may have sustained by such breach.

11127. (a) The provisions of this article shall apply only to licenses issued by the Board of Pharmacy for customs brokers and warehouses which store controlled substances.

(b) The Board of Pharmacy shall have authority to issue licenses for customs brokers and warehouses which store controlled substances. Such licenses shall be issued in accordance with the provisions of this chapter and regulations adopted by the board pursuant thereto. All licenses issued by the Board of Pharmacy shall expire one year from the date of issue. Licenses may be renewed upon application and payment of the renewal fees if the application for renewal is made within the 30-day period prior to the date of expiration. Persons whose licenses have expired shall immediately cease the activity requiring a license, but the Board of Pharmacy shall accept applications for renewal during the 30-day period following the date of expiration if they are accompanied by the new license fee. In no case shall a license be renewed where the application is received more than 30 days after the date of expiration.

(c) Each application for a new or renewal license shall be accompanied by a fee which shall be fixed by the Board of Pharmacy at an amount not to exceed two hundred dollars (\$200). The application shall be made upon a form furnished by the Board of Pharmacy. It shall contain such information concerning the background of the applicant and his experience which the Board of Pharmacy may prescribe, in addition to any other information required by law.

11128. (a) Licenses issued by the Board of Pharmacy shall not be transferable.

(b) In the event of a change of name, not involving a change of ownership, or a change of address of the licensee, the license shall be returned to the board for cancellation, and a new license application form shall be submitted. The Board of Pharmacy shall cancel the returned license and issue a new license for the unexpired term without fee.

11129. (a) Any license issued may be suspended or revoked by the Board of Pharmacy. The Board of Pharmacy may refuse to issue a license to any applicant for the reasons set forth in subdivision (b).

The proceedings under this chapter shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the Board of Pharmacy shall have all the powers granted therein.

(b) The Board of Pharmacy may deny a license if the applicant does or has done any of the following:

(1) Fails to meet the qualifications established by the Board of Pharmacy pursuant to this chapter for the issuance of the license applied for.

(2) Was previously the holder of a license issued under this chapter which has been revoked and never reissued or was suspended and the terms of the suspension have not been fulfilled.

(3) Has committed any act which, if committed by any licensee, would be grounds for the suspension or revocation of a license issued pursuant to this chapter.

(4) Has committed any act involving dishonesty, fraud, or deceit whereby another is injured or the applicant has benefited.

(5) Has acted in the capacity of a licensed person under this division without having a license therefor.

(6) Has entered a plea of guilty or nolo contendere to, or been found guilty or convicted of, a felony or a crime involving moral turpitude and the time for appeal has elapsed or the judgment of conviction has been affirmed on appeal, irrespective of an order granting probation following the conviction or suspending the imposition of sentence, or of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing the person to withdraw his plea of guilty and to enter a plea of not guilty, setting aside the plea or verdict of guilty, or dismissing the accusation, information, or indictment.

(7) Violated any of the provisions of this division.

11130. The Board of Pharmacy may suspend, revoke, or take other disciplinary action against a license as provided in this chapter if the licensee does any of the following:

(a) Violates any section of this division which relates to his licensed activities.

(b) Is convicted of any felony.

(c) Violates any of the regulations promulgated by the Board of Pharmacy pursuant to this chapter.

(d) Has misrepresented a material fact in obtaining a license.

(e) Aids or abets an unlicensed person to evade the provisions of this division.

(f) Fails to make and keep records showing his transactions as a licensee, or fails to have such records available for inspection by the Board of Pharmacy for a period of not less than three years after completion of any transaction to which the records refer, or refuses to comply with a written request of the Board of Pharmacy to make such records available for inspection.

(g) Violates or attempts to violate the provisions of this division relating to the particular activity for which he is licensed.

(h) Fails to send a copy of the monthly reporting form to the Board of Pharmacy as required by the provisions of this chapter.

11131. A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this chapter. The Board of Pharmacy may order the license suspended or revoked, or may decline to issue a license, when the time for appeal has elapsed, the judgment of conviction has been affirmed on appeal, or an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4

of the Penal Code allowing such person to withdraw his plea of guilty and to enter a plea of not guilty, setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.

11132. The Board of Pharmacy may take disciplinary action against any licensee, after a hearing as provided in this chapter, by any of the following:

- (a) Imposing probation upon terms and conditions to be set forth by the Board of Pharmacy.
- (b) Suspending the license.
- (c) Revoking the license.

11133. The expiration or suspension of a license by operation of law or by order or decision of the board or a court, or the voluntary surrender of a license by a licensee, shall not deprive the Board of Pharmacy of jurisdiction to proceed with any investigation of, or action or disciplinary proceedings against, the licensee, or to render a decision suspending or revoking the license.

11134. All accusations against licensees shall be filed within three years after the act or omission alleged as the ground for disciplinary action.

11135. When any license has been revoked or suspended following a hearing under the provisions of this chapter, any additional license issued under this chapter in the name of the licensee may also be revoked or suspended by the Board of Pharmacy.

11136. After suspension of the license upon any of the grounds set forth in this chapter, the Board of Pharmacy may reinstate the license upon proof of compliance by the applicant with all provisions of the decision as to reinstatement. After revocation of a license upon any of the grounds set forth in this chapter, the license shall not be reinstated or reissued within a period of one year after the effective date of revocation.

## CHAPTER 4. PRESCRIPTIONS

### Article 1. Requirements of Prescriptions

11150. No person other than a physician, dentist, podiatrist, or veterinarian, or pharmacist acting within the scope of a project authorized under Article 18 (commencing with Section 429.70) of Chapter 2 of Part 1 of Division 1, or registered nurse acting within the scope of a project authorized under Article 18 (commencing with Section 429.70) of Chapter 2 of Part 1 of Division 1, or physician's assistant acting within the scope of a project authorized under Article 18 (commencing with Section 429.70) of Chapter 2 of Part 1 of Division 1 shall write a prescription.

11150.5. The provisions of this chapter shall be applicable to controlled substances subject to the Federal Controlled Substances Act (Title II, P.L. 91-513), as provided in subdivision (b) of Section 11007. References in this chapter to controlled substances classified in a particular schedule shall be

than a reference to the schedules set forth in Chapter 2 (commencing with Section 11053) of this division.

11151. A prescription written by an unlicensed person lawfully practicing medicine pursuant to Section 2147.5 of the Business and Professions Code, shall be filed only at a pharmacy maintained in the hospital which employs such unlicensed person.

11152. No person shall write, issue, fill, compound, or dispense a prescription that does not conform to this division.

11153. The responsibility for the proper prescribing and dispensing of controlled substances is upon the practitioner, but a corresponding liability rests with the pharmacist who fills the prescription. An order purporting to be a prescription issued to an addict or habitual user of controlled substances, which is not in the course of professional treatment nor part of an authorized methadone maintenance program, for the purpose of providing the user with controlled substances, sufficient to keep him comfortable by maintaining his customary use, is not a prescription within the meaning and intent of this division; and the person filling such an order, as well as the person issuing it, may be charged with violation of the law.

11154. Except in the regular practice of his profession, no person shall prescribe, administer, dispense, or furnish, a controlled substance to or for any person who is not under his treatment for a pathology or condition other than addiction to a controlled substance, except as provided in this division.

11155. Any physician, who by court order or order of any state or governmental agency, or who voluntarily surrenders his controlled substance privileges, shall not possess, administer, dispense, or prescribe a controlled substance unless and until such privileges have been restored, and he has obtained current registration from the appropriate federal agency as provided by law.

11156. No person shall prescribe for or administer, or dispense a controlled substance to an addict or habitual user, or to any person representing himself as such, except as permitted by this division.

11157. No person shall issue a prescription that is false or fictitious in any respect.

11158. Except as provided in Section 11159, no controlled substance classified in Schedule II shall be dispensed without a prescription meeting the requirements of this chapter. Except as provided in Section 11159 or when dispensed directly to an ultimate user by a practitioner, other than a pharmacist or pharmacy, no controlled substance classified in Schedule III, IV, or V may be dispensed without a prescription meeting the requirements of this chapter.

Except as otherwise prohibited or limited by law, a practitioner specified in Section 11150, may administer controlled substances in the

11159. An order for controlled substances for use by a patient in a county or licensed hospital shall be exempt from all requirements of this article, but shall be in writing on the patient's record, signed by the prescriber, dated, and shall state the name and quantity of the controlled substance ordered and the quantity actually administered. The record of such orders shall be maintained as a hospital record for a minimum of seven years.

11161. Prescription blanks shall be issued by the Department of Justice in serially numbered groups of 100 forms each in triplicate, and shall be furnished free of cost to any person authorized to write a prescription, and such prescription blanks shall not be transferable. Any person possessing any such prescription blank otherwise than as herein provided is guilty of a misdemeanor.

11162. The prescription blanks shall be printed on distinctive paper, serial number of the group being shown on each form, and also each form being serially numbered.

11163. Not more than one such prescription group shall in any case be issued or furnished by the Department of Justice to the same prescriber at one time.

11164. Except as provided in Section 11167, no person shall prescribe a controlled substance, nor shall any person fill, compound, or dispense such a prescription unless it complies with the requirements of this section.

(a) Each prescription for a controlled substance classified in Schedule II which is a narcotic drug shall be wholly written in ink or indelible pencil in the handwriting of the prescriber upon the official prescription form issued by the Department of Justice. Such prescriptions shall be prepared in triplicate, signed and dated by the prescriber, and shall contain the name and address of the person for whom the controlled substance is prescribed, the name and quantity of the controlled substance prescribed, directions for use, and the address, category of professional licensure, and the federal controlled substance registration of the prescriber. The original and one copy of such a prescription shall be delivered to the pharmacist filling the prescription. The original shall be retained by the pharmacist and the copy, properly endorsed by him, shall be transmitted to the Department of Justice at the end of the month in which the prescription was filled.

(b) Each prescription for a controlled substance classified in Schedule II which is not a narcotic drug or for a controlled substance classified in Schedule III, IV, or V, except as authorized by subdivision (c), shall be subject to the following requirements:

(1) The prescription shall be signed and dated by the prescriber and shall contain the name of the person for whom the controlled substance is prescribed, the name and quantity of controlled substance prescribed, and directions for use. With respect to prescriptions for controlled substances classified in Schedule II or III which are not narcotic drugs, the signature, date, and information required by this paragraph shall be

wholly written in ink or indelible pencil in the handwriting of the prescriber.

(2) In addition, the prescription shall contain the name, address, telephone number, category of professional licensure, and federal controlled substance registration number of the prescriber. The information required by this paragraph shall be either preprinted upon the prescription blank, typewritten, rubber stamped, or printed by hand.

(3) The prescription shall also contain the address of the person for whom the controlled substance is prescribed. If the prescriber does not specify such address on the prescription, the pharmacist filling the prescription or an employee acting under his direction shall write or type the address on the prescription.

(c) Any controlled substance classified in Schedule III, IV, or V may be dispensed upon an oral prescription, which shall be reduced to writing by the pharmacist filling the prescription or by such other person as is expressly authorized by provisions of the Business and Professions Code. The date of issue of the prescription and all the information required for a written prescription by subdivision (b) shall be included in such written record of the prescription. Pursuant to authorization of the prescriber, any employee of the prescriber on his behalf may orally transmit a prescription for a controlled substance classified in Schedule IV or V, and within a reasonable time thereafter the prescriber transmits to the pharmacist filling the prescription written evidence of the employee's authorization, and in such cases the written record of the prescription required by this subdivision shall also specify the name of the employee of the prescriber transmitting the prescription.

11165. Each written prescription for a controlled substance or for any material, compound, mixture, or preparation containing one or more controlled substances shall be set forth on a separate prescription blank.

11166. No person shall fill a prescription for a controlled substance classified in Schedule II which is tendered to him after the seventh day following the date of issue. No person shall knowingly fill a forged or altered prescription for a controlled substance except for the addition of the address of the person for whom the controlled substance is prescribed as provided by paragraph (3) of subdivision (b) of Section 11164.

11167. In the event of an epidemic or accident or calamity, any controlled substance classified in Schedule II may be dispensed upon an oral prescription if failure to issue such a prescription might result in loss of life or intense suffering. Prior to filling such a prescription, the pharmacist shall reduce it to writing. The date of issue of the prescription and all the information required for a written prescription by Section 11164 shall be included in such written record of the prescription.

Additionally, in such an emergency a prescriber may issue a written prescription for a controlled substance classified in Schedule II which is a narcotic drug upon a form other than the official prescription form issued by the Department of Justice. However, such a prescription shall in all other respects comply with the requirements of subdivision (a) of

## Section 11164.

When an emergency oral or written prescription is issued pursuant to this section, the prescriber shall within 72 hours submit the prescription in the form required by Section 11164 to the pharmacy or pharmacist filling the prescription. If the prescriber does not provide such a prescription within 72 hours, the pharmacist filling the emergency prescription shall immediately so inform the Department of Justice.

11168. The prescription book containing the prescriber's copies of prescriptions issued shall be retained by the prescriber which shall be preserved for three years.

11169. When codeine, or dihydrocodeinone or tincture opii camphorata (paregoric) is not combined with other medicinal ingredients, it shall be prescribed on the official triplicate blanks.

11170. No person shall prescribe, administer, or furnish a controlled substance for himself.

11171. No person shall prescribe, administer, or furnish a controlled substance except under the conditions and in the manner provided by this division.

11172. No person shall antedate or postdate a prescription.

11173. (a) No person shall obtain or attempt to obtain controlled substances, or procure or attempt to procure the administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation, or subterfuge; or (2) by the concealment of a material fact.

(b) No person shall make a false statement in any prescription, order, report, or record, required by this division.

(c) No person shall, for the purpose of obtaining controlled substances, falsely assume the title of, or represent himself to be, a manufacturer, wholesaler, pharmacist, physician, dentist, veterinarian, registered nurse, physician's assistant, or other authorized person.

(d) No person shall affix any false or forged label to a package or receptacle containing controlled substances.

11174. No person shall, in connection with the prescribing, furnishing, administering, or dispensing of a controlled substance, give a false name or false address.

11175. No person shall obtain or possess a prescription that does not comply with this division, nor shall any person obtain a controlled substance by means of a prescription which does not comply with this division or possess a controlled substance obtained by such a prescription.

11179. A person who fills a prescription shall keep it on file for at least three years from the date of filing it.

11180. No person shall obtain or possess a controlled substance obtained by a prescription that does not comply with this division.

## Article 2. Prescriber's Record

11190. Every practitioner, other than a pharmacist, who issues prescription, or dispenses or administers a controlled substance classified in Schedule II shall make a record that, as to the transaction, shows all of the following:

(a) The name and address of the patient.

(b) The date.

(c) The character and quantity of controlled substances involved.

The prescriber's record shall show the pathology and purpose for which the prescription is issued, or the controlled substance administered prescribed, or dispensed.

11191. The record shall be preserved for three years.

Every person who violates any provision of this section is guilty of misdemeanor.

11192. In a prosecution for a violation of Section 11190, proof that defendant received or has had in his possession at any time a greater amount of controlled substances than is accounted for by any record required by law or that the amount of controlled substances possessed by a defendant is a lesser amount than is accounted for by any record required by law is prima facie evidence of a violation of the section.

## Article 3. Copies of Prescriptions

11195. Whenever the pharmacist's copy of a controlled substance prescription is removed by a peace officer, agent of the Attorney General or inspector of the Board of Pharmacy, or investigator of the Division of Investigation of the Department of Consumer Affairs for the purpose of investigation or as evidence, the officer or inspector or investigator shall give to the pharmacist a receipt in lieu thereof.

## Article 4. Refilling Prescriptions

11200. No person shall refill a controlled substance prescription more than six months after the date thereof or cause such a prescription to be refilled more than five times, unless renewed by the prescriber. No prescription for a Schedule II substance may be refilled.

11201. A prescription for a controlled substance, except the one appearing in schedule II, may be refilled without the prescriber's authorization if the prescriber is unavailable to authorize the refill and in the pharmacist's professional judgment, failure to refill the prescription might present an immediate hazard to the patient's health and welfare or might result in intense suffering. The pharmacist shall refill only a reasonable amount sufficient to maintain the patient until the prescriber can be contacted. The pharmacist shall note on the reverse side of the prescription the date and quantity of the refill and that the prescriber was not available and the basis for his judgment to refill the prescription.

without the prescriber's authorization. The pharmacist shall inform the patient that the prescription was refilled without the prescriber's authorization, indicating that the prescriber was not available and that, in the pharmacist's professional judgment, failure to provide the drug might result in an immediate hazard to the patient's health and welfare or might result in intense suffering. The pharmacist shall inform the prescriber within a reasonable period of time. Prior to refilling a prescription pursuant to this section, the pharmacist shall make every reasonable effort contact the prescriber.

The prescriber shall not incur any liability as the result of a refiling of a prescription pursuant to this section.

#### Article 5. Pharmacists' Records

11205. The owner of a pharmacy or any person who purchases a controlled substance upon federal order forms as required pursuant to the provisions of the Federal "Comprehensive Drug Abuse Prevention and Control Act of 1970," (P.L. 91-513, 84 Stat. 1236), relating to the importation, exportation, manufacture, production, compounding, distribution, dispensing, and control of controlled substances, and who sells controlled substances obtained upon such federal order forms in response to prescriptions shall maintain and file such prescriptions in a separate file apart from noncontrolled substances prescriptions. Such files shall be preserved for a period of three years.

11206. The prescription file shall constitute a record that as to the transactions shall show all of the following:

- (a) The name and address of the patient.
- (b) The date.
- (c) The character, quantity, and directions for use of the controlled substance involved.
- (d) The name, address, telephone number, category of professional licensure, and the federal controlled substance registration number of the prescriber.

11207. No person other than a registered pharmacist under the laws of this state or an intern pharmacist, as defined in Section 4038.1 of the Business and Professions Code, who is under the personal supervision of a pharmacist, shall compound, prepare, fill or dispense a prescription for a controlled substance.

11208. In a prosecution under this division, proof that a defendant received or has had in his possession at any time a greater amount of controlled substances than is accounted for by any record required by law or that the amount of controlled substances possessed by the defendant is a lesser amount than is accounted for by any record required by law is prima facie evidence of guilt.

### CHAPTER. 5. USE OF CONTROLLED SUBSTANCES

#### Article 1. Lawful Medical Use Other Than Treatment of Addicts

11210. A physician, surgeon, dentist, veterinarian, or podiatrist, or pharmacist acting within the scope of a project authorized under Article 18 (commencing with Section 429.70) of Chapter 2 of Part 1 of Division 1, or registered nurse acting within the scope of a project authorized under Article 18 (commencing with Section 429.70) of Chapter 2 of Part 1 of Division 1, or physician's assistant acting within the scope of a project authorized under Article 18 (commencing with Section 429.70) of Chapter 2 of Part 1 of Division 1 may prescribe for, furnish to, or administer controlled substances to his patient when the patient is suffering from a disease, ailment, injury, or infirmities attendant upon old age, other than addiction to a controlled substance.

The physician, surgeon, dentist, veterinarian, or podiatrist, or pharmacist acting within the scope of a project authorized under Article 18 (commencing with Section 429.70) of Chapter 2 of Part 1 of Division 1, or registered nurse acting within the scope of a project authorized under Article 18 (commencing with Section 429.70) of Chapter 2 of Part 1 of Division 1, or physician's assistant acting within the scope of a project authorized under Article 18 (commencing with Section 429.70) of Chapter 2 of Part 1 of Division 1 shall prescribe, furnish, or administer controlled substances only when in good faith he believes the disease, ailment, injury, or infirmity, requires such treatment.

The physician, surgeon, dentist, veterinarian, or podiatrist, or pharmacist acting within the scope of a project authorized under Article 18 (commencing with Section 429.70) of Chapter 2 of Part 1 of Division 1, or registered nurse acting within the scope of a project authorized under Article 18 (commencing with Section 429.70) of Chapter 2 of Part 1 of Division 1, or physician's assistant acting within the scope of a project authorized under Article 18 (commencing with Section 429.70) of Chapter 2 of Part 1 of Division 1 shall prescribe, furnish, or administer controlled substances only in such quantity and for such length of time as are reasonably necessary.

11211. In order to provide a supply of controlled substances as may be necessary to handle emergency cases, any hospital which does not employ a resident pharmacist and which is under the supervision of a licensed physician, may purchase controlled substances on federal order forms for such institution, under the name of such hospital, such supply to be made available to a registered nurse for administration to patients in emergency cases, upon direction of a licensed physician.

11213. Persons who, under applicable federal laws or regulations, are lawfully entitled to use controlled substances for the purpose of research, instruction, or analysis, may lawfully obtain and use for such purposes such substances as are defined as controlled substances in this division, upon approval for use of such controlled substances in bona fide research, instruction, or analysis by the Research Advisory Panel established

pursuant to Sections 11480 and 11481.

Such research, instruction, or analysis shall be carried on only under the auspices of the head of a research project which has been approved by the Research Advisory Panel pursuant to Section 11480 or Section 11481. Complete records of receipts, stocks at hand, and use of these controlled substances shall be kept.

## Article 2. Treatment of Addicts for Addiction

11215. Except as otherwise provided in this section, any narcotic controlled substance employed in treating an addict for addiction shall be administered by a physician, or by a registered nurse acting under his instruction. When acting under the direction of a physician, any psychiatric technician licensed pursuant to Chapter 10 (commencing with Section 4300) of Division 2 of the Business and Professions Code or any vocational nurse licensed pursuant to Chapter 6.5 (commencing with Section 2840) of Division 2 of the Business and Professions Code, or any pharmacist licensed pursuant to Chapter 9 (commencing with Section 4000) of Division 2 of the Business and Professions Code may administer methadone or other controlled substances orally in the treatment of an addict for addiction to a controlled substance.

11216. Except as otherwise provided in Section 11215, no physician or other person shall order, permit, or direct any person other than a registered nurse, or other physician, to administer a narcotic controlled substance to a person being treated for addiction to a controlled substance.

11217. No person shall treat an addict for addiction to a narcotic drug which is an opiate except in one of the following:

(a) An institution approved by the State Department of Health, and where the patient is at all times kept under restraint and control.

(b) A city or county jail.

(c) A state prison.

(d) A facility designated by a county and approved by the State Department of Health pursuant to Division 5 (commencing with Section 5000) of the Welfare and Institutions Code.

(e) A state hospital.

(f) A county hospital.

Methadone in the continuing treatment of addiction to a controlled substance shall be used only in those programs approved by the state department pursuant to Section 4351 of the Welfare and Institutions Code on either an inpatient or outpatient basis, or both.

This section does not apply during emergency treatment, or where the patient's addiction is complicated by the presence of incurable disease, serious accident, or injury, or the infirmities of old age.

Neither this section nor any other provision of this division shall be construed to prohibit the maintenance of a place in which persons seeking and endeavor

that no person is treated for addiction in such place by means of administering, furnishing, or prescribing of controlled substances. The preceding sentence is declaratory of preexisting law. Every such place shall register with, and be approved by, the state department.

Neither this section or any other provision of this division shall be construed to prohibit short-term methadone detoxification treatment in a controlled setting approved by the director and pursuant to rules and regulations of the director. Facilities and treatment approved by the director under this paragraph shall not be subject to approval or inspection by the Board of Medical Examiners of the State of California nor shall persons in such facilities be required to register with, or report the termination of residence with, the police department or sheriff's office.

11217.5. Notwithstanding the provisions of Section 11217, a licensed physician and surgeon may treat an addict for addiction in any office or medical facility which, in the professional judgment of such physician and surgeon, is medically proper for the rehabilitation and treatment of such addict. Such licensed physician and surgeon may administer to an addict under his direct care, those medications and therapeutic agents which, in the judgment of such physician and surgeon, are medically necessary, provided that nothing in this section shall authorize the administration of any narcotic drug.

11218. A physician treating an addict for addiction shall not prescribe for or furnish the addict more than any one of the following amounts of controlled substances during each of the first 15 days of such treatment:

(a) Eight grains of opium.

(b) Four grains of morphine.

(c) Six grains of Pantopon.

(d) One grain of Dilaudid.

(e) Four hundred milligrams of isonipocaine (Demerol).

(f) One hundred eighty milligrams of methadone.

11219. After 15 days of treatment the physician shall not prescribe or furnish to the addict more than any one of the following amounts of controlled substances during each day of such treatment:

(a) Four grains of opium.

(b) Two grains of morphine.

(c) Three grains of Pantopon.

(d) One-half grain of Dilaudid.

(e) Two hundred milligrams of isonipocaine (Demerol).

(f) One hundred eighty milligrams of methadone.

11220. At the end of 30 days from the first treatment, the prescribing or furnishing of controlled substances, except methadone, shall be discontinued.

11221. The physician prescribing, furnishing, or administering a narcotic controlled substance in the treatment of an addict for addiction shall file a report with the state department within 30 days after the first treatment report by registered

over his signature, to the Attorney General stating the name and address of the patient, and the name and quantities of narcotic controlled substances prescribed.

The report shall state the progress of the patient under the treatment.

The physician shall in the same manner further report on the 15th day of the treatment and on the 30th day of the treatment, and thereafter shall make such further reports as are requested in writing by the Attorney General.

11222. In any case in which a person is taken into custody by arrest or other process of law and is lodged in a jail or other place of confinement, and there is reasonable cause to believe that such person is addicted to a controlled substance, it is the duty of the person in charge of the place of confinement to provide the person so confined with medical aid as necessary to ease any symptoms of withdrawal from the use of controlled substances.

In any case in which a person, who is participating in a methadone maintenance program, is incarcerated in a jail or other place of confinement, he shall, in the discretion of the director of such program, be entitled to continue in such program until conviction.

### Article 3. Physicians' Reports

11230. A physician prescribing or furnishing a controlled substance classified in Schedule II to an habitual user shall within five days after first prescribing or furnishing the controlled substance personally report in writing by registered mail, over his signature, to the Attorney General.

The report shall contain all of the following:

- (a) Name of the patient.
- (b) Address of the patient.
- (c) Character of the injury or ailment.
- (d) Quantity and kind of controlled substance used.
- (e) A statement as to whether or not the patient is an addict.

11231. The physician shall upon request in writing from the Attorney General furnish any additional reports upon the treatment of the user as the Attorney General may request in writing.

### Article 4. Veterinarians

11240. No veterinarian shall prescribe, administer, or furnish a controlled substance for himself or any other human being.

11241. A prescription written by a veterinarian shall state the kind of animal for which ordered and the name and address of the owner or person having custody of the animal.

### Article 5. Sale Without Prescription

11250. No prescription is required in case of the sale of controlled

substances at retail in pharmacies by pharmacists to any of the following:

- (a) Physicians.
- (b) Dentists.
- (c) Podiatrists.
- (d) Veterinarians.
- (e) Pharmacists acting within the scope of a project authorized under

Article 18 (commencing with Section 429.70) of Chapter 2 of Part 1 of Division 1, or registered nurses acting within the scope of a project authorized under Article 18 (commencing with Section 429.70) of Chapter 2 of Part 1 of Division 1, or physician's assistants acting within the scope of a project authorized under Article 18 (commencing with Section 429.70) of Chapter 2 of Part 1 of Division 1.

In any sale mentioned in this article, there shall be executed any written order that may otherwise be required by federal law relating to the production, importation, exportation, manufacture, compounding, distributing, dispensing, or control of controlled substances.

11251. No prescription is required in case of sales at wholesale by pharmacies, jobbers, wholesalers and manufacturers to any of the following:

- (a) Pharmacies as defined in the Business and Professions Code.
- (b) Physicians.
- (c) Dentists.
- (d) Podiatrists.
- (e) Veterinarians.
- (f) Other jobbers, wholesalers or manufacturers.

(g) Pharmacists acting within the scope of a project authorized under Article 18 (commencing with Section 429.70) of Chapter 2 of Part 1 of Division 1, or registered nurses acting within the scope of a project authorized under Article 18 (commencing with Section 429.70) of Chapter 2 of Part 1 of Division 1, or physician's assistants acting within the scope of a project authorized under Article 18 (commencing with Section 429.70) of Chapter 2 of Part 1 of Division 1.

11252. All wholesale jobbers, wholesalers, and manufacturers, mentioned in this division shall keep, in a manner readily accessible, the written orders or blank forms required to be preserved pursuant to federal law relating to the production, importation, exportation, manufacture, compounding, distributing, dispensing, or control of controlled substances.

11253. The written orders or blank forms shall be preserved for at least three years after the date of the last entry made.

11255. The taking of any order, or making of any contract or agreement, by any traveling representative or employee of any person for future delivery in this state, of any controlled substance constitutes a sale within the meaning of this division.

11256. Within 24 hours after any purchaser in this state gives any order for a controlled substance classified in Schedule II to, or makes any

contract or agreement for purchases from or sales by, an out-of-state wholesaler or manufacturer of any controlled substances for delivery in this state, the purchaser shall forward to the Attorney General by registered mail a true and correct copy of the order, contract, or agreement.

## CHAPTER. 6. OFFENSES AND PENALTIES

### Article 1. Offenses Involving Controlled Substances Formerly Classified as Narcotics

11350. Except as otherwise provided in this division, every person who possesses (1) any controlled substance specified in subdivision (b) or (c) of Section 11054, specified in paragraph (11), (12), or (17) of subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section 11055, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic drug, unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian licensed to practice in this state, shall be punished by imprisonment in the state prison.

11351. Except as otherwise provided in this division, every person who possesses for sale (1) any controlled substance specified in subdivision (b) or (c) of Section 11054, specified in paragraph (11), (12), or (17) of subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section 11055, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic drug, shall be punished by imprisonment in the state prison for two, three, or four years.

11352. Except as otherwise provided in this division, every person who transports, imports into this state, sells, furnishes, administers, or gives away, or offers to transport, import into this state, sell, furnish, administer, or give away, or attempts to import into this state or transport (1) any controlled substance specified in subdivision (b) or (c) of Section 11054, specified in paragraph (11), (12), or (17) of subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section 11055, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic drug, unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian licensed to practice in this state, shall be punished by imprisonment in the state prison for three, four or five years.

11352.5. The court shall impose a fine not exceeding fifty thousand dollars (\$50,000), in the absence of a finding that the defendant would be incapable of paying such a fine, in addition to any term of imprisonment provided by law for any of following persons:

(1) Any person who is convicted of violating Section 11351 of the Health and Safety Code by possessing for sale one-half ounce or more of a substance containing heroin.

(2) Any person who is convicted of violating Section 11352 of the Health and Safety Code by selling or offering to sell one-half ounce or more of a substance containing heroin.

(3) Any person convicted of violating Section 11351 of the Health and Safety Code by possessing heroin for sale or convicted of violating Section 11352 of the Health and Safety Code by selling or offering to sell heroin, and who has one or more prior convictions for violating Section 11351 or Section 11352 of the Health and Safety Code.

11353. Every person 18 years of age or over who in any voluntary manner solicits, induces, encourages, or intimidates any minor with the intent that the minor shall knowingly violate any provision of this chapter or Section 11550 with respect to (1) a controlled substance which is specified in subdivision (b) or (c) of Section 11054, specified in paragraph (11), (12), or (17) of subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section 11055 or, (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic drug, who hires, employs, or uses a minor to knowingly and unlawfully transport, carry, sell, give away, prepare for sale, or peddle any such controlled substance, or who unlawfully sells, furnishes, administers, gives, or offers to sell, furnish, administer, or give, any such controlled substance to a minor shall be punished by imprisonment in the state prison for a period of three, four, or five years.

11354. (a) Every person under the age of 18 years who in any voluntary manner solicits, induces, encourages, or intimidates any minor with the intent that the minor shall knowingly violate any provision of this chapter or Section 11550, who hires, employs, or uses a minor to knowingly and unlawfully transport, carry, sell, give away, prepare for sale, or peddle (1) any controlled substance specified in subdivision (b) or (c) of Section 11054, specified in paragraph (11), (12), or (17) of subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section 11055 or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic drug, or who unlawfully sells, furnishes, administers, gives, or offers to sell, furnish, administer, or give, any such controlled substance to a minor shall be punished by imprisonment in the state prison.

(b) This section is not intended to affect the jurisdiction of the juvenile court.

11355. Every person who agrees, consents, or in any manner offers to unlawfully sell, furnish, transport, administer, or give (1) any controlled substance specified in subdivision (b) or (c) of Section 11054, specified in paragraph (10), (11), (12), or (17) of subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section 11055 or, (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic drug to any person, or offers, arranges, or negotiates to have any such controlled substance unlawfully sold, delivered, transported, furnished, administered, or given to any person and then sells, delivers, furnishes, transports, administers, or gives, or offers, arranges, or negotiates to have sold, delivered, transported, furnished, administered, or given to any person any other liquid, substance, or material in lieu of any such controlled substance shall be punished by imprisonment in the county jail for a term not exceeding one year, or in the state prison.

11356. As used in this article "felony offense," and offense "punishable as a felony" refer to an offense for which the law prescribes imprisonment in the state prison as either an alternative or the sole penalty, regardless of the sentence the particular defendant received.

## Article 2. Marijuana

11357. (a) Except as authorized by law, every person who possesses any concentrated cannabis shall be punished by imprisonment in the county jail for a period of not more than one year or by a fine of not more than five hundred dollars (\$500), or by both such fine and imprisonment, or shall be punished by imprisonment in the state prison.

(b) Except as authorized by law, every person who possesses not more than one avoirdupois ounce of marijuana, other than concentrated cannabis, is guilty of a misdemeanor and shall be punished by a fine of not more than one hundred dollars (\$100). Notwithstanding other provisions of law, if such person has been previously convicted three or more times of an offense described in this subdivision during the two-year period immediately preceding the date of commission of the violation to be charged, the previous convictions shall also be charged in the accusatory pleading and, if found to be true by the jury upon a jury trial or by the court upon a court trial or if admitted by the person, the provisions of Sections 1000.1 and 1000.2 of the Penal Code shall be applicable to him, and the court shall divert and refer him for education, treatment, or rehabilitation, without a court hearing or determination or the concurrence of the district attorney, to an appropriate community program which will accept him. If the person is so diverted and referred he shall not be subject to the fine specified in this subdivision. If no community program will accept him, the person shall be subject to the fine specified in this subdivision. In any case in which a person is arrested for a violation of this subdivision and does not demand to be taken before a magistrate, such person shall be released by the arresting officer upon presentation of satisfactory evidence of identity and giving his written promise to appear in court, as provided in Section 853.6 of the Penal Code, and shall not be subjected to booking.

(c) Except as authorized by law, every person who possess more than one avoirdupois ounce of marijuana, other than concentrated cannabis, shall be punished by imprisonment in the county jail for a period of not more than six months or by a fine of not more than five hundred dollars (\$500), or by both such fine and imprisonment.

11358. Every person who plants, cultivates, harvests, dries, or processes any marijuana or any part thereof, except as otherwise provided by law, shall be punished by imprisonment in the state prison.

11359. Every person who possesses for sale any marijuana, except as otherwise provided by law, shall be punished by imprisonment in the state prison.

11360. (a) Except as otherwise provided by this section or as

authorized by law, every person who transports, imports into this state, sells, furnishes, administers, or gives away, or offers to transport, import into this state, sell, furnish, administer, or give away, or attempts to import into this state or transport any marijuana shall be punished by imprisonment in the state prison for a period of two, three or four years.

(b) Except as authorized by law, every person who gives away, offers to give away, transports, offers to transport, or attempts to transport not more than one avoirdupois ounce of marijuana, other than concentrated cannabis, is guilty of a misdemeanor and shall be punished by a fine of not more than one hundred dollars (\$100). In any case in which a person is arrested for a violation of this subdivision and does not demand to be taken before a magistrate, such person shall be released by the arresting officer upon presentation of satisfactory evidence of identity and giving his written promise to appear in court, as provided in Section 853.6 of the Penal Code, and shall not be subjected to booking.

11361. Every person 18 years of age or over who hires, employs, or uses a minor in unlawfully transporting, carrying, selling, giving away, preparing for sale, or peddling any marijuana, who unlawfully sells, furnishes, administers, gives, or offers to sell, furnish, administer, or give any marijuana to a minor, or who induces a minor to use marijuana in violation of law shall be punished by imprisonment in the state prison for a period of three, four, or five years.

11361.5. (a) Records of any court of this state, any public or private agency that provides services upon referral under Section 1000.2 of the Penal Code, or of any state agency or local public agency pertaining to the arrest or conviction of any person for a violation of subdivision (b) or (c) of Section 11357 or subdivision (c) of Section 11360, shall not be kept beyond two years from the date of such a conviction, or from the date of the arrest if there was no conviction. It shall be the duty of each court and each such agency having custody of such records to provide for the timely destruction thereof in accordance with the provisions of subdivision (c). The requirements of this subdivision shall not apply to records of any conviction occurring prior to January 1, 1976, or records of any arrest not followed by a conviction occurring prior to such date.

(b) This subdivision shall be applicable only to records of conviction and arrests not followed by conviction occurring prior to January 1, 1976 for any of the following offenses:

(1) Any violation of Section 11357 or a statutory predecessor thereof  
 (2) Unlawful possession of a device, contrivance, instrument or paraphernalia used for unlawfully smoking marijuana, in violation of Section 11364, as it existed prior to January 1, 1976, or a statutory predecessor thereof,

(3) Unlawful visitation or presence in a room or place in which marijuana is being unlawfully smoked or used, in violation of Section 11365, as it existed prior to January 1, 1976, or a statutory predecessor thereof.

(4) Unlawfully using or being under the influence of marijuana, in violation of Section 11370, as it existed prior to January 1, 1976, or a

statutory predecessor thereof.

Any person subject to such an arrest or conviction may apply to the Department of Justice for destruction of records pertaining thereto if two years or more have elapsed since the date of the conviction, or since the date of the arrest if not followed by a conviction. The application shall be submitted upon a form supplied by the Department of Justice and shall be accompanied by a fee, which shall be established by the department in such amount as will defray the cost of administering this subdivision and costs incurred by the state under subdivision (c), but which shall not exceed thirty-seven dollars and fifty cents (\$37.50). The application form shall be made available at every local police or sheriff's department and from the Department of Justice and may require such information as the department determines is necessary for purposes of identification.

The department may request, but not require, the applicant to include a self-administered fingerprint upon the application. If the department is unable to sufficiently identify the applicant for purposes of this subdivision without such fingerprint or without additional fingerprints, it shall so notify the applicant and shall request the applicant to submit such fingerprints as may be required to effect identification, including a complete set if necessary, or, alternatively, to abandon the application and request a refund of all or a portion of the fee submitted with the application, as provided in this section. If the applicant fails or refuses to submit fingerprints in accordance with the department's request within such reasonable time as shall be established by the department or if the applicant requests a refund of the fee, the department shall promptly mail a refund to the applicant at the address specified in the application or at such other address as may be specified by the applicant. However, if the department has notified the applicant that election to abandon the application will result in forfeiture of a specified amount which is a portion of the fee, the department may retain such portion of the fee as the department may determine will defray the actual costs of processing the application, provided, the amount of such portion retained shall not exceed ten dollars (\$10).

Upon receipt of a sufficient application, the Department of Justice shall destroy records of the department, if any, pertaining to such arrest or conviction in the manner prescribed by subdivision (c) and shall notify the Federal Bureau of Investigation, the law enforcement agency which arrested the applicant, and, if the applicant was convicted, the probation department which investigated the applicant and the Department of Motor Vehicles, of the application. Each state or local agency receiving such a notice from the Department of Justice shall destroy records of such agency, if any, pertaining to the arrest or conviction specified in the notice, in the manner prescribed by subdivision (c). The application form and the notices from the department to the agencies specified in this subdivision shall be destroyed by the department or agency, as the case may be, at the time the other records of the arrest or conviction are destroyed.

(c) Destruction of records of arrest or conviction pursuant to subdivisions (a) or (b) of this section shall be accomplished by permanent

obliteration of all entries or notations upon such records pertaining to the arrest or conviction, and the record shall be prepared again so that it appears that the arrest or conviction never occurred. However, where (1) the only entries upon the record pertain to such arrest or conviction and (2) the record can be destroyed without necessarily effecting the destruction of other records, then the document constituting the record shall be physically destroyed.

(d) Notwithstanding subdivision (a) or (b), written transcriptions or oral testimony in court proceedings and published judicial appellate reports shall not be subject to the provisions of this section. Additionally no records shall be destroyed pursuant to subdivision (a) if the defendant or a codefendant has filed a civil action against the peace officers or law enforcement jurisdiction which made the arrest or instituted the prosecution and if the agency which is the custodian of such records has received a certified copy of the complaint in such civil action, until the civil action has finally been resolved. Immediately following the final resolution of the civil action, records subject to subdivision (a) of this section shall be destroyed pursuant to subdivision (a) if more than two years has elapsed from the date of the conviction or arrest without conviction.

(e) Costs incurred by local agencies in complying with the provision of subdivision (b) shall be reimbursed as provided in Section 2231 of the Revenue and Taxation Code.

11361.7. (a) Any record subject to destruction or permanent obliteration pursuant to Section 11361.5, or more than two years of age, or a record of a conviction for an offense specified in subdivision (a) or (b) of Section 11361.5 which became final more than two years previously shall not be considered to be accurate, relevant, timely, or complete for any purposes by any agency or person. The provisions of this subdivision shall be applicable for purposes of the Privacy Act of 1974 (5 U.S.C. Section 552a) to the fullest extent permissible by law, whenever any information or record subject to destruction or permanent obliteration under Section 11361.5 was obtained by any state agency, local public agency, or any public or private agency that provides services upon referral under Section 1000.2 of the Penal Code, and is thereafter shared with or disseminated to any agency of the federal government.

(b) No public agency shall alter, amend, assess, condition, deny, limit, postpone, qualify, revoke, surcharge, or suspend any certificate, franchise, incident, interest, license, opportunity, permit, privilege, right, or title of any person because of an arrest or conviction for an offense specified in subdivision (a) or (b) of Section 11361.5, or because of the facts or event leading to such an arrest or conviction, on or after the date the records of such arrest or conviction are required to be destroyed by subdivision (a) of Section 11361.5, or two years from the date of such conviction or arrest without conviction with respect to arrests and convictions occurring prior to January 1, 1976. As used in this subdivision, "public agency" includes but is not limited to, any state, county, city and county, city, public or constitutional corporation or entity, district, local or regional political

subdivision, or any department, division, bureau, office, board, commission or other agency thereof.

(c) Any person arrested or convicted for an offense specified in subdivision (a) or (b) of Section 11361.5 may, two years from the date of such a conviction, or from the date of the arrest if there was no conviction, indicate in response to any question concerning his prior criminal record that he was not arrested or convicted for such offense.

(d) The provisions of this section shall be applicable without regard to whether destruction or obliteration of records has actually been implemented pursuant to Section 11361.5.

11362. As used in this article "felony offense," and offense "punishable as a felony" refer to an offense for which the law prescribes imprisonment in the state prison as either an alternative or the sole penalty, regardless of the sentence the particular defendant received.

### Article 3. Peyote

11363. Every person who plants, cultivates, harvests, dries, or processes any plant of the genus *Lophophora*, also known as peyote, or any part thereof shall be punished by imprisonment in the county jail for a period of not more than one year or the state prison.

### Article 4. Miscellaneous Offenses and Provisions

11364. It is unlawful to possess an opium pipe or any device, contrivance, instrument or paraphernalia used for unlawfully injecting or smoking (1) a controlled substance specified in subdivision (b) or (c) of Section 11054, specified in paragraph (11), (12), or (17) of subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section 11055 or (2) a controlled substance which is a narcotic drug classified in Schedule III, IV or V.

11365. It is unlawful to visit or to be in any room or place where any controlled substances which are specified in subdivision (b) or (c) of Section 11054, specified in paragraph (11), (12), or (17) of subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section 11055, or which are narcotic drugs classified in Schedule III, IV, or V, are being unlawfully smoked or used with knowledge that such activity is occurring.

11366. Every person who opens or maintains any place for the purpose of unlawfully selling, giving away, or using any controlled substance which is (1) specified in subdivision (b) or (c) of Section 11054, specified in paragraph (10), (11), (12), or (17) of subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section 11055, or (2) which is a narcotic drug classified in Schedule III, IV, or V, shall be punished by imprisonment in the county jail for a period of not more than one year or the state prison.

11367. All duly authorized peace officers, while investigating violations of this division in performance of their official duties, and any person

working under their immediate direction, supervision or instruction, are immune from prosecution under this division.

11368. Every person who forges or alters a prescription or who issues or utters an altered prescription, or who issues or utters a prescription bearing a forged or fictitious signature for any narcotic drug, or who obtains any narcotic drug by any forged, fictitious, or altered prescription or who has in possession any narcotic drug secured by such forged, fictitious, or altered prescription, shall for the first offense be punished by imprisonment in the county jail for not less than six months nor more than one year, or in the state prison.

11369. When there is reason to believe that any person arrested for violation of Section 11350, 11352, 11353, 11355, 11357, 11360, 11361, 11366, 11368 or 11550, may not be a citizen of the United States, the arresting agency shall notify the appropriate agency of the United States having charge of deportation matters.

11370. (a) Any person convicted of violating Section 11350, 11352, 11355, 11357, 11359, 11360, 11361, 11363, 11366, or 11368, or of committing any offense referred to in those sections, shall not, in any case, be granted probation by the trial court or have the execution of the sentence imposed upon him suspended by the court, if he has been previously convicted of any offense described in subdivision (c).

(b) Any person who was 18 years of age or over at the time of the commission of the offense and is convicted for the first time of selling, furnishing, administering, or giving a controlled substance which is (1) specified in subdivision (b) or (c) of Section 11054, specified in paragraph (11), (12), or (17) of subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section 11055, or (2) which is a narcotic drug classified in Schedule III, IV, or V, to a minor or inducing a minor to use such a controlled substance in violation of law shall not, in any case, be granted probation by the trial court or have the execution of the sentence imposed upon him suspended by the court.

(c) Any previous conviction of any of the following offenses, or of an offense under the laws of another state or of the United States which, if committed in this state, would have been punishable as such an offense, shall render a person ineligible for probation or suspension of sentence pursuant to subdivision (a) of this section:

(1) Any felony offense described in this division involving a controlled substance specified in subdivision (b) or (c) of Section 11054, specified in paragraph (10), (11), (12), or (17) of subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section 11055.

(2) Any felony offense described in this division involving a narcotic drug classified in Schedule III, IV, or V.

11371. Any person who shall violate any of the provisions of Section 11152, 11153, 11154, 11155, or 11156 with respect to (1) a controlled substance specified in subdivision (b) or (c) of Section 11054, specified in paragraph (10), (11), (12), or (17) of subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section 11055, or (2) a controlled

substance which is a narcotic drug classified in Schedule III, IV, or V, or who in any voluntary manner solicits, induces, encourages or intimidates any minor with the intent that such minor shall commit any such offense, shall be punished by imprisonment in the state prison or in a county jail not exceeding one year, or by a fine not exceeding twenty thousand dollars (\$20,000), or by both such fine and imprisonment.

11371.1. Any person who shall violate any of the provisions of Section 11173 or 11174 with respect to (1) a controlled substance specified in subdivision (b) or (c) of Section 11054, specified in paragraph (10), (11), (12), or (17) of subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section 11055, or (2) a controlled substance which is a narcotic drug classified in Schedule III, IV, or V, or who in any voluntary manner solicits, induces, encourages or intimidates any minor with the intent that such minor shall commit any such offense, shall be punished by imprisonment in the state prison or in a county jail not exceeding one year.

11372. In addition to the term of imprisonment provided by law for persons convicted of violating Section 11350, 11351, 11352, 11353, 11355, 11359, 11360, or 11361 of this code, the trial court may impose a fine not exceeding twenty thousand dollars (\$20,000) for each such offense. In no event shall such fine be levied in lieu of or in substitution for the term of imprisonment provided by law for any of such offenses.

11373. Whenever any person is granted probation by the trial court after conviction for possession of any controlled substance classified in Schedule I or II, such trial court shall, as a condition of probation, order such person to secure education or treatment from a local community agency designated by such court, if such service is available and the person is likely to benefit from the service.

If such defendant is a minor, the trial court shall also order his parents or guardian to participate in such education or treatment to the extent the court determines will aid the education or treatment of the minor.

If a minor is found by a juvenile court to have been in possession of any controlled substance classified in Schedule I or II, in addition to any other order it may make, such juvenile court shall order the minor to receive education or treatment from a local community agency designated by such court, if such service is available and the person is likely to benefit from the service, and it shall also order his parents or guardian to participate in such education or treatment to the extent the court determines will aid the education or treatment of the minor.

11374. Every person who violates or fails to comply with any provision of this division, except one for which a penalty is otherwise in this division specifically provided, is guilty of a misdemeanor punishable by a fine in a sum not less than thirty dollars (\$30) nor more than five hundred dollars (\$500), or by imprisonment for not less than 15 nor more than 180 days,

## Article 5. Schedules III, IV, and V

11376. Whenever any person is granted probation by the trial court after conviction for possession of any controlled substance which is (1) classified in Schedule III, IV, or V and which is not a narcotic drug or (2) which is specified in subdivision (d) of Section 11054, except paragraph (10), (11), (12), and (17) of such subdivision, or specified in subdivision (d) of Section 11055, such trial court shall, as a condition of probation order such person to secure education or treatment from a local community agency designated by such court, if such service is available and the person is likely to benefit from the service.

If such defendant is a minor, the trial court shall also order his parents or guardian to participate in such education or treatment to the extent the court determines will aid the education or treatment of the minor.

If a minor is found by a juvenile court to have been in possession of any such controlled substance, in addition to any other order it may make, such juvenile court shall order the minor to receive education or treatment from the local community agency designated by such court, if such service is available and the person is likely to benefit from the service, and it shall also order his parents or guardian to participate in such education or treatment to the extent the court determines will aid the education or treatment of the minor.

11377. (a) Except as otherwise provided in Article 8 (commencing with Section 4211) of Chapter 9 of Division 2 of the Business and Professions Code, every person who possesses any controlled substance which is (1) classified in Schedule III, IV, or V, other than any substance specified in paragraph (6) of subdivision (b) of Section 11056, and which is not a narcotic drug or (2) which is specified in subdivision (d) of Section 11054, except paragraphs (10), (11), (12), and (17) of such subdivision, unless upon the prescription of a physician, dentist, podiatrist, or veterinarian, or pharmacist acting within the scope of a project authorized under Article 18 (commencing with Section 429.70) of Chapter 2 of Part 1 of Division 1, or registered nurse acting within the scope of a project authorized under Article 18 (commencing with Section 429.70) of Chapter 2 of Part 1 of Division 1, shall be punished by imprisonment in the county jail for a period of not more than one year or in the state prison.

(b) Except as otherwise provided in Article 8 (commencing with Section 4211) of Chapter 9 of Division 2 of the Business and Professions Code, every person who possesses any controlled substance specified in paragraph (6) of subdivision (b) of Section 11056, unless upon the prescription of a physician, dentist, podiatrist, or veterinarian, or pharmacist acting within the scope of a project authorized under Article 18 (commencing with Section 429.70) of Chapter 2 of Part 1 of Division 1, or registered nurse acting within the scope of a project authorized

under Article 18 (commencing with Section 429.70) of Chapter 2 of Part 1 of Division 1, or physician's assistant acting within the scope of a project authorized under Article 18 (commencing with Section 429.70) of Chapter 2 of Part 1 of Division 1 licensed to practice in this state, shall be punished by a fine of not exceeding five hundred dollars (\$500), or by imprisonment in the county jail for not exceeding six months, or by both such fine and imprisonment.

11378. Except as otherwise provided in Article 8 (commencing with Section 4211) of Chapter 9 of Division 2 of the Business and Professions Code, every person who possesses for sale any controlled substance which is (1) classified in Schedule III, IV, or V and which is not a narcotic drug or (2) which is specified in subdivision (d) of Section 11054, except paragraphs (10), (11), (12), and (17) of such subdivision, or specified in subdivision (d) of Section 11055, shall be punished by imprisonment in the state prison.

11379. Except as otherwise provided in Article 8 (commencing with Section 4211) of Chapter 9 of Division 2 of the Business and Professions Code, every person who transports, imports into this state, sells, manufactures, compounds, furnishes, administers, or gives away, or offers to transport, import into this state, sell, manufacture, compound, furnish, administer, or give away, or attempts to import into this state or transport any controlled substance which is (1) classified in Schedule III, IV, or V and which is not a narcotic drug or (2) which is specified in subdivision (d) of Section 11054 except paragraphs (10), (11), (12), and (17) of such subdivision, or specified in subdivision (d) of Section 11055, unless upon the prescription of a physician, dentist, podiatrist, or veterinarian, or pharmacist acting within the scope of a project authorized under Article 18 (commencing with Section 429.70) of Chapter 2 of Part 1 of Division 1, or registered nurse acting within the scope of a project authorized under Article 18 (commencing with Section 429.70) of Chapter 2 of Part 1 of Division 1, or physician's assistant acting within the scope of a project authorized under Article 18 (commencing with Section 429.70) of Chapter 2 of Part 1 of Division 1 licensed to practice in this state, shall be punished by imprisonment in the state prison for a period of two, three, or four years.

11380. (a) Every person 18 years of age or over who violates any provision of this chapter involving controlled substances which are (1) classified in Schedule III, IV, or V and which are not narcotic drugs or (2) which are specified in subdivision (d) of Section 11054, except paragraphs (10), (11), (12), and (17) of such subdivision, or specified in subdivision (d) of Section 11055, by the use of a minor as agent, who solicits, induces, encourages, or intimidates any minor with the intent that the minor shall violate any provision of this article involving such controlled substances or who unlawfully furnishes, offers to furnish, or attempts to furnish such controlled substances to a minor shall be punished by imprisonment in the state prison for a period of three, four or five years.

(b) Nothing contained in this section shall apply to a registered

pharmacist furnishing controlled substances pursuant to a prescription.

11381. As used in this article "felony offense" and offense "punishable as a felony" refer to an offense for which the law prescribes imprisonment in the state prison as either an alternative or the sole penalty, regardless of the sentence the particular defendant received.

11382. Every person who agrees, consents, or in any manner offers to unlawfully sell, furnish, transport, administer, or give any controlled substance which is (1) classified in Schedule III, IV, or V and which is not a narcotic drug, or (2) which is specified in subdivision (d) of Section 11054, except paragraphs (10), (11), (12), and (17) of such subdivision, or specified in subdivision (d) of Section 11055, to any person, or offers, arranges, or negotiates to have any such controlled substance unlawfully sold, delivered, transported, furnished, administered, or given to any person and then sells, delivers, furnishes, transports, administers, or gives or offers, or arranges, or negotiates to have sold, delivered, transported, furnished, administered, or given to any person any other liquid substance, or material in lieu of any such controlled substance shall be punished by imprisonment in the county jail for not more than one year or in the state prison.

11382.5. All controlled substances in Schedules I, II, III, IV, and V, in solid or capsule form, except for such controlled substances in the possession or inventory of a wholesaler, retailer, or pharmacist on January 1, 1975, shall not be sold, furnished, or distributed in this state unless they have on the controlled substance if in solid form, or on the capsule if in capsule form, an identifying device, insignia, or mark of the manufacturer of such controlled substance. However, the exception for such controlled substances in the possession or inventory of a wholesaler, retailer, or pharmacist shall not be available to any wholesaler, retailer, or pharmacist under the control or jurisdiction of a manufacturer of controlled substances.

This section shall not apply to a pharmacist who, in accordance with applicable state law, compounds such controlled substance in the course of his practice as a pharmacist for direct dispensing by him upon a prescription of any person licensed to prescribe such controlled substances.

#### Article 6. Precursors of Methamphetamine and Phencyclidine

11383. (a) Any person who possesses both methylamine and phenyl-2-propanone (phenylacetone) at the same time with the intent to manufacture methamphetamine is guilty of a felony and shall be punished by imprisonment in the state prison for not less than one year nor more than five years.

(b) Any person who possesses both piperidine and cyclohexanone at the same time, or a combination product thereof, with intent to manufacture phencyclidine (PCP) is guilty of a felony and shall be punished by imprisonment in the state prison for not less than one year

nor more than five years.

(c) For purposes of this section, possession of immediate precursors sufficient for the manufacture of methylamine, phenyl-2-propanone, piperidine, or cyclohexanone shall be deemed to be possession of such a derivative substance. Additionally, possession of any compound or mixture containing piperidine or cyclohexanone shall be deemed to be possession of such substance.

(d) The provisions of subdivisions (a), (b), and (c) shall not apply to drug manufacturers licensed by this state or persons authorized by regulation of the Board of Pharmacy to possess such combination of substances.

11384. The Board of Pharmacy shall, by regulation, authorize such persons to possess any combinations of substance specified in subdivision (a) or (b) of Section 11383 as it determines need and will use such substance for a lawful purpose.

#### CHAPTER 7. BUREAU OF NARCOTIC ENFORCEMENT

11450. The Attorney General may, in conformity with the State Civil Service Act, Part 2 (commencing with Section 18500), Division 5, Title 2 of the Government Code, employ such agents, chemists, clerical, and other employees as are necessary for the conduct of the affairs of the Department of Justice in carrying out its responsibilities specified in this division.

11453. The Department of Justice may employ a physician to interview and examine any patient for whom any controlled substance classified in Schedule I, II, or III has been prescribed or to whom any such controlled substance has been furnished or administered, or who is an habitual user of such a controlled substance, or who has a previous addiction record to a substance listed as a controlled substance classified in Schedules I, II, or III.

The patient shall submit to the interview and examination and shall not in any manner hinder or impede it.

The physician employed by the Department of Justice to conduct the interview and examination shall report the results of the examination and interview to the department.

The physician so employed may testify in any action brought under this division or in any hearing before the State Board of Medical Examiners or the State Board of Osteopathic Examiners and his testimony is not privileged.

Every person who violates any provision of this section is guilty of a misdemeanor.

11454. The Attorney General and the agents appointed by him, when authorized so to do by the Attorney General, may expend such sums as the Attorney General deems necessary in the purchase of controlled substances and in the employment of operators to obtain

The sums so expended shall be repaid to the officer making the expenditures upon claims approved by the Attorney General and subject to postaudit by the Department of Finance. The claims when approved shall be paid out of the funds appropriated or made available by law for the support or use of the Department of Justice.

#### CHAPTER 8. SEIZURE AND DISPOSITION

11470. The following are subject to forfeiture:

(a) All controlled substances which have been manufactured, distributed, dispensed, or acquired in violation of this division.

(b) All raw materials, products and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting any controlled substance in violation of this division.

(c) All property which is used, or intended for use, as a container for property described in subdivision (a) or (b).

(d) All books, records, and research products and materials, including formulas, microfilm, tapes, and data which are used, or intended for use, in violation of this division.

(e) The interest of any registered owner of a boat, airplane, or any vehicle other than an implement of husbandry, as defined in Section 36000 of the Vehicle Code, or a vehicle which may be lawfully driven upon the highway with a class 3 or class 4 license, as prescribed in Section 12804 of the Vehicle Code, used, in direct relation to the particular offense for which the owner or defendant is arrested and convicted, to unlawfully transport for sale any controlled substance.

11471. Property subject to forfeiture under this division may be seized by the Attorney General upon process issued by any court having jurisdiction over the property. Seizure without process may be made if any of the following situations exist:

(a) The seizure is incident to an arrest or a search under a search warrant.

(b) The property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding based upon this division.

(c) The Attorney General has probable cause to believe that the property is directly or indirectly dangerous to health or safety.

(d) The Attorney General has probable cause to believe that the property was used or is intended to be used in violation of this division.

11472. In the event of seizure pursuant to Section 11471, proceedings under Section 11473 shall be instituted promptly.

11473. Controlled substances and any device, contrivance, instrument or paraphernalia used for unlawfully using or administering a controlled substance, which are possessed in violation of this division, may be seized by any peace officer and in the aid of such seizure a search warrant may be issued by law.

11474. All seizures under provisions of this chapter, except seizures of vehicles, boats, or airplanes, shall, upon conviction of the owner or defendant, be ordered destroyed by the judge of the court in which conviction was had and the judge shall turn all such evidence over to the Attorney General for destruction or disposition.

11474.5. All seizures of controlled substances, instruments, or paraphernalia used for unlawfully using or administering a controlled substance which are in possession of any city, county, or state official as the result of a case in which no trial was had or in a case which has been disposed of by way of dismissal or otherwise than by way of conviction, shall be turned over to the Attorney General for destruction or disposition under order of the court.

11475. Controlled substances listed in Schedule I that are possessed, transferred, sold, or offered for sale in violation of this division are contraband and shall be seized and summarily forfeited to the state. Controlled substances listed in Schedule I, which are seized or come into the possession of the state, the owners of which are unknown, are contraband and shall be summarily forfeited to the state.

11476. Species of plant from which controlled substances in Schedules I and II may be derived which have been planted or cultivated in violation of this division, or of which the owners or cultivators are unknown, or which are wild growths, may be seized and summarily forfeited to the state.

11477. The failure, upon demand by the Attorney General, or his authorized agent, of the person in occupancy or in control of land or premises upon which the species of plants are growing or being stored, to produce an appropriate registration, or proof that he is the holder thereof, constitutes authority for the seizure and forfeiture of the plants.

11478. The Attorney General may dispose of controlled substances, other than heroin or smoking opium, by gift to the medical superintendent of state prisons or state hospitals, for medical purposes. Marijuana shall be provided by the Attorney General to the heads of research projects which have been registered by the Attorney General, and which have been approved by the Research Advisory Panel pursuant to Section 11480.

The head of the approved research project shall personally receipt for such quantities of marijuana and shall make a record of their disposition. The receipt and record shall be retained by the Attorney General. The head of the approved research project shall also, at intervals and in the manner required by the Research Advisory Panel, report the progress or conclusions of the research project.

11479. Notwithstanding the provision of Sections 11474 and 11474.5, at any time after receipt by a publicly operated criminalistic laboratory of a suspected controlled substance for analysis, the person in charge of the laboratory may without a court order destroy that amount of the suspected controlled substance which exceeds 10 pounds in gross weight.

Destruction shall not take place pursuant to this section until all of the following requirements are satisfied:

(a) A random sampling of the suspected controlled substance has been taken.

(b) The analysis of the random sampling has been completed.

(c) Photographs have been taken of the suspected controlled substance to be destroyed.

(d) The chief has approved a written request of the publicly operated criminalistic laboratory for the destruction of the suspected controlled substance. Such request shall specify the total weight of the suspected controlled substance, the total weight of such substance to be destroyed, and the total weight of such substance not to be destroyed.

(e) Not less than 30 days prior to the destruction of the suspected controlled substance, written notice shall be given to the defendant's attorney of record or, if the defendant has no attorney of record, to the defendant, stating the information contained in the request submitted to the chief pursuant to subdivision (d) and the date proposed for destruction of the suspected controlled substance, stating that destruction of such suspected controlled substance has been approved by the chief, and stating that any request to have samples taken from the whole mass of the suspected controlled substance must be done prior to the date proposed for such destruction.

11480. The Legislature finds that there is a need to encourage further research into the nature and effects of marijuana and hallucinogenic drugs and to coordinate research efforts on such subjects.

There is a Research Advisory Panel which consists of a representative of the State Department of Health, a representative of the California State Board of Pharmacy, a representative of the Attorney General, a representative of the University of California who shall be a pharmacologist or physician or a person holding a doctorate degree in the health sciences, a representative of a private university in this state who shall be a pharmacologist or physician or a person holding a doctorate degree in the health sciences, a representative of a statewide professional medical society in this state who shall be engaged in the private practice of medicine and shall be experienced in treating controlled substance dependency, and a representative appointed by and serving at the pleasure of the Governor, who shall hold a doctorate degree in the health sciences and shall have experience in drug abuse or controlled substance research. The Governor shall annually designate the private university and the professional medical society represented on the panel. Members of the panel shall be appointed by the heads of the entities to be represented, and they shall serve at the pleasure of the appointing power.

The panel shall annually select a chairman from among its members.

The panel may hold hearings on, and in other ways study, research projects concerning marijuana or hallucinogenic drugs in this state. Members of the panel shall serve without compensation, but shall be reimbursed for any actual and necessary expenses incurred in connection with the performance of their duties.

The panel may approve research projects, which have been registered by the Attorney General, into the nature and effects of marijuana or hallucinogenic drugs, and shall inform the Attorney General of the head of such approved research projects which are entitled to receive quantities of marijuana pursuant to Section 11478.

The panel may withdraw approval of a research project at any time, and when approval is withdrawn shall notify the head of the research project to return any quantities of marijuana to the Attorney General.

The panel shall report annually to the Legislature and the Governor whose research projects approved by the panel, the nature of each research project, and, where available, the conclusions of the research project.

11481. The Research Advisory Panel may hold hearings on, and in other ways study, research projects concerning the treatment of abuse of controlled substances.

The panel may approve research projects, which have been registered by the Attorney General concerning the treatment of abuse of controlled substances and shall inform the chief of such approval. The panel may withdraw approval of a research project at any time and when approval is withdrawn shall so notify the chief.

The panel shall, annually and in the manner determined by the panel, report to the Legislature and the Governor those research projects approved by the panel, the nature of each research project, and where available, the conclusions of the research project.

11483. No provision of this division shall be construed to prohibit the establishment and effective operation of a methadone maintenance treatment program approved pursuant to Section 4351 of the Welfare and Institutions Code.

11485. When controlled substances have been seized pursuant to this division and the defendant or owner has escaped from custody and is a fugitive from justice, they shall upon demand of the Attorney General be turned over to it for safekeeping until such time as the owner or defendant is apprehended and prosecuted for violation of this division.

11486. When controlled substances have been seized pursuant to this division and the case has been disposed of by way of dismissal or otherwise than by way of conviction, they shall by order of the court, be turned over to the Attorney General unless the court finds that the controlled substances were lawfully possessed by the defendant.

11487. Each city, county, or state agency coming into possession of a controlled substance pursuant to the provisions of this chapter shall report semiannually to the Attorney General the amounts, kind, and disposition of controlled substances so seized.

The reports provided for by this section shall be in a form and contain such information as determined necessary by the Attorney General.

The Attorney General shall issue an annual report to the Governor and shall correlate and summarize the reports provided for by this

section.

This section shall remain in effect only until January 1, 1980, and as of such date is repealed, unless a later enacted statute, which is chaptered before January 1, 1980, deletes or extends such date.

11490. Any peace officer of this state, upon making or attempting to make an arrest for a violation of Section 11351, 11352, 11355, 11359, 11360, 11378, or 11379, insofar as the offense involves the transportation for sale, or possession for sale, may seize any vehicle, boat, or airplane used to unlawfully transport for sale any controlled substance. If he does not hold the vehicle, boat, or airplane for evidence, he shall immediately deliver such vehicle, boat, or airplane to the State Department of Justice to be held as evidence until a forfeiture has been declared or a release ordered; otherwise he shall return the vehicle, boat, or airplane to the registered owner.

11491. (a) Within 15 days after such seizure, if the Department of Justice determines that the factual circumstances do not warrant that the vehicle, boat, or airplane come within subdivision (e) of Section 11470, or if for any other reason it decides not to seek forfeiture, it shall return the vehicle, boat, or airplane to the arresting officer who shall return it to the registered owner. If the Department of Justice does not return the vehicle, boat, or airplane to the arresting officer, it shall cause an investigation to be made as to any claimant to the vehicle, boat, or airplane whose right, title, interest, or lien is of record in the Department of Motor Vehicles or appropriate federal agency. Except as provided in subdivision (b), if the department finds that any person, other than the registered owner, is the legal owner thereof, and such ownership interest did not arise subsequent to the date and time of arrest or seizure of the vehicle, boat, or airplane, it shall forthwith send a notice of the seizure to such legal owner at his address appearing on the records of the Department of Motor Vehicles or appropriate federal agency. Notice of seizure and intended forfeiture proceedings shall be filed with the county clerk and shall be served on all owners whose interest will be affected thereby.

(b) A bona fide purchaser without notice of the arrest or seizure whose interest was acquired subsequent to the arrest or seizure shall be entitled to participate in the forfeiture proceedings to establish his claim.

(c) An assignee, purchaser, or holder in due course who had notice of the arrest or seizure at the time he acquired his interest and who sells, assigns, or conveys such interest is guilty of a fraudulent conveyance as provided for in Section 531 of the Penal Code, and civilly liable under Section 3439.07 of the Civil Code.

11491.1. Actual notice shall be given to each owner whose right, title or interest is of record in the Department of Motor Vehicles or appropriate federal agency, by mailing a copy of the notice by registered mail to the address as given upon the records of the Department of Motor Vehicles or appropriate federal agency; and to each owner whose name and address is known, to the last known address of the owner.

All other owners, whose addresses are unknown, but who are believed

to have an interest in the vehicle, boat, or airplane, by one publication in a newspaper of general circulation in the county where the seizure was made.

All notices shall set forth the time within which an answer is required to be filed pursuant to Section 11491.2.

11491.2. Within 10 days after receipt of actual notice or within 30 days of the publication of the notice, any owner of any right, title, or interest in, or lien upon, a seized vehicle, boat, or airplane may file a verified answer to the fact of the use of the vehicle, boat, or airplane alleged in the notice of seizure and of the intended forfeiture proceeding; and any person holding a valid lien, mortgage, security interest, or interest under a conditional sales contract may file a verified answer to the facts set forth in the notice and setting forth, if such be the fact, that he acquired his interest prior to the date of seizure without actual knowledge that the vehicle, boat, or airplane was to be used in the manner set forth in

division (c) of Section 11470.

11491.3. No extensions of time shall be granted for the purpose of filing the answer.

11491.4. If, at the end of the times set forth in Section 11491.2, there is no verified answer on file, the court, upon motion, shall declare the vehicle, boat, or airplane forfeited to the state upon conviction as provided in Section 11492. Notwithstanding any other provision of law, a certified copy of said declaration of forfeiture, duly filed with the Department of Motor Vehicles or appropriate federal agency, shall constitute authority for the state to convey clear title to the vehicle, boat, or airplane to any purchaser thereof in the manner provided in Sections 11493.1 and 11494.

11491.5. If a verified answer is filed, the forfeiture proceeding shall be set for hearing on a day not less than 30 days therefrom, and the proceeding shall have priority over other civil cases.

11491.6. Notice of the hearing shall be given in the same manner as provided in Section 11491.1.

11491.7. At the hearing, the state shall have the burden of establishing beyond a reasonable doubt that the owner of the vehicle, boat, or airplane, or the owner of an interest in such vehicle, boat, or airplane, consented to the use of such vehicle, boat, or airplane with the knowledge that it would be used for a violation of this chapter.

11492. No legal or registered title or interest in the vehicle, boat, or airplane shall be affected by the forfeiture decree under this article unless the state has proved that the owner of such interest consented to the use of such vehicle, boat, or airplane with knowledge that it was used for the purpose charged. No forfeiture shall be ordered unless and until a conviction is had for an offense set forth in Section 11490.

11493. The forfeiture hearing may be continued until after a verdict of guilt on the related charges has been decided. The forfeiture hearing shall be conducted in accordance with Sections 600 to 630, inclusive, of the

Code of Civil Procedure if a trial by jury, and by Sections 631 to 636, inclusive, of the Code of Civil Procedure if by court. Unless the court or jury finds that the vehicle, boat, or airplane was used in violation of this chapter, the court shall order the vehicle, boat, or airplane released to the person entitled thereto.

If the court or jury finds that the vehicle, boat, or airplane was used in violation of this chapter, but does not find that a person holding a valid lien, mortgage, security interest, or interest under a conditional sales contract acquired his interest with actual knowledge that the vehicle, boat, or airplane was to be used for a purpose for which forfeiture is permitted, and if the amount due him is equal to, or in excess of, the appraised value of the vehicle, boat, or airplane, the court shall order the vehicle, boat, or airplane released to him. If the amount due him is less than the appraised value of the vehicle, boat, or airplane, he may pay to the Department of General Services the amount of the registered owner's equity, which shall be deemed to be the difference between the appraised value and the amount of the lien, mortgage, security interest, or interest under a conditional sales contract. Upon such payment, the state shall relinquish all claims to the vehicle, boat, or airplane. If the holder of the interest elects not to make such payment to the Department of General Services, the vehicle, boat, or airplane shall be deemed forfeited to the Department of General Services and the ownership certificate shall be forwarded. Appraised value is to be determined as of the date judgment is entered on a wholesale basis either by agreement between the legal owner and the Department of General Services, or if such persons cannot agree, then by the inheritance tax appraiser for the county in which the action is brought.

11493.1. If the amount due to a person holding a valid lien, mortgage, security interest, or interest under a conditional sales contract is less than the value of the vehicle, boat, or airplane, and the person elects not to make payment to the Department of General Services, the vehicle, boat, or airplane shall be sold at public auction by the Department of General Services.

11494. The Department of General Services shall publish a notice of the sale by one publication in a newspaper published and circulated in the city, community, or locality where the sale is to take place.

11495. In all cases where a vehicle, boat, or airplane seized by the Department of Justice is forfeited to the state and turned over to and sold by the Department of General Services, the proceeds of the sale shall be distributed as follows, in the order indicated:

(a) To the bona fide or innocent purchaser, conditional sales vendor, or mortgagee of the vehicle, boat, or airplane, if any, up to the amount of his interest in the vehicle, boat, or airplane, when the court declaring the forfeiture orders a distribution to such person.

(b) The balance, if any, to accumulate, and from time to time, as the proceeds become sufficient, to be distributed:

1. To the Department of General Services for all expenditures made or

incurred by it in connection with the sale, including expenditure for any necessary repairs, storage, or transportation, of any vehicle, boat, or airplane seized under this article.

2. To the Attorney General for all expenditures made or incurred by him in connection with the forfeiture proceedings of any vehicle, boat, or airplane seized under this article, including, but not limited to, expenditures for witness fees, reporters' fees, transcripts, printing, traveling, and investigation.

3. To the state for all expenditures for traveling, investigation, storage, and other expenses made or incurred by the Department of Justice after the seizure, and in connection with the forfeiture of any vehicle, boat, or airplane seized under this article.

4. The remainder, if any, to the State Treasury, for credit to the General Fund.

11498. The provisions of this division relative to forfeiture of vehicles, boats, or airplanes shall not apply to a common carrier, or to an employee acting within the scope of his employment in the enforcement of this division.

#### CHAPTER 9. COLLECTION AND DISPOSITION OF FINES

11500. The district attorney, or any person designated by him, of the county in which any violation of this division is committed shall conduct all actions and prosecutions for the violation.

However, the Attorney General, or special counsel employed by the Attorney General for that purpose, may take complete charge of the conduct of such actions or prosecutions. The Attorney General may fix the compensation to be paid for the service and may incur such other expense in connection with the conduct of the actions or prosecutions as he may deem necessary. No attorney employed as special counsel shall receive as compensation more than three thousand five hundred dollars (\$3,500) in any one year.

11501. The State of California, or any political subdivision thereof, may maintain an action against any person or persons engaged in the unlawful sale of controlled substances or the recovery of any public funds paid over to such person or persons in the course of any investigation of violations of this division. All proceedings under this section shall be instituted in the superior court of the county where the funds were paid over, where the sale was made, or where the defendant resides. Notwithstanding Section 483.010 of the Code of Civil Procedure, in any action under this section, a writ of attachment may be issued, without the showing required by Section 485.010 of the Code of Civil Procedure, in the manner provided by Chapter 5 (commencing with Section 485.010) of Title 6.5 of Part 2 of the Code of Civil Procedure to attach any funds paid over or any other funds on the defendant's person at the time of his arrest.

11502. All moneys, forfeited bail, or fines received by any court under this division shall as soon as practicable after the receipt thereof be

deposited with the county treasurer of the county in which such court is situated. Amounts so deposited shall be paid at least once a month as follows: 75 percent to the State Treasurer by warrant of the county auditor drawn upon the requisition of the clerk or judge of said court to be deposited in the State Treasury on order of the State Controller; and 25 percent to the city treasurer of the city, if the offense occurred in a city, otherwise to the treasurer of the county in which the prosecution is conducted.

Any money deposited in the State Treasury under the provisions of this section which is determined by the State Controller to have been erroneously deposited therein shall be refunded by him, subject to approval of the State Board of Control prior to the payment of such refund, out of any money in the State Treasury which is available by law for such purpose.

11503. Judges and magistrates who collect fines or forfeitures under this division shall keep a record thereof, and, upon the imposition of any such fine or forfeiture, shall at least monthly transmit a record of it to the county auditor. The county auditor shall transmit a record of the imposition, collection and payment of such fines or forfeitures to the State Controller at the time of transmittal of each warrant to the State Treasurer pursuant to this article.

11504. When an imprisonment has been imposed for a violation of this division, and before the termination of the sentence, the defendant is released by the vacation of the sentence of imprisonment and the imposition of a fine or forfeiture instead, the fine or forfeiture shall be recorded and accounted for in the same manner as though it had been imposed in the first instance.

11505. Whenever a fine has been imposed for violation of this division, and before the full payment of the fine a sentence of imprisonment is imposed instead, the imprisonment shall be recorded and accounted for to the county auditor.

11506. The State Controller shall check the reports and records received by him with the transmittals of fines and forfeitures and whenever it appears that fines or forfeitures have not been transmitted the county auditor shall and the State Controller may bring suit to enforce their collection or transmittal, or both.

11507. The official bond of any judge or magistrate is liable for his failure to transmit the fines or forfeitures imposed by him under this division.

11508. The records kept by a judge or magistrate under this division are open to public inspection, and may be checked by the State Controller, the Attorney General, the district attorney of the particular county, or the state bureau.

## CHAPTER 10. CONTROL OF USERS OF CONTROLLED SUBSTANCES

## Article 1. Addicts

11550. No person shall use, or be under the influence of any controlled substance which is (1) specified in subdivision (b) or (c) of Section 11054, specified in paragraph (11), (12), or (17) of subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section 11055, or (2) which is a narcotic drug classified in Schedule III, IV, or V, excepting when administered by or under the direction of a person licensed by the state to dispense, prescribe, or administer controlled substances. It shall be the burden of the defense to show that it comes within the exception. Any person convicted of violating any provision of this section is guilty of a misdemeanor and shall be sentenced to serve a term of not less than 90 days nor more than one year in the county jail. The court may place a person convicted hereunder on probation for a period not to exceed five years and shall in all cases in which probation is granted require as a condition thereof that such person be confined in the county jail for at least 90 days. In no event does the court have the power to absolve a person who violates this section from the obligation of spending at least 90 days in confinement in the county jail.

11551. (a) Whenever any court in this state grants probation to a person who the court has reason to believe is or has been a user of controlled substances, the court may require as a condition to probation that the probationer submit to periodic tests by a city or county health officer, or by a physician and surgeon appointed by the city or county health officer with the approval of the Attorney General, to determine, by whatever means is available, whether the probationer is addicted to a controlled substance.

In any case provided for in this subdivision, the city or county health officer, or the physician and surgeon appointed by the city or county health officer with the approval of the Attorney General shall report the results of the tests to the probation officer.

(b) In any case in which a person is granted parole by a county parole board and the person is or has been a user of controlled substances, a condition of the parole may be that the parolee undergo periodic tests as provided in subdivision (a) and that the county or city health officer, or the physician and surgeon appointed by the city or county health officer with the approval of the Attorney General, shall report the results to the board.

(c) In any case in which any state agency grants a parole to a person who is or has been a user of controlled substances, it may be a condition of the parole that the parolee undergo periodic tests as provided in subdivision (a) and that the county or city health officer, or the physician and surgeon appointed by the city or county health officer with the approval of the Attorney General, shall report the results of the tests to such state agency.

(d) The cost of administering tests pursuant to subdivisions (a) and (b)

shall be a charge against the county. The cost of administering tests pursuant to subdivision (c) shall be paid by the state.

(e) The state department, in conjunction with the Attorney General, shall issue regulations governing the administering of the tests provided for in this section and providing the form of the report required by this section.

11552. In any case in which a person has been arrested for a criminal offense and is suspected of being addicted to a controlled substance, a law enforcement officer having custody of such person may, with the written consent of such person, request the city or county health officer, or physician appointed by such health officer pursuant to Section 11551, to administer to the arrested person a test to determine, by whatever means is available whether the arrested person is addicted to a controlled substance, and such health officer or physician may administer such test to such arrested person.

11553. The fact that a person is or has been, or is suspected of being, a user of marijuana is not alone sufficient grounds upon which to invoke Section 11551 or 11552.

This section shall not be construed to limit the discretion of a judge to invoke Section 11551 or 11552 if the court has reason to believe a person is or has been a user of narcotics or drugs other than marijuana.

11554. The rehabilitation of persons addicted to controlled substances and the prevention of continued addiction to controlled substances is a matter of statewide concern. It is the policy of the state to encourage each county and city and county to make use, whenever applicable, of testing procedures to determine addiction to controlled substances or the absence thereof, and to foster research in means of detecting the existence of addiction to controlled substances and in medical methods and procedures for that purpose.

11555. The Attorney General is directed to promote and sponsor the use by agencies of local government of the provisions of this article. The Attorney General may assist such agencies to establish facilities for, and to train personnel to conduct testing procedures pursuant to Section 11551, and may conduct demonstrations thereof for limited periods. For these purposes the Attorney General may procure such medical supplies, equipment, and temporary services of physicians and qualified consultants as may reasonably be necessary. Subject to the availability of funds appropriated for the purpose, the Attorney General may contract with any county or city and county which undertakes to establish facilities and a testing program pursuant to Section 11551, and such contract may provide for payment by the state of such costs of initially establishing and demonstrating such program as the Attorney General may approve.

## Article 2. Controlled Substances Treatment Control Units

11560. The Department of Corrections and the Department of the Youth Authority are authorized to establish controlled substance

treatment control units in state correctional facilities or training schools or as separate establishments for such study, research, and treatment as may be necessary for control of the addiction or imminent addiction to controlled substances of persons committed to the custody of the Director of Corrections or the Director of the Youth Authority.

11561. When the Adult Authority concludes that there are reasonable grounds for believing that a man on parole is addicted to, or is in imminent danger of addiction to, controlled substances it may issue an order to detain or place such person in a controlled substance treatment control unit for a period not to exceed 90 days. Such order shall be a sufficient warrant for any peace officer or employee of the Department of Corrections to return to physical custody any such person. Detention pursuant to such order shall not be deemed a suspension, cancellation or revocation of parole until such time as the Adult Authority so orders pursuant to Section 3060 of the Penal Code. A parolee taken into physical custody pursuant to Section 3060 of the Penal Code may be detained in a controlled substance treatment control unit established pursuant to this article.

11562. When the Youth Authority concludes that there are reasonable grounds for believing that a person committed to its custody, and on parole, is addicted to, or is in imminent danger of addiction to, controlled substances, it may issue an order to detain or place such person in a controlled substance treatment control unit for not to exceed 90 days. Such order shall be a sufficient warrant for any peace officer or employee of the Department of the Youth Authority to return to physical custody any such person. Detention pursuant to such order shall not be deemed a suspension, cancellation, or revocation of parole unless the Youth Authority so orders pursuant to Section 1761.3 of the Welfare and Institutions Code.

With the consent of the Director of Corrections, the Director of the Youth Authority may, pursuant to this section, confine the addicted or potentially addicted person, over 18 years of age, in a controlled substance treatment control unit established by the Department of Corrections.

11563. When the California Women's Board of Terms and Parole concludes that there are reasonable grounds for believing that a woman on parole is addicted to, or is in imminent danger of addiction to, controlled substances, it may issue an order to detain or place such person in a controlled substance treatment control unit for a period not to exceed 90 days. Such order shall be a sufficient warrant for any peace officer or employee of the Department of Corrections to return to physical custody any such person. Detention pursuant to such order shall not be deemed a suspension, cancellation or revocation of parole until such time as the board so orders pursuant to Section 3060 of the Penal Code. A parolee taken into physical custody pursuant to Section 3060, 6043, or 6044 of the Penal Code may be detained in a controlled substance treatment control unit established pursuant to this article.

11564. The authority granted to the Adult Authority and the Youth

Authority in no way limits Sections 3060 and 3325 of the Penal Code.

### Article 3. Abatement

11570. Every building or place used for the purpose of unlawfully selling, serving, storing, keeping, or giving away controlled substances as defined in this division, and every building or place wherein or upon which such acts take place, is a nuisance which shall be enjoined, abated, and prevented, whether it is a public or private nuisance.

11571. Whenever there is reason to believe that such a nuisance is kept, maintained or exists in any county, the district attorney of the county, in the name of the people, shall, or any citizen of the state resident in the county, in his own name, may, maintain an action to abate and prevent the nuisance and perpetually to enjoin the person conducting or maintaining it, and the owner, lessee, or agent of the building or place, in or upon which the nuisance exists, from directly or indirectly maintaining or permitting the nuisance.

11572. Unless filed by the district attorney, the complaint in the action shall be verified.

11573. If the existence of the nuisance is shown in the action to the satisfaction of the court or judge, either by verified complaint or affidavit, the court or judge shall allow a temporary writ of injunction to abate and prevent the continuance or recurrence of the nuisance.

11574. Except when it is granted on application of the people of the state, on granting the temporary writ the court or judge shall require a written undertaking on the part of the applicant, with sufficient sureties, to the effect that he will pay to the defendant enjoined such damages, not exceeding an amount to be specified, as the defendant sustains by reason of the injunction if the court finally decides that the applicant was not entitled to it.

11575. The action shall have precedence over all other actions, except criminal proceedings, election contests, hearings on injunctions, and actions to forfeit vehicles under this division.

11576. If the complaint is filed by a citizen it shall not be dismissed by him or for want of prosecution except upon a sworn statement made by him and his attorney, setting forth the reasons why the action should be dismissed, and by dismissal ordered by the court.

11577. In case of failure to prosecute the action with reasonable diligence, or at the request of the plaintiff, the court, in its discretion, may substitute any other citizen consenting thereto for the plaintiff.

11578. If the action is brought by a citizen and the court finds there was no reasonable ground or cause for the action, the costs shall be taxed against him.

11579. If the existence of the nuisance is established in the action, an

order of abatement shall be entered as part of the judgment in the case, and plaintiff's costs in the action are a lien upon the building or place. The lien is enforceable and collectible by execution issued by order of the court.

11580. A violation or disobedience of the injunction or order for abatement is punishable as a contempt of court by a fine of not less than two hundred dollars (\$200) nor more than one thousand dollars (\$1,000), or by imprisonment in the county jail for not less than one nor more than six months, or by both.

11581. If the existence of the nuisance is established in the action, an order of abatement shall be entered as a part of the judgment, which order shall direct the removal from the building or place of all fixtures, musical instruments, and other movable property used in conducting, maintaining, aiding, or abetting the nuisance and shall direct their sale in the manner provided for the sale of chattels under execution.

The order shall provide for the effectual closing of the building or place against its use for any purpose, and for keeping it closed for a period of one year, unless sooner released, as provided in this division.

11582. While the order of abatement remains in effect, the building or place is in the custody of the court.

11583. For removing and selling the movable property, the officer is entitled to charge and receive the same fees as he would for levying upon and selling like property on execution; and for closing the premises and keeping them closed, a reasonable sum shall be allowed by the court.

11584. The proceeds of the sale of the movable property shall be applied as follows:

First—To the fees and costs of the removal and sale.

Second—To the allowances and costs of closing and keeping closed the building or place.

Third—To the payment of the plaintiff's costs in the action.

Fourth—The balance, if any, to the owner of the property.

11585. If the proceeds of the sale of the movable property do not fully discharge all of the costs, fees, and allowances, the building and place shall then also be sold under execution issued upon the order of the court or judge and the proceeds of the sale shall be applied in like manner.

11586. If the owner of the building or place has not been guilty of any contempt of court in the proceedings, and appears and pays all costs, fees, and allowances that are a lien on the building or place and files a bond in the full value of the property, to be ascertained by the court, with sureties, to be approved by the court or judge, conditioned that he will immediately abate any such nuisance that may exist at the building or place and prevent it from being established or kept thereat within a period of one year thereafter, the court, or judge may, if satisfied of his good faith, order the building or place to be delivered to the owner, and the order of abatement canceled so far as it may relate to the property.

The release of property under the provisions of this division does not release it from any judgment, lien, penalty, or liability to which it may be subject.

11587. Whenever the owner of a building or place upon which the act or acts constituting the contempt have been committed, or the owner of any interest therein, has been guilty of a contempt of court, and fined in any proceedings under this division, the fine is a lien upon the building or place to the extent of his interest in it.

The lien is enforceable and collectible by execution issued by order of the court.

#### Article 4. Registration of Controlled Substance Offenders

11590. (a) Any person who, on or after the effective date of this section, is convicted in the State of California of any offense defined in Section 11350, 11351, 11352, 11353, 11354, 11355, 11357, 11358, 11359, 11360, 11361, 11363, 11365, 11368, or 11550, or any person who is, on or after such date, discharged or paroled from a penal institution where he was confined because of the commission of any such offense, or any person who is, on or after such date, convicted in any other state of any offense which, if committed or attempted in this state, would have been punishable as one or more of the above-mentioned offenses, shall within 30 days after the effective date of this section or within 30 days of his coming into any county or city, or city and county in which he resides or is temporarily domiciled for such length of time, register with the chief of police of the city in which he resides or the sheriff of the county if he resides in an unincorporated area.

(b) Any person who, on or after the effective date of this section is convicted in any federal court of any offense which, if committed or attempted in this state would have been punishable as one or more of the offenses enumerated in subdivision (a) shall within 30 days after the effective date of this section or within 30 days of his coming into any county or city, or city and county in which he resides or is temporarily domiciled for such length of time, register with the chief police of the city in which he resides or the sheriff of the county if he resides in an unincorporated area.

(c) This section does not apply to a conviction of a misdemeanor conviction under Section 11357 or 11360.

11591. Every sheriff or chief of police, upon the arrest for any of the controlled substance offenses enumerated in Section 11590, or Section 11364, insofar as that section relates to paragraph (9) of subdivision (d) of Section 11354, of any school employee, shall do either of the following:

(1) If such school employee is a teacher in any of the public schools of this state, he shall immediately notify by telephone the superintendent of schools of the school district employing such teacher and shall immediately give written notice of the arrest to the Commission for Teacher Preparation and Licensing and to the superintendent of schools in the county wherein such person is employed. Upon receipt of such

notice, the county superintendent of schools shall immediately notify the governing board of the school district employing such person.

(2) If such school employee is a nonteacher in any of the public schools of this state, he shall immediately notify by telephone the superintendent of schools of the school district employing such nonteacher and shall immediately give written notice of the arrest to the governing board of the school district employing such person.

(3) If such school employee is a teacher in any private school of this state, he shall immediately notify by telephone the private school authority employing such teacher and shall immediately give written notice of the arrest to the private school authority employing such teacher.

11592. Any person who, on or after the effective date of this section is discharged or paroled from a jail, prison, school, road camp, or other institution where he was confined because of the commission or attempt to commit one of the offenses described in Section 11590 shall, prior to such discharge, parole, or release, be informed of his duty to register under that section by the official in charge of the place of confinement and the official shall require the person to read and sign such form as may be required by the Department of Justice, stating that the duty of the person to register under this section has been explained to him. The official in charge of the place of confinement shall obtain the address where the person expects to reside upon his discharge, parole, or release and shall report such address to the Department of Justice. The official in charge of the place of confinement shall give one copy of the form to the person, and shall send two copies to the Department of Justice, which, in turn, shall forward one copy to the appropriate law enforcement agency having local jurisdiction where the person expects to reside upon his discharge, parole, or release.

11593. Any person who, on or after the effective date of this section is convicted in the State of California of the commission or attempt to commit any of the above-mentioned offenses and who is released on probation or discharged upon payment of a fine shall, prior to such release or discharge, be informed of his duty to register under Section 11590 by the court in which he has been convicted and the court shall require the person to read and sign such form as may be required by the Department of Justice, stating that the duty of the person to register under this section has been explained to him. The court shall obtain the address where the person expects to reside upon his release or discharge and shall report within three days such address to the Department of Justice. The court shall give one copy of the form to the person, and shall send two copies to the Department of Justice, which, in turn, shall forward one copy to the appropriate law enforcement agency having local jurisdiction where the person expects to reside upon his discharge, parole, or release.

11594. The registration required by Section 11590 shall consist of (a) a statement in writing signed by such person, giving such information as may be required by the Department of Justice, and (b) the fingerprints and photograph of such person. Within three days thereafter the

registering law enforcement agency shall forward such statement, fingerprints and photograph to the Department of Justice.

If any person required to register hereunder changes his residence address he shall inform, in writing within 10 days, the law enforcement agency with whom he last registered of his new address. The law enforcement agency shall, within three days after receipt of such information, forward it to the Department of Justice. The Department of Justice shall forward appropriate registration data to the law enforcement agency having local jurisdiction of the new place of residence.

All registration requirements set forth in this article shall terminate five years after the discharge from prison, release from jail or termination of probation or parole of the person convicted. Nothing in this section shall be construed to conflict with the provisions of Section 1203.4 of the Penal Code concerning termination of probation and release from penalties and disabilities of probation.

Any person required to register under the provisions of this section who shall knowingly violate any of the provisions thereof is guilty of a misdemeanor.

The statements, photographs and fingerprints herein required shall not be open to inspection by the public or by any person other than a regularly employed peace or other law enforcement officer.

11595. The provisions of former Article 6 (commencing with Section 11850) of Chapter 7 of Division 10 of this code, which is repealed by the act that adds this article, including Section 11850 as amended by Chapter 796 of the Statutes of 1972, shall remain in effect as to any person who comes within such provisions.

Notwithstanding Section 9605 of the Government Code, the changes which are made in former Section 11850 by Chapter 796 of the Statutes of 1972 shall be effective and operative for the purposes of this section.

## CHAPTER 11. EDUCATIONAL PROGRAMS

11600. The Attorney General, the Board of Pharmacy, and other agencies shall carry out educational programs designed to prevent and deter misuse and abuse of controlled substances. In connection with these programs, he may do all of the following:

(a) Promote better recognition of the problems of misuse and abuse of controlled substances within the regulated industry and among interested groups and organizations.

(b) Assist the regulated industry and interested groups and organizations in contributing to the reduction of misuse and abuse of controlled substances.

(c) Consult with interested groups and organizations to aid them in solving administrative and organizational problems.

(d) Assist in the education and training of state and local law enforcement officials in their efforts to control misuse and abuse of controlled substances.

abuse of controlled substances. In connection with the research, and in furtherance of the enforcement of this division, he may do all of the following:

(a) Develop new or improved approaches, techniques, systems, equipment and devices to strengthen the enforcement of this division.

(b) Enter into contracts with public agencies, institutions of higher education, and private organizations or individuals for the purpose of conducting demonstrations or special projects which bear directly on misuse and abuse of controlled substances.

11602. The Attorney General may enter into contracts for educational and research activities without performance bonds.

11603. The Attorney General, with the approval of the Research Advisory Panel, may authorize persons engaged in research on the use and effects of controlled substances to withhold the names and other identifying characteristics of individuals who are the subjects of the research. Persons who obtain this authorization are not compelled in any civil, criminal, administrative, legislative, or other proceeding to identify the individuals who are the subjects of research for which the authorization was obtained.

11604. The Attorney General, with the approval of the Research Advisory Panel, may authorize the possession and distribution of controlled substances by persons engaged in research. Persons who obtain this authorization are exempt from state prosecution for possession and distribution of controlled substances to the extent of the authorization.

## CHAPTER 12. STATE OFFICE OF NARCOTICS AND DRUG ABUSE

11640. The Legislature hereby finds and declares that it is essential to the health and welfare of the people of this state that action be taken by state government to effectively and economically utilize federal and state funds for narcotic and drug abuse prevention, care, treatment and rehabilitation services. To achieve this, it is necessary that:

(a) Existing fragmented, uncoordinated, and duplicative narcotic and drug abuse programs be molded into a comprehensive and integrated statewide program for the prevention of narcotic and drug abuse and for the care, treatment, and rehabilitation of narcotic addicts and drug abusers.

(b) Responsibility and authority for planning programs and activities for prevention, care, treatment, and rehabilitation of narcotic addicts be concentrated in one agency. It is hereby declared to be the intent of the Legislature to assign responsibility and grant authority for planning narcotic and drug abuse prevention, care, treatment, and rehabilitation programs to a state agency whose functions shall be subject to periodic review by the Legislature and appropriate federal agencies.

11641. There is in the Health and Welfare Agency the State Office of Narcotics and Drug Abuse. This office shall be under the control of an executive officer known as the director. The director shall be appointed

by, and hold office at the pleasure of, the Governor.

11642. The director may appoint:

(a) An assistant director.

(b) Such other employees as may be necessary for the proper discharge of the duties of his office.

11643. The duties of the State Office of Narcotics and Drug Abuse are:

(a) To coordinate state and local narcotic and drug abuse preventive, care, treatment, and rehabilitation programs.

(b) Consult with state and local health planning bodies and encourage and promote effective use of facilities, resources, and funds in the development of integrated, comprehensive local programs for the prevention, care, treatment, and rehabilitation of narcotic and drug abuse.

(c) Develop and implement a comprehensive and uniform plan for the prevention, care, treatment, and rehabilitation of narcotic and drug abuse throughout the state.

(d) Consult with federal, state, and local agencies involved in the provision and delivery of services of prevention, care, treatment, and rehabilitation of narcotic and drug abuse.

(e) Provide technical assistance, guidance, and information to local governments and state agencies with respect to the creation and implementation of programs and procedures for dealing effectively with narcotics and drug abuse prevention, care, treatment, and rehabilitation.

(f) Establish goals and priorities for all state agencies providing narcotic and drug abuse services. All state governmental units operating drug programs or administering or subventing state or federal funds for drug programs shall annually set their program priorities and allocate funds in coordination with the State Office of Narcotics and Drug Abuse.

(g) Identify, in conjunction and cooperation with the Department of Finance, all funds made available to the state by the federal government, the state, public agencies, and other sources which can be used in the prevention, care, treatment, and rehabilitation of narcotic and drug abuse.

(h) In the same manner and subject to the same conditions as other state agencies, develop and submit annually to the Department of Finance a program budget for the statewide narcotic and drug abuse program, including not only expenditures proposed to be made under this division, but also expenditures proposed to be made under any related program or by any other state agency, incidental to the prevention, control, and treatment of narcotic and drug abuse. The office may require state departments to contract with it for services to carry out provisions of this division.

(i) To coordinate all narcotic and drug abuse services and related programs conducted by state agencies with the federal government, and shall ensure that there is no duplication of such programs among state agencies and that all agreements, contracts, plans, and programs proposed to be submitted by any such agency, other than the Regents of the University of California, to the federal government in relation to narcotic

and drug abuse related problems shall first be submitted to the State Office of Narcotics and Drug Abuse for review and approval.

(j) To enter into such agreements and contracts with any person, agency, corporation, or other legal entity and such other actions as are necessary to carry out the purposes of this division. The office may require state departments to contract with it for services to carry out the provisions of this division.

(k) To accept and expend grants, gifts, and legacies of money, and with the consent of the Department of Finance, to accept, manage, and expend grants, gifts, and legacies of other properties in furtherance of the purposes of this division.

11645. Notwithstanding any other provision of law, the State Department of Health may provide advance payment of federal funds, to the extent permitted by the federal contract with the State Office of Narcotics and Drug Abuse and the interagency agreement between the state office and the state department, to private nonprofit or county drug abuse treatment and prevention programs which are under subcontract with the state department or which are under Division 5 (commencing with Section 5000) of the Welfare and Institutions Code.

#### CHAPTER 13. MISCELLANEOUS.

11650. (a) Prosecution for any violation of law occurring prior to effective date of this division is not affected or abated by this division. If the offense being prosecuted is similar to one set out in Chapter 5 (commencing with Section 11350) of this division, then the penalties under Chapter 5 (commencing with Section 11350) apply if they are less than those under prior law.

(b) Civil seizures or forfeitures and injunctive proceedings commenced prior to effective date of this division are not affected by this division.

(c) All administrative proceedings pending under prior laws which are superseded by this division shall be continued and brought to a final determination in accord with the laws and rules in effect prior to effective date of this division. Any substance controlled under prior law which is not listed within Schedules I through V, is automatically controlled without further proceedings and shall be listed in the appropriate schedule.

(d) This division applies to violations of law, seizures and forfeiture, injunctive proceedings, administrative proceedings and investigations which occur on or after the effective date of this division.

11651. Any orders and regulations promulgated pursuant to any law affected by this division shall have effect on the effective date of this division, not in conflict with laws which continue in effect until modified, superseded, or repealed.

### EXCERPTS FROM CALIFORNIA WELFARE AND INSTITUTIONS CODE RELATING TO DRUG ADDICTS

#### Division 3. Narcotic Addicts

#### CHAPTER 1. COMMITMENT AND TREATMENT OF NARCOTIC ADDICTS

#### Article 1. Administration

3000. It is the intent of the Legislature that persons addicted to narcotics, or who by reason of repeated use of narcotics are in imminent danger of becoming addicted, shall be treated for such condition and its underlying causes, and that such treatment shall be carried out for nonpunitive purposes not only for the protection of the addict, or person in imminent danger of addiction, against himself, but also for the prevention of contamination of others and the protection of the public. Persons committed to the program provided for in this chapter who are uncooperative with efforts to treat them or are otherwise unresponsive to treatment nevertheless should be kept in the program for purposes of control. It is the further intent of the Legislature that persons committed to this program who show signs of progress after an initial or subsequent periods of treatment and observation be given reasonable opportunity to demonstrate ability to abstain from the use of narcotics under close supervision in outpatient status outside of the rehabilitation center provided for in Chapter 2 (commencing with Section 3300) of this division. Determinations of progress of persons committed to the program should be based upon criteria to be established by the Director of Corrections with the advice of clinically trained and experienced personnel.

The enactment of the preceding provisions of this section shall not be construed to be evidence that the intent of the Legislature was otherwise before such enactment.

3001. The narcotic detention, treatment and rehabilitation facility referred to herein shall be one within the Department of Corrections whose principal purpose shall be the receiving, control, confinement, employment, education, treatment and rehabilitation of persons under the custody of the Department of Corrections or any agency thereof who are or have been addicted to narcotics or who by reason of repeated use of narcotics are in imminent danger of becoming addicted.

3002. Every person committed pursuant to this chapter or from Chapter 11 (commencing with Section 6359) of Title 7 of the Penal Code who escapes or attempts to escape from lawful custody is guilty of a crime punishable by imprisonment in the state prison. This section does not apply to unauthorized absence from a halfway house.

3003. The Director of Corrections may enter into agreements with

of narcotics in imminent danger of addiction, further proceedings shall be conducted in compliance with Sections 3104, 3105, 3106, and 3107.

If, after a hearing, the judge finds that the defendant is a narcotic addict, or is by reason of the repeated use of narcotics in imminent danger of becoming addicted to narcotics, he shall make an order committing such person to the custody of the Director of Corrections for confinement in the facility until such time as he is discharged pursuant to Article 5 of this chapter, except as this chapter permits earlier discharge. In any case to which Section 3052 applies, the judge may request the district attorney to investigate the facts relevant to the advisability of commitment pursuant to this section. In unusual cases, wherein the interest of justice would best be served, the judge may, with the concurrence of the district attorney and defendant, order commitment notwithstanding Section 3052. If, upon the hearing, the judge shall find that the defendant is not a narcotic addict and is not in imminent danger of becoming addicted to narcotics, he shall so certify and return the defendant to the department of the superior court which directed the filing of the petition for such further proceedings on the criminal charges as the judge of such department deems warranted.

If a person committed pursuant to this section is dissatisfied with the order of commitment he may within 10 days after the making of such order file a written demand for a jury trial in compliance with Section 3108.

3052. (a) Sections 3050 and 3051 shall not apply to persons convicted of, or who have been previously convicted of murder, assault with intent to commit murder, attempt to commit murder, kidnapping, robbery, burglary in the first degree, mayhem, a violation of Section 245 or a violation of any provision of Chapter 1 (commencing with Section 261) of Title 9 of Part 1 of the Penal Code (but excepting subdivision 1 of Section 261) any felonies involving bodily harm or attempt to inflict bodily harm or any offense set forth in Article 1 (commencing with Section 11500) or 2 (commencing with Section 11530) of Chapter 5 of Division 10 of the Health and Safety Code, or in Article 4 (commencing with Section 11710) of Chapter 7 of such Division 10 for which the minimum term prescribed by law is more than five years in state prison.

(b) Notwithstanding the provisions of subdivision (a) of this section or Section 3053, the fact a person comes within Section 1203.07 P.C. does not mean that he may not be committed and treated.

3053. If at any time following receipt at the facility of a person committed pursuant to this article, the Director of Corrections concludes that the person, because of excessive criminality or for other relevant reason, is not a fit subject for confinement or treatment in such narcotic detention, treatment and rehabilitation facility, he shall return the person to the court in which the case originated for such further proceedings on the criminal charges as that court may deem warranted.

3054. A person committed to the custody of the Director of Corrections pursuant to this article is not required to register pursuant to

Article 6 (commencing with Section 11850) of Chapter 7, Division 10 of the Health and Safety Code.

### Article 3. Involuntary Commitment of Persons Not Charged With a Crime

3100. Anyone who believes that a person is addicted to the use of narcotics or by reason of the repeated use of narcotics is in imminent danger of becoming addicted to their use or any person who believes himself to be addicted or about to become addicted may report such belief to the district attorney, under oath, who may, when there is probable cause, petition the superior court for a commitment of such person to the Director of Corrections for confinement in the narcotic detention, treatment and rehabilitation facility. As used in this article the term "person" includes any person who is released on probation by any court of this state.

3100.6. Any peace officer or health officer who has reasonable cause to believe that a person is addicted to the use of narcotics or by reason of the repeated use of narcotics is in imminent danger of becoming addicted to their use may take the person, for his best interest and protection, to the county hospital or other suitable medical institution designated by the board of supervisors of the county.

Upon written application of the peace officer or health officer, the physician or superintendent in charge of the designated hospital or institution may admit the person believed to be addicted to the use of narcotics or in imminent danger of becoming addicted to their use. The application shall state the circumstances under which the person's condition was called to the officer's attention, shall state the date, time and place of taking the person into custody and shall state the facts upon which the officer has reasonable cause to believe that the person is addicted to the use of narcotics or by reason of the repeated use of narcotics is in imminent danger of becoming addicted to their use. The application shall be signed by the officer, and a copy of the application shall be presented to the person prior to his admittance to the hospital or institution.

Within 24 hours of admittance, a physician shall conduct an examination to determine whether the person is addicted to the use of narcotics or by reason of the repeated use of narcotics is in imminent danger of becoming addicted to their use and may provide the person with medical aid as necessary to ease any symptoms of withdrawal from the use of narcotics.

If, after examination, the physician does not believe that the person is addicted to the use of narcotics or by reason of the repeated use of narcotics is in imminent danger of becoming addicted to their use, he shall immediately report his belief to the physician or superintendent in charge of the hospital or institution, who shall discharge the person immediately.

If, after examination, the physician believes that further examination is necessary to determine whether the person is addicted to the use of narcotics or by reason of the repeated use of narcotics is in imminent danger of addiction to their use, he shall prepare an affidavit which states

Section 3050, 3051, 3100.6 or 3102, who shall testify as to the result of the examination, unless the presence of the physicians is waived and it is stipulated that their affidavit or report may be received in evidence.

3106.5. If the court determines that the person is not addicted to the use of narcotics, or in imminent danger of addiction, the petition shall be denied. If the court determines that the person is addicted to the use of narcotics or is by reason of the repeated use of narcotics in imminent danger of addiction, the court shall order the person committed to the custody of the Director of Corrections, until such time as he is discharged in accordance with Article 5 of this chapter, except as provided in Section 3109.

3107. Hearing may be waived by consent of the person, expressed in open court or in writing by the person after the arraignment required by Section 3104 and after consultation with counsel.

3108. If the person so committed or any friend in his behalf is dissatisfied with the order of commitment, he may within 10 days after the making of such order, file a written demand that the question of his addiction or imminent danger of addiction be tried by a jury in the superior court of the county in which he was committed. Thereupon, the court shall cause a jury to be summoned and to be in attendance at a date stated, not less than 4 days nor more than 30 days from the date of the demand for a jury trial. The court shall submit to the jury the question: Is the person addicted to the use of narcotics or is he by reason of the repeated use of narcotics in imminent danger of addiction? The order of commitment entered pursuant to Sections 3050, 3051, or 3106.5 shall not be read to the jury, nor alluded to in such trial. The trial shall be had as provided by law for the trial of civil cases and the petition shall be dismissed unless a verdict that the person is addicted or in imminent danger of addiction is found by at least three-fourths of the jury.

The person committed shall be awarded all his constitutional rights including, but not limited to, his right to counsel, his right to notice of the nature of the proceedings brought against him, his right to the process of the court to compel the attendance of witnesses in his behalf, and his right to be confronted with witnesses.

3109. If at any time following receipt at the facility of a person committed pursuant to this article, the Director of Corrections concludes that such person is not, because of excessive criminality or for other relevant reason, a fit subject for confinement or treatment in a facility of the Department of Corrections, he may order such person discharged.

3110. A person committed to the custody of the Director of Corrections pursuant to this article is not required to register pursuant to Article 6 (commencing with Section 11850) of Chapter 7, Division 10 of the Health and Safety Code.

3111. In the performance of acts and duties required by this article,

as is provided for public officers in Sections 820.2 and 821.6 of the Government Code.

#### Article 4. Release in Outpatient Status

3150. (a) There is in the state government a Narcotic Addict Evaluation Authority, hereafter referred to in this article as the "authority." The authority shall be composed of four members, each of whom shall be appointed by the Governor, for a term of four years and until the appointment and qualification of his successor. Members shall be eligible for reappointment. The chairman of the authority shall be designated by the Governor from time to time. The terms of the members first appointed to the authority shall expire as follows: one on January 15, 1965, one on January 15, 1966, one on January 15, 1967, and one on January 15, 1968. Their successors shall hold office for terms of four years, each term to commence on the expiration date of the term of the predecessor. The Governor shall fill every vacancy for the balance of the unexpired term. Insofar as practicable, persons appointed to the authority shall have a broad background in law, sociology, law enforcement, medicine, or education, and shall have a deep interest in the rehabilitation of narcotic addicts.

(b) Each member of the authority shall devote such time to the duties of his office as required for performance of his duties and shall be entitled to an annual salary of nine thousand five hundred dollars (\$9,500) for attendance upon business of the authority. The chairman shall be entitled to an annual salary of ten thousand dollars (\$10,000). In addition, each member shall be allowed actual expenses incurred in the discharge of his duties, including travel expenses.

(c) The authority shall maintain its headquarters at the California Rehabilitation Center and shall be provided with necessary office space, equipment and services from funds appropriated to the California Rehabilitation Center.

(d) The authority shall meet at the center or its branches at such times as may be necessary for a full and complete study of the cases of all patients who are certified by the Director of Corrections to the authority as having recovered from addiction or imminent danger of addiction to such an extent that release in an outpatient status is warranted. Other times and places of meetings may also be fixed by the authority. Where the authority performs its functions by meeting en banc in either public or executive sessions to decide matters of general policy, at least three members shall be present, and no such action shall be valid unless it is concurred in by a majority vote of those present. The authority may meet and transact business in panels. Each authority panel shall consist of at least two members of the authority. Two members of the authority shall constitute a quorum for the transaction of business of a panel. No action shall be valid unless concurred in by a majority of the members present.

(e) Members of other similar boards may be assigned to hear cases and make recommendations to the authority. Such recommendations shall be in accordance with the policies established by a majority of the members

membership of the authority.

3151. After an initial period of observation and treatment of six months, and subject to the rules and policies established by the Director of Corrections, whenever a person committed under Article 2 or Article 3 of this chapter has recovered from his addiction or imminent danger of addiction to such an extent that, in the opinion of the Director of Corrections, release in an outpatient status is warranted, the director shall certify such fact to the authority. If the director has not so certified within the preceding 12 months, in the anniversary month of the commitment of any person committed under this chapter his case shall automatically be referred to the authority for consideration of the advisability of release in outpatient status. Upon any such certification by the director or such automatic certification, the authority may release such person in an outpatient status subject to all rules and regulations adopted by the authority and subject to all conditions imposed by the authority, whether of general applicability or restricted to the particular person released in outpatient status, and subject to being retaken and returned to inpatient status as prescribed in such rules, regulations, or conditions. The supervision of such persons while in an outpatient status shall be administered by the Department of Corrections. Such persons are not subject to the provisions of Penal Code Section 2600.

A single member of the authority may by written or oral order suspend the release in outpatient status of such a person and cause him to be retaken, until the next meeting of the authority. The written order of any member of the authority shall be a sufficient warrant for any peace officer to return such persons to physical custody.

It is hereby made the duty of all peace officers to execute any such order in like manner as ordinary criminal process.

3152. The rules for persons in outpatient status shall include but not be limited to close supervision of the person after release from the facility, periodic and surprise testing for narcotic use, counseling and return to inpatient status at the California Rehabilitation Center or its branches at the discretion of the authority, if from the reports of agents of the Department of Corrections or other information including reports of law enforcement officers as to the conduct of the person, the authority concludes that it is for the best interests of the person and society that this be done.

3153. The Director of Corrections is authorized to establish one or more halfway houses in large metropolitan areas as pilot projects in order to determine the effectiveness of such control on the addict's rehabilitation, particularly upon his release from the narcotic detention and treatment facility. Rules and regulations governing the operation of such halfway houses shall be established by the Director of Corrections and shall provide for control of the earnings of persons assigned to such halfway houses during their residence there, from which shall be deducted such charges for maintenance as the Director of Corrections may prescribe.

3154. A person released in an outpatient status from the California Rehabilitation Center may, with the approval of the Department of Corrections and the Narcotic Addict Evaluation Authority, voluntarily participate in a methadone maintenance project approved under Section 4351.

Participation in a methadone maintenance project shall not be construed to break the abstention from the use of narcotics for the purpose of Section 3200.

3155. In addition to any other payment to which he is entitled by law, each person who has been committed to the custody of the Director of Corrections pursuant to this chapter shall, upon his release, be paid the sum of two hundred dollars (\$200), from such appropriations that may be made available for the purposes of this section.

The director may prescribe rules and regulations (a) to limit or eliminate any payments provided for in this section to persons who have not been confined at least six consecutive months prior to their release in instances where the director determines that such a payment is not necessary for the rehabilitation of the prisoner, and (b) to establish procedures for the payment of the sum of the two hundred dollars (\$200) within the first 60 days of a prisoner's release.

The provisions of this section shall not be applicable if the person is released to the custody of another state or to the custody of the federal government.

#### Article 5. Discharge of Narcotic Addicts

3200. If at any time the Director of Corrections is of the opinion that a person committed pursuant to Article 3 of this chapter while in outpatient status has abstained from the use of narcotics for at least two consecutive years and has otherwise complied with the conditions of his release, or that an outpatient from the California Rehabilitation Center participating in a methadone program pursuant to Section 3154 has abstained from the use of narcotics for at least three consecutive years while on such program and has otherwise complied with the conditions of his release, he shall recommend to the Narcotic Addict Evaluation Authority that such person be discharged from the program. If the authority concurs in the opinion of the director, it shall discharge such person from the program.

If at any time the director is of the opinion that a person committed pursuant to Article 2 of this chapter while in outpatient status has abstained from the use of narcotics for at least two consecutive years and has otherwise complied with the conditions of his release, or that an outpatient from the California Rehabilitation Center participating in a methadone program pursuant to Section 3154 has abstained from the use of narcotics for at least three consecutive years while on such program and has otherwise complied with the conditions of his release, he shall so advise the Narcotic Addict Evaluation Authority. If the authority concurs in the opinion of the director it may file with the superior court of the county

in which the person was committed a certificate alleging such facts and recommending to the court the discharge of the person from the program. The authority shall serve a copy of such certificate upon the district attorney of the county. Upon the filing of such certificate, the court shall discharge the person from the program and may dismiss the criminal charges of which such person was convicted. Where such a person was certified to the superior court from a municipal or justice court, the person shall be returned to such court, which may dismiss the original charges. In any case where the criminal charges are not dismissed and the person is sentenced thereon, time served while under commitment pursuant to Article 2 of this chapter shall be credited on such sentence. Such dismissal shall have the same force and effect as a dismissal under Section 1203.4 of the Penal Code, except the conviction is a prior conviction for purposes of Division 16 of the Health and Safety Code.

This section shall apply to persons convicted pursuant to the provisions of Section 1203.07 of the Penal Code, whether or not such person is on inpatient or outpatient status with the California Rehabilitation Center, if such person has been committed for a minimum period of 20 months.

3201. If a person committed pursuant to this chapter has not been discharged from the program prior to expiration of seven years, the Director of Corrections shall, on the expiration of such period, return him to the court from which he was committed, which court shall discharge him from the program and order him returned to the court in which criminal proceedings were adjourned, or the imposition of sentence suspended, prior to his commitment or certification to the superior court; or, if he was committed pursuant to Article 3, shall discharge him. If, however, it appears to the director that such person gives promise that, if his time on the program were extended, he could complete three consecutive years of abstinence from narcotics, the director shall return him to the court from which he was committed, with the recommendation that an extension not to exceed three years be ordered. The court may order such extension. If it declines to do so, it shall, if the person was committed pursuant to Article 3, discharge him, or, if he was committed pursuant to Article 2, return the person to the court in which criminal proceedings were adjourned, or the imposition of sentence suspended, prior to his commitment or certification to the superior court.

If an extension of the commitment is ordered pursuant to the preceding provisions of this section, the person must be returned to the court and discharged from the program on or before the expiration of 10 years from the date of the original commitment.

Any other provision of this chapter notwithstanding, in any case in which a person was committed pursuant to Article 3 as a result of such person's having requested the district attorney to file a petition for his commitment, such person must be discharged no later than two years and six months after his commitment.

No person committed pursuant to Chapter 11 (commencing with Section 6399) of Title 7 of Part 3 of the Penal Code, before the effective

any longer period than the term of his commitment under the law as it read at the time he was committed.

Nothing in this chapter shall preclude a person who has been discharged from the program from being recommitted under the program, irrespective of the periods of time of any previous commitments.

## CHAPTER 2. CALIFORNIA REHABILITATION CENTER

3300. There is hereby established an institution and branch under the jurisdiction of the Department of Corrections, to be known as the California Rehabilitation Center. Branches may be established in existing institutions of the Department of Corrections or of the Department of the Youth Authority, in halfway houses as described in Section 3153, in such other facilities as may be made available on the grounds of other state institutions, and in city and county correctional facilities where treatment facilities are available. Branches shall not be established on the grounds of such other institutions in any manner which will result in the placement of patients of such institutions into inferior facilities. Branches placed in a facility of the State Department of Health shall have prior approval of the Director of Health. The branches in the Department of the Youth Authority shall be established on order of the Secretary of the Human Relations Agency and shall be subject to the administrative direction of the Director of the Youth Authority. Branches placed in city or county facilities shall have prior approval of the legislative body of the city or county.

Persons confined pursuant to this section in branches established in city and county correctional facilities shall be housed separately from the prisoners therein, and shall be entitled to receive treatment substantially equal to that which would be afforded such persons if confined in the main institution of the California Rehabilitation Center.

3301. The principal purpose of the California Rehabilitation Center shall be the receiving control, confinement, employment, education, treatment and rehabilitation of persons under the custody of the Department of Corrections or any agency thereof who are addicted to the use of narcotics or are in imminent danger of becoming so addicted.

3302. The Director of Corrections shall acquire, or construct, and equip, in accordance with law, suitable buildings, structures and facilities for the California Rehabilitation Center.

3303. The Director of Corrections shall make rules and regulations for the government of the California Rehabilitation Center and the management of its affairs.

3304. A superintendent shall be appointed for the California Rehabilitation Center pursuant to Section 6050 of the Penal Code, and the Director of Corrections shall appoint, subject to civil service, such other officers and employees as may be necessary.

Rehabilitation Center and the responsibility for the care, custody, training, discipline, employment and treatment of the persons confined therein are vested in the Director of Corrections. The provisions of Part 3 of the Penal Code apply to said institution as a prison under the jurisdiction of the Department of Corrections and to the persons confined therein insofar as such provisions may be applicable.

3306. The Director of Corrections may authorize the temporary removal from the California Rehabilitation Center or any of its branches under the jurisdiction of the Department of Corrections of any person confined therein. The director may require that such temporary removal be under custody. Unless the person is removed for medical treatment, the removal shall not be for a period longer than three days. The director may require the person to reimburse the state, in whole or in part, for expenses incurred by the state in connection with such temporary removal other than for medical treatment.

Under specific regulations established by the director for the selection of confined persons, the director may authorize assignment to conservation camp programs.

## EXCERPTS FROM CALIFORNIA VEHICLE CODE RELATING TO DRUG ADDICTS

### 12805. Grounds requiring refusal of license

The department shall not issue or renew a driver's license to any person:

- (a) Who is not of legal age to receive such license.
- (b) Who, because of excessive and continuous use of alcoholic liquors, is incapable of safely operating a motor vehicle, or who is addicted to the use of, or is an habitual user of, any drug to a degree that the person is rendered incapable of safely operating a motor vehicle.
- (c) Who is insane or feebleminded or an idiot or an imbecile.
- (d) Who has a disorder characterized by lapses of consciousness.
- (e) Who is unable as shown by examination to understand traffic signs or signals or who does not have a reasonable knowledge of the provisions of this code governing the operations of vehicles upon the highways.
- (f) When it appears by examination or other evidence that such person is unable to operate a motor vehicle upon a highway safely because of physical or mental defect or lack of skill.
- (g) Who is unable to read and understand simple English used in highway traffic and directional signs. The provisions of this subdivision shall not apply to any person holding an operator's or chauffeur's license issued by this state and valid on September 11, 1957.
- (h) Who holds a valid driver's license issued by a foreign jurisdiction unless he surrenders that license to the department.
- (i) Who has ever held, or is the holder of a license to drive issued by another state, territory or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico, and such license has been suspended by reason, in whole or in part, of a conviction of a traffic violation until the suspension period has terminated, except as provided in subdivision (b) of Section 12806.
- (j) Who has ever held, or is the holder of a license to drive issued by another state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico, and such license has been revoked by reason, in whole or in part, of a conviction of a traffic violation until the revocation has been terminated or after the expiration of one year from the date the license was revoked, whichever occurs first, except as provided in subdivision (b) of Section 12806.

### 12806. Grounds not requiring refusal

(a) Any physical or mental defect of the applicant which in the opinion of the department does not affect the applicant's ability to exercise reasonable and ordinary control in operating a motor vehicle upon the highway shall not prevent the issuance of a license to the applicant.

(b) An applicant addicted to the use of narcotic drugs who is participating in a methadone maintenance program approved pursuant to Article 3 (commencing with Section 4350) of Chapter 3 of Part 1 of Division 4 of the Welfare and Institutions Code shall not be considered

subject to reasonable terms and conditions of probation if such drug usage does not affect the applicant's ability to exercise reasonable and ordinary control in operating a motor vehicle upon the highway.

(c) Any suspension or revocation by a state which is not a party to the Driver License Compact provided for in Chapter 6 (commencing with Section 15000) of Division 6 shall not prevent the issuance of a license to the applicant if in the opinion of the department it will be safe to issue such license.

#### 12807. Additional grounds for refusal

The department shall not issue or renew a driver's license to any person:

(a) When a license previously issued to the person under this code has been suspended until the expiration of the period of the suspension, unless cause for suspension has been removed.

(b) When a license previously issued to the person under this code has been revoked until the expiration of one year after the date of the revocation, except where a different period of revocation is prescribed by this code, or unless the cause for revocation has been removed.

(c) When the department has received a notice pursuant to subdivision (a) of Section 40509, unless the department has received a certificate as provided in that subdivision.

(d) When the department has been notified by a court that the licensee has failed to pay a lawfully imposed fine within the time authorized by the court for any violation which is required to be reported pursuant to Section 1803.

#### 12809. Grounds permitting refusal

The department may refuse to issue or renew a driver's license to any person:

(a) If the department is satisfied that the applicant is not entitled to the license under this code.

(b) If the applicant has failed to furnish the department the information required in the application or reasonable additional information requested by the department.

(c) If the department determines that the applicant has made or permitted unlawful use of any driver's license.

(d) If the department determines that such person has knowingly used a false or fictitious name in any application for a license or has impersonated another in making application or in taking any test, or has knowingly made a false statement or knowingly concealed a material fact, or otherwise committed any fraud in any such application.

(e) If the department determines that the applicant is a negligent or incompetent operator of a motor vehicle.

(f) If the applicant is convicted of any offense involving the transportation for purpose of sale, or the transportation for compensation,

Division 10 (commencing with Section

involved the use or operation of a motor vehicle.

If, however, the driving privilege of the applicant is on probation for a cause related to the use or possession of a narcotic controlled substance, the department may refuse to issue or renew a driver's license to such applicant if the applicant is subsequently convicted of any offense involving the use or possession of a narcotic controlled substance, whether or not the commission of such offense involved the use or operation of a motor vehicle.

The maximum period of time for which the department may refuse to issue or renew a driver's license to any person pursuant to this subdivision shall be three years from the date of conviction.

(g) If the applicant fails or refuses to surrender to the department upon its lawful demand, a nonresident minor's certificate which has been canceled.

#### 12810. Traffic violation point count and negligent operation defined

In determining the violation point count, any conviction of failure to stop in the event of an accident resulting in damage to property or otherwise failing to comply with the requirements of Section 20002, or driving a motor vehicle while under the influence of intoxicating liquor or any drug, or under the combined influence of intoxicating liquor and any drug, or of reckless driving shall be given a value of two points and any other traffic conviction involving the safe operation of a motor vehicle upon the highway shall be given a value of one point; provided, that conviction for only one violation arising from one occasion of arrest or citation shall be counted in determining the violation point count for the purposes of this section.

Any person whose driving record shows a violation point count of four or more points in 12 months, six or more points in 24 months or eight or more points in 36 months shall be prima facie presumed to be a negligent operator of a motor vehicle.

Any accident in which the operator is deemed by the department to be responsible shall be given a value of one point.

In applying the provisions of this section to a driver, the department shall give due consideration to the amount of use or mileage traveled in the operation of a motor vehicle.

#### 13201. Certain misdemeanors and drug use

A court may suspend the privilege of any person to operate a motor vehicle, for a period not exceeding six months, upon conviction of any of the following offenses:

(a) Failure of the driver of a vehicle involved in an accident to stop or otherwise comply with the provisions of Section 20002.

(b) Reckless driving proximately causing bodily injury to any person under Section 20104.

(c) Failure of the driver of a vehicle to stop at a railway grade crossing

(d) Driving while addicted to the use, or under the influence of, any drug under subdivisions (a) or (c) of Section 23105.

#### 13201.5 Driving while under the influence

A court may suspend the privilege of any person to operate a motor vehicle, for a period not exceeding six months, upon conviction of driving while under the influence of intoxicating liquor or under the combined influence of intoxicating liquor and any drug.

#### 13202. Illegal narcotics

(a) A court may suspend or order that the department revoke in which case the department shall revoke the privilege of any person to operate a motor vehicle upon conviction of any narcotic controlled substance offense as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code when the use of a motor vehicle was involved in, or incidental to, the commission of the offense.

(b) A court shall order that the department revoke and the department shall revoke the privilege of any person to operate a motor vehicle upon conviction of a violation of Section 11350, 11351, 11352, 11353, 11357, 11359, 11360, or 11361 of the Health and Safety Code when a motor vehicle was involved in, or incidental to, the commission of such offense.

(c) The period of time for suspension or the period after revocation during which the person may not apply for a license shall be determined by the court, but in no event shall such period exceed three years from the date of conviction.

#### 13209. Record of prior conviction

Before sentencing a person upon a conviction of driving a motor vehicle while under the influence of intoxicating liquor or any drug, or under the combined influence of intoxicating liquor and any drug, other than under Section 23101 or 23106, the court shall obtain from the department a record of any prior convictions of that person for traffic violations. The department shall furnish such record upon the written request of the court.

Notwithstanding the provisions of Section 1449 of the Penal Code, in any such criminal action the time for pronouncement of judgment shall not commence to run until the time that the court receives the record of prior convictions from the department.

#### 13210. Procedure upon first conviction

Notwithstanding any other provision of this code, whenever any person is convicted for the first time of driving a motor vehicle while under the influence of intoxicating liquor or any drug, or under the combined influence of intoxicating liquor and any drug, other than under Section 23101 or 23106, the court shall order the department to suspend the

person's driving privilege unless the person shows good cause why such order should not be made. If the court does not order such suspension, the court may limit the person's driving privilege as a condition of probation without notifying the department of such condition.

#### 13352. Influence of liquor or drugs

The department shall, except for a conviction or finding described in subdivision (a) where the court does not order the department to suspend, immediately suspend or revoke the privilege of any person to operate a motor vehicle upon receipt of a duly certified abstract of the record of any court showing that the person has been convicted of driving a motor vehicle while under the influence of intoxicating liquor or any drug, or while under the combined influence of intoxicating liquor and any drug, or in violation of subdivision (c) of Section 23105, or upon receipt of a report of a judge of the juvenile court, a juvenile traffic hearing officer, or a referee of a juvenile court showing that the person has been found to have committed the offense of operating a vehicle while under the influence of intoxicating liquor or any drug, or while under the combined influence of intoxicating liquor and any drug, or in violation of subdivision (c) of Section 23105. The suspension or revocation shall be as follows:

(a) Upon a first such conviction or finding, other than under Section 23101 or 23106 such privilege shall be suspended for a period of six months, if the court orders the department to suspend such privilege.

(b) Upon a first such conviction or finding under Section 23101 or 23106 such privilege shall be suspended for one year and shall not be reinstated until such person gives proof of ability to respond in damages as defined in Section 16430.

(c) Upon a second conviction or finding of driving a motor vehicle while under the influence of intoxicating liquor or any drug, or under the combined influence of intoxicating liquor and any drug, or in violation of subdivision (c) of Section 23105, or any combination of such convictions or findings within five years, such privilege shall be suspended for one year and shall not be reinstated unless and until such person gives proof of ability to respond in damages as defined in Section 16430.

(d) Upon a second such conviction or finding under Section 23101 or 23106 within three years, such privilege shall be permanently revoked.

(e) Upon a third or subsequent conviction or finding of driving a motor vehicle while under the influence of intoxicating liquor or any drug, or under the combined influence of intoxicating liquor and any drug, or in violation of subdivision (c) of Section 23105, or any combination of such convictions or findings within seven years such privilege shall be revoked and shall not be reinstated for a period of three years and until such person files proof of ability to respond in damages as defined in Section 16430.

For the purposes of subdivision (c), (d), and (e), the finding of the juvenile court judge, the juvenile traffic hearing officer, or the referee of a juvenile court, specified in the first paragraph of this section shall also be considered a conviction.

Each judge of a juvenile court, juvenile traffic hearing officer, or referee of a juvenile court shall immediately report such findings to the department.

#### 13300. Investigations by the department

The department may conduct an investigation to determine whether the privilege of any person to operate a motor vehicle should be suspended or revoked or whether terms or conditions of probation should be imposed upon receiving information or upon a showing by its records:

(a) That the licensee has been involved as a driver in any accident causing death or personal injury or serious damage to property.

(b) That the licensee has been involved in three or more accidents within a period of 12 consecutive months.

(c) That the licensee is a reckless, negligent, or incompetent driver of a motor vehicle.

(d) That the licensee has permitted an unlawful or fraudulent use of his driver's license.

(e) That any ground exists for which a license might be refused. The receipt by the department of an abstract of the record of conviction of any offense involving the use or possession of narcotic controlled substances under Division 10 (commencing with Section 11000) of the Health and Safety Code shall be a sufficient basis for an investigation by the department to determine whether grounds exist for which a license might be refused.

#### 23101. Influence of alcohol or alcohol and drugs causing death or injury

(a) It is unlawful for any person, while under the influence of intoxicating liquor, or under the combined influence of intoxicating liquor and any drug, to drive a vehicle upon a highway and when so driving do any act forbidden by law or neglect any duty imposed by law in the driving of such vehicle, which act or neglect proximately causes bodily injury to any person other than himself.

(b) It is unlawful for any person, while under the influence of intoxicating liquor, or under the combined influence of intoxicating liquor and any drug, to drive a vehicle other than on a highway and when so driving do any act, or neglect any duty imposed by law, which act or neglect proximately causes death or bodily injury to any person other than himself.

(c) Any person convicted under this section shall be punished by imprisonment in the state prison, or in the county jail for not less than 90 days nor more than one year and by fine of not less than two hundred fifty dollars (\$250) nor more than five thousand dollars (\$5,000).

#### 23102. Influence of alcohol or alcohol and drugs

(a) It is unlawful for any person who is under the influence of intoxicating liquor, or under the combined influence of intoxicating liquor

and any drug, to drive a vehicle upon any highway.

(b) It is unlawful for any person who is under the influence of intoxicating liquor, or under the combined influence of intoxicating liquor and any drug, to drive a vehicle upon other than a highway.

The department shall not be required to provide patrol or enforce the provisions of this subdivision.

(c) Any person convicted under this section shall be punished upon first conviction by imprisonment in the county jail for not less than 48 hours nor more than six months or by fine of not less than two hundred fifty dollars (\$250) nor more than five hundred dollars (\$500) or by both such fine and imprisonment. If, however, any person so convicted consents to, and does participate and successfully completes, a driver improvement program or treatment program for persons who are habitual users of alcohol, or both such programs, as designed by the court the court shall punish such person by a fine of not less than one hundred fifty dollars (\$150) nor more than five hundred dollars (\$500) or by imprisonment in the county jail for not less than 48 hours nor more than six months or by both such fine and imprisonment.

(d) Any person convicted under this section shall be punished upon second or any subsequent conviction, within five years of a prior conviction, by imprisonment in the county jail for not less than 48 hours nor more than one year and by a fine of not less than two hundred fifty dollars (\$250) nor more than one thousand dollars (\$1,000). A conviction under this section shall be deemed a second conviction if the person has previously been convicted of a violation of Section 23101.

(e) If any person is convicted of a second or subsequent offense under this section within five years of a prior conviction and is granted probation it shall be a condition of probation that such person be confined in jail for at least 48 hours but not more than one year and pay a fine of at least two hundred fifty dollars (\$250) but not more than one thousand dollars (\$1,000).

(f) In no event does the court have the power to absolve a person who is convicted of a second or subsequent offense under this section within five years of a prior conviction from the obligation of spending at least 48 hours in confinement in the county jail and of paying a fine of at least two hundred fifty dollars (\$250), except as provided in subdivision (g).

(g) Except in unusual cases where the interests of justice demand an exception, the court shall not strike a prior conviction of an offense under this section for purposes of sentencing in order to avoid imposing as part of the sentence or term of probation the minimum time in confinement in the county jail and the minimum fine, as provided in subdivision (f).

When such a prior conviction is stricken by the court for purposes of sentencing, the court shall specify the reason or reasons for such striking order.

On appeal by the people from such an order striking such a prior conviction it shall be conclusively presumed that such order was made only for the reasons specified in such order and such order shall be reversed if there is no substantial basis in the record for any of such reasons.

(h) The court may order that any person convicted under this section who is punished by imprisonment in jail, be imprisoned on days other than days of regular employment of the person, as determined by the court.

(i) If the person convicted under this section is under the age of 21 years and the vehicle used in any such violation is registered to such person, the vehicle may be impounded at the owner's expense for not less than one day nor more than 30 days.

(c) In any case, the court may order suitable treatment for the person, in addition to imposing any penalties required by this code.

#### 23105. Influence of drug or addiction

(a) It is unlawful for any person who is under the influence of any drug to drive a vehicle upon any highway.

(b) It is unlawful for any person who is under the influence of any drug to drive a vehicle upon other than a highway.

The department shall not be required to provide patrol or enforce the provisions of this subdivision.

(c) It is unlawful for any person who is addicted to the use of any drug, except such a person who is participating in a methadone maintenance treatment program approved pursuant to Article 3 (commencing with Section 4350) of Chapter 1 of Part 1 of Division 4 of the Welfare and Institutions Code, to drive a vehicle upon any highway.

(d) Any person convicted under this section shall be punished upon a first conviction by imprisonment in the county jail for not less than 48 hours nor more than six months or by fine of not less than two hundred fifty dollars (\$250) nor more than five hundred dollars (\$500) or by both such fine and imprisonment. If, however, any person so convicted consents to participate, and does participate and successfully completes, a driver improvement program or a treatment program for persons who are habitual users of drugs, or both such programs, as designated by the court, a court shall punish such person by a fine of not less than one hundred fifty dollars (\$150) nor more than five hundred dollars (\$500) or by imprisonment in the county jail for not less than 48 hours nor more than six months or by both such fine and imprisonment.

(e) Any person convicted under this section shall be punished upon a second or any subsequent conviction, within five years of a prior conviction, by imprisonment in the county jail for not less than 48 hours nor more than one year and by a fine of not less than two hundred fifty dollars (\$250) nor more than one thousand dollars (\$1,000). A conviction under this section shall be deemed a second or subsequent conviction if the person has previously been convicted of a violation of driving a vehicle while under the influence of intoxicating liquor or any drug, or under the combined influence of intoxicating liquor and any drug.

(f) If any person is convicted of a second or subsequent offense under this section within five years of a prior conviction and is granted probation, it shall be a condition of probation that such person be confined in jail for at least 48 hours but not more than one year and pay a fine of at least two hundred fifty dollars (\$250) but not more than one thousand dollars

(\$1,000).

(g) In no event does the court have the power to absolve a person who is convicted of a second or subsequent offense under this section within five years of a prior conviction from the obligation of spending at least 48 hours in confinement in the county jail and of paying a fine of at least two hundred fifty dollars (\$250) except as provided in subdivision (h).

(h) Except in unusual cases where the interests of justice demand an exception, the court shall not strike a prior conviction of an offense under this section for purposes of sentencing in order to avoid imposing as part of the sentence or term of probation the minimum time in confinement in the county jail and the minimum fine, as provided in subdivision (g).

When such a prior conviction is stricken by the court for purposes of sentencing, the court shall specify the reason or reasons for such striking order.

On appeal by the people from such an order striking such a prior conviction it shall be conclusively presumed that such order was made only for the reasons specified in such order and such order shall be reversed if there is no substantial basis in the record for any of such reasons.

(i) The court may order that any person convicted under this section who is punished by imprisonment in jail, be imprisoned on days other than days of regular employment of the person, as determined by the court.

(j) If the person convicted under this section is under the age of 21 years and the vehicle used in any such violation is registered to such person, the vehicle may be impounded at the owner's expense for not less than one day nor more than 30 days.

#### 23106. Influence of drugs causing injury

(a) It is unlawful for any person, while under the influence of any drug, to drive a vehicle upon a highway and when so driving do any act forbidden by law or neglect any duty imposed by law in the driving of such vehicle, which act or neglect proximately causes bodily injury to any person other than himself.

(b) It is unlawful for any person, while under the influence of any drug, to drive a vehicle other than on a highway and when so driving do any act, or neglect any duty imposed by law, which act or neglect proximately causes bodily injury to any person other than himself.

(c) Any person convicted under this section shall be punished by imprisonment in the state prison, or in the county jail for not less than 90 days nor more than one year and by fine of not less than two hundred fifty dollars (\$250) nor more than five thousand dollars (\$5,000).

#### 23107. Defense to drug violations

The fact that any person charged with a violation of Section 23105 or 23106 is or has been entitled to use such drug under the laws of this state shall not constitute a defense against any violation of the sections.

## EXCERPTS FROM BUSINESS AND PROFESSIONS CODE

## Article 6. Hypodermics

## 4140. Permit to sell and dispense; renewal; transfer

The board may, upon written application, on a form furnished by the board, and in its discretion, issue a permit to any person, permitting and authorizing such person to sell and dispense hypodermic syringes and hypodermic needles for the purposes and uses specified by the board.

Separate certificates, licenses, permits or registrations, shall be required for each of the premises of any business establishment having more than one location. Such certificate, license, permit or registration shall be renewed annually, on or before January 1 of each year and shall not be transferable.

No person shall furnish, by sale or otherwise, any hypodermic syringe or hypodermic needle if he has not obtained a permit from the board, unless he is authorized to furnish a hypodermic syringe or hypodermic needle without a permit from the board, or unless he is otherwise exempted from such requirement.

## 4140.5. Nonresident hypodermic needle or syringe distributor's license; renewal; application; discipline; doing business in state

(a) A nonresident distributor of hypodermic needles or syringes doing business in this state that has not obtained a certificate, license, permit, registration, or exemption from the board and that sells or distributes hypodermic needles or syringes in this state through any person or medium other than a wholesaler which has obtained a certificate, license, permit, registration, or exemption pursuant to the provisions of this chapter or through a selling or distribution outlet which is licensed as a wholesaler pursuant to the provisions of this chapter, shall not conduct the business of selling or distributing hypodermic needles or syringes in this state without obtaining a nonresident hypodermic needle or syringe distributor's license from the board.

Separate certificates, licenses, permits or registrations shall be required for each of the premises of any business establishment having more than one location. Such certificate, license, permit or registration shall be renewed annually on or before January 1 of each year and shall not be transferable.

(b) Applications for a nonresident hypodermic needle or syringe distributor's license under this section shall be made on a form furnished by the board. The board may require such information as the board deems is reasonably necessary to carry out the purposes of the section.

(c) The board may deny, revoke, or suspend such nonresident distributor's license for any violation of this chapter.

(d) The Legislature, by enacting this section, does not intend a license

## 4140.7. Confiscation of hypodermic needles or syringes not in possession of authorized person

All stocks of hypodermic needles or hypodermic syringes shall be confiscated if found upon any premises which are not in the possession of the person who was issued a permit under Section 4140, unless he is excepted therefrom.

## 4141. Record of furnishing

Any furnishing of a hypodermic syringe or hypodermic needle without a prescription shall at the time of furnishing be recorded in a book by the furnisher. The record of furnishing shall consist of the date and hour of such furnishing, the type or kind, size, and quantity of syringe or needle furnished, the purpose and use for which such needle or syringe was obtained, the signature of the furnisher, and the signature and address of the person to whom the needle or syringe was furnished. Such record book shall be available for inspection by any authorized officer of the law.

## 4142. Exceptions

The provisions of this article with reference to hypodermic syringes and needles do not apply to the sale at wholesale by pharmacies, drug jobbers, drug wholesalers and drug manufacturers or manufacturers and dealer in surgical instruments to pharmacies, physicians, dentists, podiatrists, veterinarians, or persons to whom a permit has been issued.

## 4143. Unlawful possession; exceptions; disposition of used needle or syringe

(a) It is unlawful for any person to have in his possession or under his control any hypodermic needle or hypodermic syringe.

(b) The provisions of this section do not apply to persons who have acquired possession and control of a hypodermic needle or hypodermic syringe in accordance with the provisions of this code authorizing and regulating the furnishing, possession and use of such needles and syringes.

Any used hypodermic needle or hypodermic syringe which is to be disposed of shall be destroyed in such a manner as to render such unit unfit for reuse in any manner. Such destruction may include, but not limited to, grinding and disposal in sewerage systems where such disposal is authorized by the appropriate agency with jurisdiction over such sewerage system.

## 4145. Sale restrictions; exceptions

No hypodermic needle or hypodermic syringe shall be sold at retail except upon the prescription of a physician and surgeon, dentist, veterinarian, or podiatrist, or pharmacist acting within the scope of a project (relating to the possession, use, and distribution of controlled substances, as defined in Section 429.70) of Chapter 429.

acting within the scope of a project authorized under Article 18 (commencing with Section 429.70) of Chapter 2 of Part 1 of Division 1 of the Health and Safety Code, or physician's assistant acting within the scope of a project authorized under Article 18 (commencing with Section 429.70) of Chapter 2 of Part 1 of Division 1 of the Health and Safety Code.

#### 4147. Authority to furnish without prescription; requirements

Notwithstanding any other provision of law, a pharmacist or physician may, without a prescription or a permit, furnish hypodermic needles and syringes for human use in the administration of insulin or adrenalin, a pharmacist or veterinarian may, without a prescription or a permit, furnish hypodermic needles and syringes for use on poultry or animals, and a person may, without a prescription or permit, obtain hypodermic needles and syringes from a pharmacist or physician for human use in the administration of insulin or adrenalin, or from a pharmacist, veterinarian, or permit holder, for use on poultry or animals, if all of the following requirements are met:

- a. No needle or syringe shall be furnished to a person who is unknown to the furnisher and unable to properly establish his identity.
- b. The furnisher, at the time the furnishing occurs makes a record of the furnishing in the manner required by Section 4141.

#### 4148. Inapplicability of Sections 4141 and 4147 to industrial uses

The provisions of Sections 4141 and 4147 shall not apply to the furnishing or obtaining of hypodermic syringes or hypodermic needles for uses which the board determines are industrial. Notwithstanding any other provision of law, a person may obtain hypodermic syringes or needles, without prescription or permit, for such industrial uses.

### Article 8. Dangerous Drugs

#### 4211. Dangerous drug

"Dangerous drug" means any drug unsafe for self-medication, except preparations of drugs defined in subdivisions (e), (f), (h), and (i) hereof, designed for the purpose of feeding or treating animals (other than man) or poultry, and so labeled, and includes the following:

- (a) Any hypnotic drug "Hypnotic drug" includes acetylurea derivatives, barbituric acid derivatives, chloral, paraldehyde, sulfomethane derivatives, or any compounds or mixtures or preparations that may be used for producing hypnotic effects.
- (b) Aminopyrine, or compounds or mixtures thereof.
- (c) Amphetamine, desoxyephedrine, or compounds or mixtures thereof except preparations for use in the nose and unfit for internal use.
- (d) Cinchophen, neocinchophen, or compounds or mixtures thereof.
- (e) Diethylstilbestrol, or compounds or mixtures thereof.
- (f) Ergot, cotton root, or their contained or derived active compounds

or mixtures thereof.

(g) Oils of croton, rue, savin or tansy or their contained or derived compounds or mixtures thereof.

(h) Sulfanilamide or substituted sulfanilamides, or compounds or mixtures thereof, except preparations for topical application only containing not more than five percent (5%) strength.

(i) Thyroid and its contained or derived active compounds or mixtures thereof.

(j) Phenylhydantoin derivatives.

(k) Any drug which bears the legend: "Caution: federal law prohibits dispensing without prescription;" or, any device which bears the statement: "Caution: federal law restricts this device to sale by or on the order of a \_\_\_\_\_," the blank to be filled in with the designation of the practitioner licensed to use or order use of the device. However, this section, nor any other provision of law, shall not prohibit the sale of such devices to skilled nursing facilities or intermediate care facilities licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code.

(l) Hypnotic drugs when combined and compounded with nonhypnotic drugs.

(m) Any narcotic antagonist drug which has been found by the federal government to have currently accepted medical use in treatment in the United States and to have no potential for abuse or abuse liability.

#### 4213. Administer

"Administer," as used in this article, means the furnishing by a physician and surgeon, dentist, podiatrist, or veterinarian, or pharmacist acting within the scope of a project authorized under Article 18 (commencing with Section 429.70) of Chapter 2 of Part 1 of Division 1 of the Health and Safety Code, or registered nurse acting within the scope of a project authorized under Article 18 (commencing with Section 429.70) of Chapter 2 of Part 1 of Division 1 of the Health and Safety Code, or physician's assistant acting within the scope of a project authorized under Article 18 (commencing with Section 429.70) of Chapter 2 of Part 1 of Division 1 of the Health and Safety Code to his patient of such amount of drugs or medicines referred to in this article as are necessary for the immediate needs of the patient.

#### 4227. Furnishing or dispensing drug without prescription; exceptions

(a) No person shall furnish any dangerous drug except upon the prescription of a physician, dentist, podiatrist or veterinarian, or pharmacist acting within the scope of a project authorized under Article 18 (commencing with Section 429.70) of Chapter 2 of Part 1 of Division 1 of the Health and Safety Code, or registered nurse acting within the scope of a project authorized under Article 18 (commencing with Section 429.70) of Chapter 2 of Part 1 of Division 1 of the Health and Safety Code, or physician's assistant acting within the scope of a project authorized un

Article 18 (commencing with Section 429.70) of Chapter 2 of Part 1 of Division 1 of the Health and Safety Code.

(b) The provisions of this section do not apply to the furnishing of any dangerous drug by a manufacturer or wholesaler or pharmacy to each other or to a physician, dentist, podiatrist or veterinarian, or pharmacist acting within the scope of a project authorized under Article 18 (commencing with Section 429.70) of Chapter 2 of Part 1 of Division 1 of the Health and Safety Code, or registered nurse acting within the scope of a project authorized under Article 18 (commencing with Section 429.70) of Chapter 2 of Part 1 of Division 1 of the Health and Safety Code, or physician's assistant acting within the scope of a project authorized under Article 18 (commencing with Section 429.70) of Chapter 2 of Part 1 of Division 1 of the Health and Safety Code, or to a laboratory under sales and purchase records that correctly give the date, the names and addresses of the supplier and the buyer, the drug and its quantity.

(c) A registered pharmacist, or a person exempted pursuant to Section 4050.7, may distribute dangerous drugs and devices directly to hemodialysis patients pursuant to regulations promulgated by the board. The board shall promulgate such regulations as are necessary to insure the safe distribution of such drugs and devices to hemodialysis patients without interruption of supply including, but not limited to, the following: vendor licensing, records and labeling, patient receipts, patient training, report records, specific product and quantity limitations, verification order forms, reports and supplies, adequate establishment facilities, and reports to the board. A person who violates a regulation promulgated pursuant to this subdivision shall be liable upon order of the board to surrender this personal license. These penalties shall be in addition to penalties which may be imposed pursuant to Sections 4389 and 4350.5. If the board finds any hemodialysis drugs or devices distributed pursuant to this subdivision to be ineffective or unsafe for the intended use, the board may institute immediate recall of any or all of such drugs or devices distributed to individual patients.

(d) Home hemodialysis patients who receive any drugs or devices pursuant to subdivision (c) shall have completed a full course of home training given by a renal dialysis center accredited by the State Department of Health. The physician and surgeon prescribing the hemodialysis products shall submit proof satisfactory to the manufacturer or wholesaler that the patient has completed such program.

#### 4223. Container labels

(a) Except as provided in subdivision (b) of this section, no person shall dispense any dangerous drug upon prescription except in a container correctly labeled with the information required by Sections 4047.5 and 4048.

(b) Physicians, dentists, podiatrists, and veterinarians, and pharmacists acting within the scope of a project authorized under Article 18 (commencing with Section 429.70) of Chapter 2 of Part 1 of Division 1 of the Health and Safety Code, or registered nurses acting within the scope of

a project authorized under Article 18 (commencing with Section 429.70) of Chapter 2 of Part 1 of Division 1 of the Health and Safety Code, or physician's assistants acting within the scope of a project authorized under Article 18 (commencing with Section 429.70) of Chapter 2 of Part 1 of Division 1 of the Health and Safety Code, may personally furnish any dangerous drug prescribed by them to the patient for whom prescribed, provided that such drug is properly labeled to show all information required in Sections 4047.5 and 4048 except the prescription number.

#### 4229.5. Refilling prescription when prescriber is unavailable

A prescription for a dangerous drug may be refilled without the prescriber's authorization if the prescriber is unavailable to authorize the refill and if, in the pharmacist's professional judgment, failure to refill the prescription might present an immediate hazard to the patient's health and welfare or might result in intense suffering. The pharmacist shall refill only a reasonable amount sufficient to maintain the patient until the prescriber can be contacted. The pharmacist shall note on the reverse side of the prescription the date and quantity of the refill and that the prescriber was not available and the basis for his judgment to refill the prescription without the prescriber's authorization. The pharmacist shall inform the patient that the prescription was refilled without the prescriber's authorization, indicating that the prescriber was not available and that, in the pharmacist's professional judgment, failure to provide the drug might result in an immediate hazard to the patient's health and welfare or might result in intense suffering. The pharmacist shall inform the prescriber within a reasonable period of time. Prior to refilling a prescription pursuant to this section, the pharmacist shall make every reasonable effort to contact the prescriber.

The prescriber shall not incur any liability as the result of a refilling of a prescription pursuant to this section.

#### 4230. Possession of drug without prescription

No person shall have in possession any preparation included in subdivision (a) or (c) of Section 4211 except that furnished to such person upon the prescription of a physician, dentist, \* \* \* podiatrist, or veterinarian, or pharmacist acting within the scope of a project authorized under Article 18 (commencing with Section 429.70) of Chapter 2 of Part 1 of Division 1 of the Health and Safety Code, or registered nurse acting within the scope of a project authorized under Article 18 (commencing with Section 429.70) of Chapter 2 of Part 1 of Division 1 of the Health and Safety Code, or physician's assistant acting within the scope of a project authorized under Article 18 (commencing with Section 429.70) of Chapter 2 of Part 1 of Division 1 of the Health and Safety Code. The provisions of this section do not apply to the possession of any drug defined in subdivision (a) or (c) of Section 4211 by a manufacturer or wholesaler or a pharmacy or physician or \* \* \* podiatrist, dentist or veterinarian or laboratory or pharmacist acting within the scope of a project authorized under Article 18 (commencing with Section 429.70) of Chapter 2 of Part 1 of Division 1 of the Health and Safety Code.

18 (commencing with Section 429.70) of Chapter 2 of Part 1 of Division 1 of the Health and Safety Code, or registered nurse acting within the scope of a project authorized under Article 18 (commencing with Section 429.70) of Chapter 2 of Part 1 of Division 1 of the Health and Safety Code, or physician's assistant acting within the scope of a project authorized under Article 18 (commencing with Section 429.70) of Chapter 2 of Part 1 of Division 1 of the Health and Safety Code when in stock in containers correctly labeled with the name and address of the supplier or producer.

#### 4231. Inspection of stock

All stock of any dangerous drug of a manufacturer, wholesaler, pharmacy, physician, dentist, podiatrist, or veterinarian, or pharmacist acting within the scope of a project authorized under Article 18 (commencing with Section 429.70) of Chapter 2 of Part 1 of Division 1 of the Health and Safety Code, or registered nurse acting within the scope of a project authorized under Article 18 (commencing with Section 429.70) of Chapter 2 of Part 1 of Division 1 of the Health and Safety Code, or physician's assistant acting within the scope of a project authorized under Article 18 (commencing with Section 429.70) of Chapter 2 of Part 1 of Division 1 of the Health and Safety Code, laboratory, shipments through a customs broker or carrier shall be at all times during business hours open to inspection by authorized officers of the law.

#### 4232. Inspection of records; current inventory; offenses

All records of manufacture and of sale, purchase or disposition of dangerous drugs shall be at all times, during business hours, open to inspection by authorized officers of the law, and shall be preserved for at least three years from the date of making. A current inventory shall be kept by every manufacturer, wholesaler, pharmacy, physician, dentist, podiatrist or veterinarian, or pharmacist acting within the scope of a project authorized under Article 18 (commencing with Section 429.70) of Chapter 2 of Part 1 of Division 1 of the Health and Safety Code, or registered nurse acting within the scope of a project authorized under Article 18 (commencing with Section 429.70) of Chapter 2 of Part 1 of Division 1 of the Health and Safety Code, or physician's assistant acting within the scope of a project authorized under Article 18 (commencing with Section 429.70) of Chapter 2 of Part 1 of Division 1 of the Health and Safety Code, laboratory, clinic, hospital, institution, or establishment holding a currently valid and unrevoked certificate, license, permit, registration or exemption under Division 2 (commencing with Section 1200) of the Health and Safety Code or under Part 3 (commencing with Section 1620) of Division 2 of, Chapter 2 (commencing with Section 2300) of Division 3 of, or Part 2 (commencing with Section 5699) of Division 6 of, the Welfare and Institutions Code who maintains a stock of dangerous drugs.

Any person who fails, neglects, or refuses to maintain such records or who, when called upon by an authorized officer or a member of the board, fails, neglects or refuses to produce such records within a reasonable time,

or who willfully produces or furnishes records which are false, is guilty of a misdemeanor.

#### 4235. Violation; offense

Every person who violates any provision of this article other than Section 4230 or Section 4227 insofar as sections relate to any preparation included in subdivision (a) or (c) of Section 4211, is guilty of a misdemeanor.

#### 4390. Forgery of prescription; offense; punishment

Every person who signs the name of another, or of a fictitious person or falsely makes, alters, forges, utters, publishes, passes, or attempts to pass as genuine, any prescription for any drugs is guilty of a forgery and upon conviction thereof shall be punished by imprisonment in the state prison or by imprisonment in the county jail for not more than 1 year.

Every person who has in his possession any drugs secured by such forged prescription shall be punished by imprisonment in the state prison for not less than one year nor more than six years, or by imprisonment in the county jail for not more than one year.

#### 4390.5. False representation as physician to obtain prescription drugs

Every person who, in order to obtain any drug or poison, falsely represents himself to be a physician or other person who can lawfully prescribe such drug, or falsely represents that he is acting on behalf of a person who can lawfully prescribe such drug or poison, in a telephone communication with a registered pharmacist, shall be punished by imprisonment in the county jail for not more than one year.

## EXCERPTS FROM THE PENAL CODE

## CHAPTER 4.5. PEACE OFFICERS

## 830.3. Particular officers

(a) The Deputy Director, assistant directors, chiefs, assistant chiefs, special agents, and narcotics agents of the Department of Justice, and such investigators who are so designated by the Attorney General, are peace officers.

The authority of any such peace officer extends to any place in the state as to a public offense committed or which there is probable cause to believe has been committed within the state.

(b) Any inspector or investigator regularly employed and paid as such in the office of a district attorney is a peace officer.

The authority of any such peace officer extends to any place in the state:

(1) As to any public offense committed, or which there is probable cause to believe has been committed, within the county which employs him; or

(2) Where he has the prior consent of the chief of police, or person authorized by him to give such consent, if the place is within a city or of the sheriff, or person authorized by him to give such consent, if the place is within a county; or

(3) As to any public offense committed or which there is probable cause to believe has been committed in his presence, and with respect to which there is immediate danger to person or property, or of the escape of the perpetrator of such offense.

## CHAPTER 5c. CITATIONS FOR MISDEMEANORS

## 853.5. infractions; release procedures

Except as otherwise provided by law, in any case in which a person is arrested for an offense declared to be an infraction, the person may be released according to the procedures set forth by this chapter for the release of persons arrested for an offense declared to be a misdemeanor.

## 853.6. Notice to appear; contents; bail; warrant

(a) In any case in which a person is arrested for an offense declared to be a misdemeanor and does not demand to be taken before a magistrate, such person may, instead of being taken before a magistrate, be released according to the procedures set forth by this chapter. If the arresting officer or his superior determines that the person should be released, such officer or superior shall prepare in duplicate a written notice to appear in court, containing the name and address of such person, the offense charged, and the time and place where and when such person shall appear in court. If the person is not released prior to being booked and the officer should

be released, such officer or superior shall prepare such written notice to appear in court.

(b) Unless waived by the person, the time specified in the notice to appear must be at least five (5) days after arrest.

(c) The place specified in the notice shall be the court of the magistrate before whom the person would be taken if the requirement of taking an arrested person before a magistrate were complied with, or shall be an officer authorized by such court to receive a deposit of bail.

(d) The officer shall deliver one copy of the notice to appear to the arrested person, and the arrested person, in order to secure release, must give his written promise so to appear in court by signing the duplicate notice which shall be retained by the officer. Thereupon the arresting officer shall forthwith release the person arrested from custody.

(e) The officer shall, as soon as practicable, file the duplicate notice with the magistrate specified therein. Thereupon the magistrate may fix the amount of bail which in his judgment, in accordance with the provisions of Section 1275 of the Penal Code, will be reasonable and sufficient for the appearance of the defendant and shall indorse upon the notice a statement signed by him in the form set forth in Section 815a of this code. The defendant may, prior to the date upon which he promised to appear in court, deposit with the magistrate the amount of bail thus set. Thereafter, at the time when the case is called for arraignment before the magistrate, if the defendant shall not appear, either in person or by counsel, the magistrate may declare the bail forfeited, and may in his discretion order that no further proceedings shall be had in such case, unless the defendant has been charged with violation of Section 374b or 374c of this code or of Section 13602 of the Health and Safety Code, or a violation punishable under Section 5005.7 of the Public Resources Code, and he has previously been convicted of a violation of such section or punishable under such section, except in cases where the magistrate finds that undue hardship will be imposed upon the defendant by requiring him to appear, the magistrate may declare the bail forfeited and order that no further proceedings shall be had in such case.

Upon the making of such order that no further proceedings be had, all sums deposited as bail shall forthwith be paid into the county treasury for distribution pursuant to Section 1463 of this code.

(f) No warrant shall issue on such charge for the arrest of a person who has given such written promise to appear in court, unless and until he has violated such promise or has failed to deposit bail, to appear for arraignment, trial or judgment, or to comply with the terms and provisions of the judgment, as required by law.

(g) The officer shall indicate on the notice to appear whether he desires the arrested person to be booked as defined in subdivision 21 of Section 7 of this code. In such event, the magistrate shall, before the proceedings are finally concluded, order the defendant to be booked by the arresting agency.

(h) A peace officer may use the written notice to appear procedure set forth in this section for any misdemeanor offense in which the officer has taken custody of the person under Section 836 or in which he has taken custody

of a person pursuant to Section 847.

(i) If the arrested person is not released pursuant to the provisions of this chapter prior to being booked by the arresting agency, then at the time of booking the arresting officer, the officer in charge of such booking or his superior officer, or any other person designated by a city or county for this purpose shall make an immediate investigation into the background of the person to determine whether he should be released pursuant to the provisions of this chapter. Such investigation shall include, but need not be limited to, the person's name, address, length of residence at that address, length of residence within this state, marital and family status, employment, length of that employment, prior arrest record, and such other facts relating to the person's arrest which would bear on the question of his release pursuant to the provisions of this chapter.

(j) Whenever any person is arrested by a peace officer for a misdemeanor, other than an offense described in subdivision (b) of Section 11357 or subdivision (c) of Section 11360 of the Health and Safety Code, and is not released with a written notice to appear in court pursuant to this chapter, the arresting officer shall indicate, on a form to be established by his employing law enforcement agency, which of the following was a reason for such nonrelease:

- (1) The person arrested was so intoxicated that he could have been a danger to himself or to others.
- (2) The person arrested required medical examination or medical care or was otherwise unable to care for his own safety.
- (3) The person was arrested for one or more of the offenses listed in Section 40302 of the Vehicle Code.
- (4) There were one or more outstanding arrest warrants for the person.
- (5) The person could not provide satisfactory evidence of personal identification.
- (6) The prosecution of the offense or offenses for which the person was arrested or the prosecution of any other offense or offenses would be jeopardized by immediate release of the person arrested.
- (7) There was a reasonable likelihood that the offense or offenses would continue or resume, or that the safety of persons or property would be imminently endangered by release of the person arrested.
- (8) The person arrested demanded to be taken before a magistrate or refused to sign the notice to appear.
- (9) Any other reason, which shall be specifically stated on the form by the arresting officer.

Such form shall be filed with the arresting agency as soon as practicable and shall be made available to any party having custody of the arrested person, subsequent to the arresting officer, and to any person authorized by law to release him from custody before trial.

#### CHAPTER 2.5. SPECIAL PROCEEDINGS IN NARCOTICS AND DRUG ABUSE CASES

1000. (a) This chapter shall apply whenever a case is before any court upon an accusatory pleading for violation of Section 11350, 11357, 11361,

11365, 11377, or 11550 of the Health and Safety Code, or Section 11358 of the Health and Safety Code if the marijuana planted, cultivated, harvested, dried, or processed is for personal use, or Section 381 or subdivision (f) of Section 647 of the Penal Code, if for being under the influence of a controlled substance, or Section 4230 of the Business and Professions Code, and it appears to the district attorney that, except as provided in subdivision (b) of Section 11357 of the Health and Safety Code, all of the following apply to the defendant:

- (1) The defendant has no conviction for any offense involving controlled substances prior to the alleged commission of the charged divertible offense.
- (2) The offense charged did not involve a crime of violence or threatened violence.
- (3) There is no evidence of a violation relating to narcotics or restricted dangerous drugs other than a violation of the sections listed in this subdivision.
- (4) The defendant's record does not indicate that probation or parole has ever been revoked without thereafter being completed.
- (5) The defendant's record does not indicate that he has been diverted pursuant to this chapter within five years prior to the alleged commission of the charged divertible offense.
- (6) The defendant has no prior felony conviction within five years prior to the alleged commission of the charged divertible offense.
- (b) The district attorney shall review his file to determine whether or not paragraphs (1) to (6), inclusive, of subdivision (a) are applicable to the defendant. If the defendant is found ineligible, the district attorney shall file with the court a declaration in writing or state for the record the grounds upon which the determination is based, and shall make this information available to the defendant and his attorney.

1000.1. (a) If the district attorney determines that this chapter may be applicable to the defendant, he shall advise the defendant and his attorney in writing of such determination. This notification shall include:

- (1) A full description of the procedures of diversionary investigation.
- (2) A general explanation of the roles and authorities of the probation department, the district attorney, the community program, and the court in the diversion process.
- (3) A clear statement that the court may decide in a hearing not to divert the defendant and that he may have to stand trial for the alleged offense.
- (4) A clear statement that should the defendant fail in meeting the terms of his diversion, or should he be convicted of a misdemeanor which reflects the divertee's propensity for violence, or should the divertee be convicted of any felony, he may be required, after a court hearing, to stand trial for the original alleged offense.
- (5) An explanation of criminal record retention and disposition resulting from participation in the diversion and the divertee's rights relative to answering questions about his arrest and diversion following successful completion of the diversion program.

(b) If the defendant consents and waives his right to a speedy trial the district attorney shall refer the case to the probation department. The probation department shall make an investigation and take into consideration the defendant's age, employment and service records, educational background, community and family ties, prior controlled substance use, treatment history, if any, demonstrable motivation and other mitigating factors in determining whether the defendant is a person who would be benefited by education, treatment, or rehabilitation. The probation department shall also determine which community programs the defendant would benefit from and which of those programs would accept the defendant. The probation department shall report its findings and recommendation to the court.

(c) No statement, or any information procured therefrom, made by the defendant to any probation officer or drug treatment worker, which is made during the course of any investigation conducted by the probation department or drug treatment program pursuant to subdivision (b), and prior to the reporting of the probation department's findings and recommendations to the court, shall be admissible in any action or proceeding brought subsequent to the investigation.

No statement, or any information procured therefrom, with respect to the specific offense with which the defendant is charged, which is made to any probation officer or drug program worker subsequent to the granting of diversion, shall be admissible in any action or proceeding.

In the event that diversion is either denied, or is subsequently revoked once it has been granted, neither the probation investigation nor statements or information divulged during that investigation shall be used in any sentencing procedures.

1000.2. The court shall hold a hearing and, after consideration of the probation department's report and any other information considered by the court to be relevant to its decision, shall determine if the defendant consents to further proceedings under this chapter and waives his right to a speedy trial and if the defendant should be diverted and referred for education, treatment, or rehabilitation. If the court does not deem the defendant a person who would be benefited by diversion, or if the defendant does not consent to participate, the proceedings shall continue as in any other case.

At such time that a defendant's case is diverted, any bail bond or undertaking, or deposit in lieu thereof, on file by or on behalf of the defendant shall be exonerated, and the court shall enter an order so directing.

The period during which the further criminal proceedings against the defendant may be diverted shall be for no less than six months nor longer than two years. Progress reports shall be filed by the probation department with the court not less than every six months.

1000.3. If it appears to the probation department that the diveree is performing unsatisfactorily in the assigned program, or that the diveree is not benefiting from education, treatment, or rehabilitation, or that the

to the diveree, the court shall hold a hearing to determine whether the criminal proceedings should be reinstated. If the court finds that the diveree is not performing satisfactorily in the assigned program, or that the diveree is not benefiting from diversion, or the court finds that the diveree has been convicted of a crime as indicated above, the criminal case shall be referred back to the court for resumption of the criminal proceedings. If the diveree has performed satisfactorily during the period of diversion, at the end of the period of diversion, the criminal charges shall be dismissed.

1000.4. This chapter shall remain in effect until January 1, 1979, and on such date is repealed.

1000.5. Any record filed with the Department of Justice shall indicate the disposition in those cases diverted pursuant to this chapter. Upon successful completion of a diversion program the arrest upon which the diversion was based shall be deemed to have never occurred. The diveree may indicate in response to any question concerning his prior criminal record that he was not arrested or diverted for such offense. A record pertaining to an arrest resulting in successful completion of a diversion program shall not, without the diveree's consent, be used in any way which could result in the denial of any employment, benefit, license, or certificate.

1203.03. (a) In any case in which a defendant is convicted of an offense punishable by imprisonment in the state prison, the court, if it concludes that a just disposition of the case requires such diagnosis and treatment services as can be provided at a diagnostic facility of the Department of Corrections, may order that defendant be placed temporarily in such facility for a period not to exceed 90 days, with the further provision in such order that the Director of the Department of Corrections report to the court his diagnosis and recommendations concerning the defendant within the 90-day period.

(b) The Director of the Department of Corrections shall, within the 90 days, cause defendant to be observed and examined and shall forward to the court his diagnosis and recommendation concerning the disposition of the defendant's case. Such diagnosis and recommendation shall be embodied in a written report and copies of the report shall be served only upon the defendant or his counsel, the probation officer, and the prosecuting attorney by the court receiving such report. After delivery of the copies of the report, the information contained therein shall not be disclosed to anyone else without the consent of the defendant. After disposition of the case, copies of the report, except the one delivered to the defendant or his counsel, shall be filed in a sealed file and shall be available thereafter only to the defendant or his counsel, the prosecuting attorney, the court, the probation officer, or the Department of Corrections.

(c) Notwithstanding subdivision (b), the probation officer may retain a copy of the report for the purpose of supervision of the defendant if the defendant is placed on probation by the court. The report and information

else without the written consent of the defendant. Upon the completion or termination of probation, the copy of the report shall be returned by the probation officer to the sealed file prescribed in subdivision (b).

(d) The Department of Corrections shall designate the place to which a person referred to it under the provisions of this section shall be transported. After the receipt of any such person, the department may return the person to the referring court if the director of the department, in his discretion, determines that the staff and facilities of the department are inadequate to provide such services.

(e) The sheriff of the county in which an order is made placing a defendant in a diagnostic facility pursuant to this section, or any other peace officer designated by the court, shall execute the order placing such defendant in the center or returning him therefrom to the court. The expense of such sheriff or other peace officer incurred in executing such order is a charge upon the county in which the court is situated.

(f) It is the intention of the Legislature that the diagnostic facilities made available to the counties by this section shall only be used for the purposes designated and not in lieu of sentences to local facilities.

(g) Time spent by a defendant in confinement in a diagnostic facility of the Department of Corrections pursuant to this section or as an outpatient or inpatient of the California Rehabilitation Center shall be credited on the term of imprisonment in state prison, if any, to which defendant is sentenced in the case.

(h) In any case in which a defendant has been placed in a diagnostic facility pursuant to this section and, in the course of his confinement, he is determined to be suffering from a remediable condition relevant to his criminal conduct, the department may, with the permission of defendant, administer treatment for such condition. If such treatment will require a longer period of confinement than the period for which defendant was placed in the diagnostic facility, the Director of Corrections may file with the court which placed defendant in the facility a petition for extension of the period of confinement, to which shall be attached a writing signed by defendant giving his consent to the extension. If the court finds the petition and consent in order, it may order the extension, and transmit a copy of the order to the Director of Corrections.

1203.07. (a) Notwithstanding the provisions of Section 1203, probation shall not be granted to, nor shall the execution or imposition of sentence be suspended for, any of the following persons:

(1) Any person who is convicted of violating Section 11351 of the Health and Safety Code by possessing for sale one-half ounce or more of a substance containing heroin.

(2) Any person who is convicted of violating Section 11352 of the Health and Safety Code by selling or offering to sell one-half ounce or more of a substance containing heroin.

(3) Any person convicted of violating Section 11351 of the Health and Safety Code by possessing heroin for sale or convicted of violating Section 11352 of the Health and Safety Code by selling or offering to sell heroin, and who has one or more prior convictions for violating Section 11351 or

Section 11352 of the Health and Safety Code.

(b) The existence of any fact which would make a person ineligible for probation under subdivision (a) shall be alleged in the information or indictment, and either admitted by the defendant in open court, or found to be true by the jury trying the issue of guilt or by the court where guilt is established by plea of guilty or nolo contendere or by trial by the court sitting without a jury.

Penalties	SB 65 (1979)	Federal Controlled Substances Act	HB 549 (1978)	Existing AK. LAW	Uniform Act	HAWAII LAW
Delivery of Amphetamines to MINORS (Parr Sch. II)	0 - life / \$25,000	0 - 10 yrs. / \$30,000 } 1st. 0 - 15 yrs. / \$45,000 } 2nd.	0 - 15 yrs / \$20,000 5 yr. presumptive sentence for 1st.	0 - Life / \$25,000	If defendant is 18 or older and MINOR is 18 or under and 3 yrs. his junior, authorized yrs. penalties are doubled.	If MINOR is three yrs. Defendant's junior = 20 yrs / \$10,000
Delivery of Hallucinogens to MINORS (Parr Sch. II)	0 - life / \$25,000	0 - 10 yrs. / \$30,000 } 1st. 0 - 15 yrs. / \$45,000 } 2nd.	0 - 7 yrs. / \$10,000 2 yr. presumptive sentence for 1st.	0 - Life / \$25,000	If defendant is 18 or older AND MINOR is 18 or under and 3 yrs. his junior, authorized imprisonment penalties are doubled.	If MINOR is Three yrs. Defendant's junior = 20 yrs / \$10,000
Delivery of Methamphetamines to MINORS (Parr Sch. II)	0 - life / \$25,000	0 - 10 yrs. / \$30,000 } 1st. 0 - 15 yrs. / \$45,000 } 2nd.			If defendant is 18 or older AND MINOR is 18 or under and 3 yrs. his junior, authorized imprisonment penalties are doubled.	If MINOR is Three yrs. Defendant's junior = 20 yrs. / \$10,000

Penalties	SB 65 (1979)	Federal Controlled SUBSTANCES ACT	HB 549 (1978)	Existing AK. LAW	Uniform Act	HAWAII LAW
Delivery of VALIUM to MINORS  Parr Sch. IV)	0 - life / \$25,000	0 - 6 yrs. } 1st. \$20,000 }  0 - 9 yrs. } 2nd. \$30,000 }			If defendant is 18 yrs. or older AND minor is 18 or under AND 3 yrs. his junior authorized imprison- ment penalties ARE doubled.	If MINOR is three yrs. Defendant's junior = 20 yrs. / \$10,000
Delivery of LASH, HASH OIL to MINORS  Parr Sch. IV) Hawaii-Sch. III)			0 - 7 yrs. / \$10,000 2 yr. presumptive sentence 1st.		If defendant is 18 yrs. or older AND minor is 18 or under AND 3 yrs. his junior authorized imprison- ment penalties ARE doubled.	If MINOR is three yrs. Defendant's junior = 20 yrs. / \$10,000

Penalties	SB 65 (1979)	Federal Controlled Substances Act	H.B. 549 (1978)	Existing AK. LAW	Uniform Act	HAWAII LAW
Possession of Amphetamines (Parr Sch. II)	0-1 yr. / \$1,000	0-1 yr. / \$5,000 1 <sup>st</sup> . 0-2 yr. / \$10,000 2 <sup>nd</sup> . IF NO PRIOR CONVICTIONS CONDITIONAL DISCHARGE IS PERMITTED.	0-1 yr. / \$10,000 - 1 <sup>st</sup> . 0-2 yr. / \$10,000 - 2 <sup>nd</sup> . \$2,000 presumptive for 1 <sup>st</sup> . 3 months presumptive for 2 <sup>nd</sup> .	0-1 yr. / \$1,000	MISDEMEANOR	IF 2 OZ. OR MORE: 20 YRS. / \$10,000 IF 50 CAPS OR MORE OR 1/2 OZ OR MORE: 10 YRS. / \$10,000 IF LESS THAN ABOVE: 5 YRS. / \$5,000
Possession of Hallucinogens (Parr Sch. II)	0-1 yr. / \$1,000	0-1 yr. / \$5,000 1 <sup>st</sup> . 0-2 yr. / \$10,000 2 <sup>nd</sup> . IF NO PRIOR CONVICTIONS CONDITIONAL DISCHARGE IS PERMITTED.	0-1 yr. / \$2,000 \$1,000 presumptive sentence	0-1 yr. / \$1,000	MISDEMEANOR	SAME AS AMPHETAMINES
Possession of Methamphetamines (Parr Sch. II)	0-1 yr. / \$1,000	0-1 yr. / \$500 1 <sup>st</sup> . 0-2 yr. / \$10,000 2 <sup>nd</sup> . IF NO PRIOR CONVICTIONS CONDITIONAL DISCHARGE IS PERMITTED.			MISDEMEANOR	SAME AS AMPHETAMINES
Possession of Valium (Parr Sch. IV)	0-1 yr. / \$1,000	0-1 yr. / \$5,000 1 <sup>st</sup> . 0-2 yr. / \$10,000 2 <sup>nd</sup> . IF NO PRIOR CONVICTIONS CONDITIONAL DISCHARGE IS PERMITTED.			MISDEMEANOR	IF 400 CAPS OR MORE: 20 YRS. / \$10,000 IF 50 CAPS OR MORE: 10 YRS. / \$10,000 IF LESS THAN ABOVE: 1 yr. / \$1,000

Penalties	SB 65 (1974)	Federal Controlled Substances Act	H.B. 549 (1978)	Existing AK. LAW	Uniform Act	HAWAII LAW
Possession of Hash, Hash oil  (Parr Sch. IV) (Hawaii-Sch. III)		0-1 yr. / \$5000 1st. 0-2 yr. / \$10,000 2nd.  If no prior convictions conditional discharge is permitted.	0-1 yr. / \$2000 \$1,000 presumptive Sentence		Misdemeanor	If 400 or more grams OR 1 oz or more: 20 yrs / \$10,000 If 50 or more grams or 1/8 oz or more: 10 yrs / \$10,000 If less than above: 1 yr. / \$1,000

USAGE PATTERNS OF SCHEDULE II  
SEDATIVE - HYPNOTICS  
IN WISCONSIN  
AND THE U.S.



Report of Special Meeting

May, 1979

Wisconsin Controlled Substances Board

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## I About the Controlled Substances Board

The Controlled Substances Board is a six-member statutory Board, created in 1969 to administer portions of the Uniform Controlled Substance Act. The Board is Wisconsin's scheduling authority and it issues controlled substances possession authorizations for researchers, teaching institutions, analytical laboratories and other special applications. The Board is advisory to the State Methadone Authority and conducts regular symposia to focus attention on specialized drug abuse topics. Symposia have been held on methadone, narcotic antagonists, the role of law in the social control of drugs, and on distribution patterns of prescription amphetamines.

Membership of the Board includes:

- Darold A. Treffert, M.D.; psychiatrist member, and Chairman; Director, Winnebago Mental Health Institute.
- Karl Marquardt, R.Ph., Vice Chairman; Executive Secretary of the Pharmacy Examining Board and representing Chairman D. Jack Myers.
- Donald E. Percy, Secretary, Department of Health and Social Services.
- John W. Calhoun, Assistant Attorney General; representing Attorney General Bronson LaFollette.
- Donald Willett, Director, Bureau of Laboratory Services, Department of Agriculture, Trade and Consumer Protection; representing Secretary Gary Rohde.
- June Dahl, Ph.D., pharmacologist member; Assistant Professor of Pharmacology, University of Wisconsin.

The Board is attached to the Department of Health and Social Services. Staff services are provided by the Bureau of Alcohol and Other Drug Abuse, Larry W. Monson, ACSW, Director.

II

Special Meeting

Usage Patterns of Schedule II  
Sedative-Hypnotics in Wisconsin and the U.S.

Wednesday, March 21, 1979  
Training Center, Gordon Hall  
Winnebago Mental Health Institute  
Winnebago, Wisconsin

PROGRAM

- 9:00 Registration
- 9:30 Welcome, Background, Introductory Remarks
- Darold A. Treffert, M.D.  
Chairman, Controlled Substances Board  
Director, Winnebago Mental Health Institute
  - Larry W. Monson, ACSW  
Director, Bureau of Alcohol and Other Drug Abuse
  - Robert T. Angarola  
Assistant Director, Domestic Policy Staff, The White House
- 10:30 Distribution Patterns of Sedative-Hypnotics in Wisconsin and the U.S.
- David E. Joranson, MSSW  
Drug Abuse Program Policy Specialist  
Bureau of Alcohol and Other Drug Abuse
- 12:00 Lunch
- 1:00 Reactor Panel and Discussion of Data, Implications for  
Wisconsin Policy and Programs
- Paul Bjerke  
Pharmacy Examining Board
  - Ralph Paulick  
Wisconsin Pharmacy Association
  - Darold Treffert, M.D.  
President-elect, State Medical Society
  - Rudolph W. Link, M.D.  
Medical Examining Board
- 3:30 Adjourn

### III Participants

1. Lee Ames; Upjohn Co.; Chicago, Illinois
2. Gary Andersen; U.S. Drug Enforcement Administration; Milwaukee, Wisconsin
3. Robert Angarola; Domestic Policy Staff, The White House; Washington, D.C.
4. Dan Bay; Unified Health Services Board of Outagamie County; Appleton, Wisconsin
5. Paul Bjerke; Pharmacy Examining Board; Madison, Wisconsin
6. Herb Boll; Brown County Mental Health Center; Green Bay, Wisconsin
7. Debi Bowen, MSSW; Bureau of Alcohol and Other Drug Abuse; Madison, Wisconsin
8. Dick Briggs; Brown County
9. Gail Briggs; Outagamie County
10. John W. Calhoun; Controlled Substances Board and Department of Justice; Madison, Wisconsin
11. Paul Cushman, Jr., M.D.; Department of Pharmacology, Medical College of Wisconsin and Wisconsin Alcoholism and Drug Abuse Research Institute; Milwaukee, Wisconsin
12. June Dahl, Ph.D.; Controlled Substances Board and Department of Pharmacology, University of Wisconsin; Madison Wisconsin
13. Frank Dolejsi; Crime Lab; Madison, Wisconsin
14. Scott Ewert; Alcohol and Drug Council of Kenosha County; Kenosha, Wisconsin
15. James A. Ferguson, DVM, Ph.D.; Office of Medical and Professional Affairs, National Institute on Drug Abuse; Washington, D.C.
16. Ron Frederick; Kenosha County Comprehensive Board; Kenosha, Wisconsin
17. Susan Fredlund; Department of Public Instruction; Madison, Wisconsin
18. Karen Gillespie; PraCon Incorporated; Vienna, Virginia
19. Mark Goff; Mental Health Planning Council; Milwaukee, Wisconsin
20. James Halikas, M.D.; Wisconsin Alcoholism and Drug Abuse Research Institute; Milwaukee, Wisconsin
21. J. J. Hannon; U.S. Drug Enforcement Administration; Chicago, Illinois
22. E. Johnson, M.D.; Brown County Mental Health Center; Green Bay, Wisconsin
23. David Joranson, MSSW; Bureau of Alcohol and Other Drug Abuse; Madison, Wisconsin
24. Paul Keys; Division of Community Services; Madison, Wisconsin
25. Allen Liegel; Department of Pharmacy, University of Wisconsin; Madison, Wisconsin
26. Rudolph Link, M.D.; Medical Examining Board; Madison, Wisconsin
27. Karl Marquardt, R. Ph.; Controlled Substances Board; Madison, Wisconsin
28. Philip McCullough, ACSW; Bureau of Alcohol and Other Drug Abuse; Madison, Wisconsin
29. Larry Monson, ACSW; Bureau of Alcohol and Other Drug Abuse; Madison, Wisconsin
30. Jack Myers; Pharmacy Examining Board; Madison, Wisconsin
31. Tony Novello; Sandoz; Cleveland, Ohio
32. James Pacella; U.S. Drug Enforcement Administration; Washington, D.C.
33. Ralph Paulick; Wisconsin Pharmaceutical Association; Madison, Wisconsin
34. Liz Plotkin, MSSW; Bureau of Alcohol and Other Drug Abuse; Madison, Wisconsin
35. Mary Reddin; Medical Examining Board; Madison, Wisconsin
36. Paul Schanen; Brown County Mental Health Center; Green Bay, Wisconsin
37. Darold Treffert, M.D.; Controlled Substances Board and Winnebago Mental Health Institute; Winnebago, Wisconsin
38. Alan White; Division of Health; Madison, Wisconsin
39. Donald Willett; Controlled Substances Board and Department of Agriculture, Trade and Consumer Protection; Madison, Wisconsin

#### IV Summary of Introductory Remarks

| Darold A. Treffert, M.D.  
| Chairman, Controlled Substances Board  
| Director, Winnebago Mental Health Institute

Dr. Treffert described the Controlled Substances Board (CSB) and introduced the Board members. He briefly discussed the Board's last symposium which was on amphetamine usage in Wisconsin.

The scope of sedative-hypnotic usage was then reviewed. Sedative-hypnotics are largely taken for insomnia, by 15-20 million Americans. Dr. Treffert reviewed statistics on the reduction of these prescriptions in recent years. A large quantity of these controlled substances are diverted onto the street - "this is our concern today"; although fifty percent of these street drugs are stolen, the other half is from doctors' diversionary practices.

Barbiturates are a poor choice for inducing sleep. They produce a non-physiologic sleep, nightmares and agitation ("REM rebound" effect). Additionally, these drugs interfere with liver enzyme production. On the other hand, the benzodiazepines induce a more natural sleep and the likelihood of physical dependence is much less.

Dr. Treffert concluded by posing several questions to be explored today:

- \* Is there a problem with Schedule II sedative hypnotics in Wisconsin?
- \* If yes, is it widespread or limited to a few practitioners and pharmacists?
- \* Is diversion a large problem?
- \* Should the "remedy" be legislation, regulation or education?

| Larry W. Monson, ACSW  
| Director, Bureau of Alcohol and Other Drug Abuse, Division of Community  
| Services, Department of Health and Social Services (Single State  
| Agency for Alcohol and Drug Abuse.)

Mr. Monson described the functions of the Bureau of Alcohol and Other Drug Abuse (BAODA), including the staff services it provides to CSB.

Mr. Monson commended the CSB and especially recognized Darold Treffert, Karl Marquardt and John W. Calhoun for their dedicated service on the Board since its beginnings.

The cooperative working relationship between federal and Wisconsin alcohol and other drug authorities was described and commended. Examples cited were the CSB monitoring of licit drug distribution as well as its monitoring of methadone maintenance programs in conjunction with BAODA and federal agencies. Gary Andersen, U.S. Drug Enforcement Administration, was introduced and recognized for his assistance with the sedative-hypnotic data.

| Robert T. Angarola  
| Assistant Director, Domestic Policy Staff  
| The White House

Mr. Angarola discussed the drug problem from a federal perspective. He stated that the federal government is concerned with three areas of drug abuse policy: (1) international issues, (2) health issues (National Institute on Drug Abuse) and (3) enforcement (Drug Enforcement Administration).

In the White House, there is high interest on drug issues. One problem mentioned in President Carter's August 1977 message to Congress was physician overprescribing of barbiturates and other sedative-hypnotics.

Heroin, barbiturates and sedative-hypnotics are the major drug problems - these account for 90% of drug-related deaths. The White House has seen a curbing of the heroin problem and this success has led to optimism as far as sedative-hypnotic issues.

According to Mr. Angarola, the key to working through these problems is to work with the states (e.g., state-level regulatory boards). It is important to identify problem practitioners and investigate where necessary. Under the Controlled Substances Act, the major responsibility for regulation at the retail level lies with the states. Therefore, it is up to the federal government to work with the states, providing information, resources and training.

Ninety-eight percent of the time, drug prescribing problems are not an enforcement/criminal issue, but an education or regulatory issue. Some physicians and pharmacists are not keeping up with advancements in this area. An interagency group (including representatives of the Food and Drug Administration, National Institute on Drug Abuse, American Medical Association, Pharmaceutical Manufacturers Association and others) was formed to work together to promote the education of professionals and the strengthening of regulatory boards as well as professional groups (i.e., encouraging peer pressure measures). (David Joranson, PAODA, was present at one of these meetings.)

Wisconsin is a forerunner in getting people together in a non-threatening way and is to be commended for this; at the federal level, there seems to be distrust between regulatory and health professionals. Wisconsin amphetamine activity has acted as a basis for the actions taken by other states. Mr. Angarola stated that this is why he came to this Special Meeting. Wisconsin can and will serve as a model for utilizing Drug Enforcement Administration information. Wisconsin is unique as a state putting forth effort into this area

James A. Ferguson, D.V.M., Ph.D., Deputy Director  
Office of Medical and Professional Affairs  
National Institute on Drug Abuse

Mr. Ferguson expressed how impressed he is with Wisconsin's use of this data. He reviewed the National Institute on Drug Abuse (NIDA) report "Sedative-Hypnotic Drugs: Risks and Benefits".

Mr. Ferguson stated that prescriptions for all sedative-hypnotics is showing a decrease (except Flurazepam, or Dalmane) from 1977 to 1978. From 1971 to

1978, the number of prescriptions decreased 82% for barbiturate sedative-hypnotics and decreased 67% for nonbarbiturate sedative-hypnotics.

The increase in the number of sedative-hypnotic prescriptions has been halted and the trend is now downward; in Wisconsin, even Dalmane prescriptions are leveling off. This data is encouraging.

Far too many Americans use sedative-hypnotics and for too long. There are "placebo effect" problems with barbiturates due to their known ineffectiveness over a period of time.

The NIDA report recommends a national education campaign for physicians and the public rather than taking these drugs off the market.

V Distribution Patterns of Sedative Hypnotics -

David E. Joranson, MSSW  
Drug Abuse Program Policy Specialist  
Bureau of Alcohol and Other Drug Abuse

"The Controlled Substances Board's first such data analysis project was in 1977, initially on purchases of but one amphetamine product - Biphentamine 20 - for only one strength - 20 milligrams - and for a period of one year.

Today's analysis is considerably more comprehensive and includes all products, and strengths in each general category of amphetamine, pentobarbital, secobarbital and methaqualone, for a two year period. These drugs make up the class of Schedule II sedative-hypnotics that have high abuse potentials and accepted medical uses.

Most of today's materials and analysis have been developed using existing resources, specifically those of the Controlled Substances Board and the Bureau of Alcohol and Other Drug Abuse. Considerable time was spent in understanding, analyzing and preparing the data. I want to recognize the very valuable assistance contributed by Liz Plotkin and Debi Bowen.

The maps you will see were prepared by the University of Wisconsin Cartography Laboratory, on a small purchase order approved for this purpose by our Division Administrator, Dr. Len Ganser. In all, these maps cost approximately \$600.

I want to emphasize the extremely valuable role of the Drug Enforcement Administration in providing this data, especially the special runs that Jim Pacella has provided us. Jim is head of the ARCOS unit in Washington, D.C.

Finally, I want to thank Gary Andersen, Compliance Investigator of the Milwaukee Resident Office of DEA for his ongoing assistance in analyzing and interpreting ARCOS information for the State of Wisconsin. The relation between Wisconsin and the Compliance and Regulatory functions of DEA is exemplary.

I want to caution everyone, including the press, that the following presentations must not be used as the exclusive basis for drawing conclusions as to the legitimacy of the use of drugs in any area of Wisconsin.

This presentation will be, for most of you, the first time you have ever seen such a detailed picture of these distribution patterns. You will see some unusual concentrations of certain drugs. We will look to our reactor panel this afternoon for insights into what these data mean, what positive trends and problems they see, and what actions may be needed, either of an educational, regulatory or enforcement nature - or, no action may be the best course in some instances. You will receive a copy of this presentation in the next few weeks.

There is a fair amount of material to present, so I would ask that we hold our discussion until this afternoon, but if you have clarification questions, please stop me.

In the distribution system for controlled substances, there are three possible distribution points which occur at the end of the system, at the community level, just before the drugs reach the ultimate user or consumer. The pharmacy distributes mainly to outpatient or nursing home patients, upon the order or prescription of a practitioner licensed to practice. The hospital distributes to inpatients or outpatients, also at the order of a practitioner. The practitioner may distribute to patients directly. This is called dispensing. All three, the pharmacy, hospital and practitioner order their drugs from the manufacturer or the distributor of their choice. For Schedule II drugs, a separate registration number must be obtained from DEA, and then all purchases are made on a triplicate order form, one copy of which finds its way back to Washington, D.C. and is programmed into ACROS. It is the analysis of these purchases that is the subject of this presentation.

I will follow a sequence in the presentation. First, I will describe the national pattern of distribution. Then, we'll move to the Wisconsin picture. For Wisconsin, I'll show you what accounts for the peaks of high per capita distribution by presenting profiles of the high purchases made by pharmacies, hospitals, or practitioners. Then I'll summarize the whole pattern, and go on to the next drug. I should point out that each area of high purchasing tends to draw attention as an area worthy of further study. There may or may not be any problem, however.

Let's start by looking at amobarbital. No United States distribution was prepared because, unfortunately, the aggregate data included dexamy1 which is much more an amphetamine product even though it contains amobarbital.

(Mr. Joranson then presented charts, maps and graphs on distribution of amobarbital. They appear at the end of this section.)

Hospital total purchases were 31,500 dosage units, by 49 hospitals (of a total of 178 hospitals in Wisconsin). One hospital purchased 11,900, which was the highest hospital purchase. The average purchase was 642 dosage units.

Practitioner total purchases were 24,800 dosages, by 21 practitioners; 26% of these purchases came to zip area 549, the Fox River Valley, to two practitioners who dispense amobarbital. The average practitioner purchase was 1,180 dosages.

In Summary, the 1976-77 decrease of 37.8% for amobarbital in Wisconsin (including dexamy1) exceeds the national average decrease of 26.1% (also includes dexamy1). Decreases are largely among pharmacies, reflecting a decrease in physician prescribing. Hospital and practitioner purchases are decreasing too.

Questions are raised about: the high pharmacy purchases in northern Wisconsin; one large hospital utilization; and several large practitioner purchases. Compared to the upcoming description of other drugs, the overall baseline for distribution of amobarbital is low, but punctuated by several high peaks.

Now lets go to pentobarbital. Again, the national aggregate data is not presented because of the inclusion of veterinary use of pentobarbital.

(Mr. Joranson then presented charts, maps and graphs on distribution of pentobarbital. They appear at the end of this section.)

Hospitals total purchases of pentobarbital were 151,575 dosages by 118 hospitals, the largest purchase was 6,600 and the average was 1,284 dosages. Total purchases were nearly 5 times greater than hospital purchases of amobarbital. The average hospital purchase was twice as high as for amobarbital.

Practitioner total purchases were 138,600 dosages by 64 practitioners. The average purchase was 2,166, almost twice as high as the hospital average purchase. The highest purchase was 24,000 dosages.

In Summary, the 1976-77 decrease of 14.3% for pentobarbital in Wisconsin is less than the average national decrease of 23.7%. (These figures include pentobarbital for veterinary use.) Pharmacy decreases, which do not include veterinary use, dropped 31% during the same period, and is probably more accurate in describing Wisconsin's trend in prescribing pentobarbital. Overall purchases of pentobarbital are about 3 times as high as amobarbital.

Questions are raised about: a few moderately high pharmacy purchases; some high hospital utilization; and a very large practitioner purchase.

For secobarbital a national distribution is available, because the data is not "contaminated" by drugs of other classes or intended for non-human uses.

(Mr. Joranson presented the U.S. distribution of secobarbital; a U.S. surface map, and a rank order list, both of which appear at the end of this section.)

Within this distribution, Wisconsin ranks number 35. This means there are 34 states that have a higher per capita distribution of secobarbital than Wisconsin.

(Mr. Joranson then presented charts, maps and graphs of distribution of secobarbital in Wisconsin. They appear at the end of this section.)

The pharmacy purchases do not by themselves explain the high peaks, so we looked at practitioner purchases of secobarbital in the 549 area. (See Zip 549 graph of practitioner purchases of secobarbital.) Then, remembering earlier large amobarbital and pentobarbital purchases by practitioners in 549, we decided to aggregate all practitioner purchases. (See Zip 549 practitioner purchases of amobarbital, pentobarbital and secobarbital.)

Hospital total purchases were 167,550 dosages by 124 hospitals, average 1,351 dosages. Total purchases, number of hospitals and average purchases were all slightly ahead of pentobarbital.

Practitioner total purchases were 144,300 dosages by 64 practitioners. The average purchase was 2,255. The number of practitioners was equal to those purchasing pentobarbital, while total purchases and average purchases were slightly ahead of pentobarbital. There were several high purchases of 20,000 and 18,000 dosages, which you just saw aggregated in the zip area 549 graph.

In Summary, the 1976-77 trend in Wisconsin shows secobarbital decreasing by almost 40% compared to a national average decrease of 21%. Large decreases occurred in pharmacy, hospital and practitioner purchases.

Questions are raised by: high pharmacy purchases in 532 Milwaukee area; several high pharmacy purchases, especially in the northwest; hospital utilization; and very high practitioner purchases in the 549 area, particularly when aggregated with amobarbital and pentobarbital.

For methaqualone, a national distribution is available too.

(Mr. Joranson presented the U.S. distribution of methaqualone, a U.S. surface map and a rank order list, both of which appear at the end of this section.)

Within this distribution, Wisconsin ranks number 33. This means there are 32 states that have a higher per capita distribution of methaqualone than Wisconsin.

(Mr. Joranson then presented charts, maps and graphs of distribution of methaqualone in Wisconsin. They appear at the end of this section.)

Fifty-one hospitals purchased 30,300 dosages for an average of 594 dosages. There was one large hospital purchase of 5,400 dosages.

Eighteen practitioners purchased 8,800 dosages for an average of 489. There were no notably high purchases, however dentists are among those purchasing methaqualone.

In Summary, the 1976-77 trend in Wisconsin shows methaqualone decreasing by 25% compared to a national average decrease of 21%. In spite of large increases in 537 pharmacy purchases, the state-wide trend appears to be declining rapidly enough to produce an overall state decrease. Questions are raised by the high prescribing of methaqualone in 537."

Mr. Joranson closed his remarks by again cautioning everyone not to draw conclusions solely on the basis of this data and urged the adoption of these techniques as a tool for problem analysis on a wider scale.

VI Maps and Charts

- Figure 1 - Controlled Substances Monitoring System
- Figure 2 - Wisconsin Zip Code Zone Centers

Amobarbital

- Figure 3 - Amobarbital (gms.) - Wisconsin
- Figure 4 - Wisconsin Distribution of Amobarbital - 1977
- Figure 5 - Wisconsin Distribution of Amobarbital - 1977 - By Population Density
- Figure 6 - Pharmacy Purchases of Amobarbital - 1977- Zip Zone 545

Pentobarbital

- Figure 7 - Pentobarbital (gms.) - Wisconsin
- Figure 8 - Wisconsin Distribution of Pentobarbital - 1977
- Figure 9 - Wisconsin Distribution of Pentobarbital - 1977
- Figure 10 - Pharmacy Purchases of Pentobarbital - 1977 - Zip Zone 538
- Figure 11 - Pharmacy Purchases of Pentobarbital - 1977 - Zip Zone 540
- Figure 12 - Pharmacy Purchases of Pentobarbital - 1977 - Zip Zone 549
- Figure 13 - Pharmacy Purchases of Pentobarbital - 1977 - Zip Zone 532

Secobarbital

- Figure 14 - U.S. Distribution of Secobarbital - 1977 - By Population Density
- Figure 15 - U.S. Secobarbital Distribution to Retail Level - 1977
- Figure 16 - Secobarbital (gms.) - Wisconsin
- Figure 17 - Wisconsin Distribution of Secobarbital - 1977
- Figure 18 - Wisconsin Distribution of Secobarbital - 1977 - By Population Density
- Figure 19 - Pharmacy Purchases of Secobarbital - 1977 - Zip Zone 545
- Figure 20 - Pharmacy Purchases of Secobarbital - 1977 - Zip Zone 532
- Figure 21 - Pharmacy Purchases of Secobarbital - 1977 - Zip Zone 548
- Figure 22 - Pharmacy Purchases of Secobarbital - 1977 - Zip Zone 549
- Figure 23 - Practitioner Purchases of Secobarbital - 1977 - Zip Zone 549

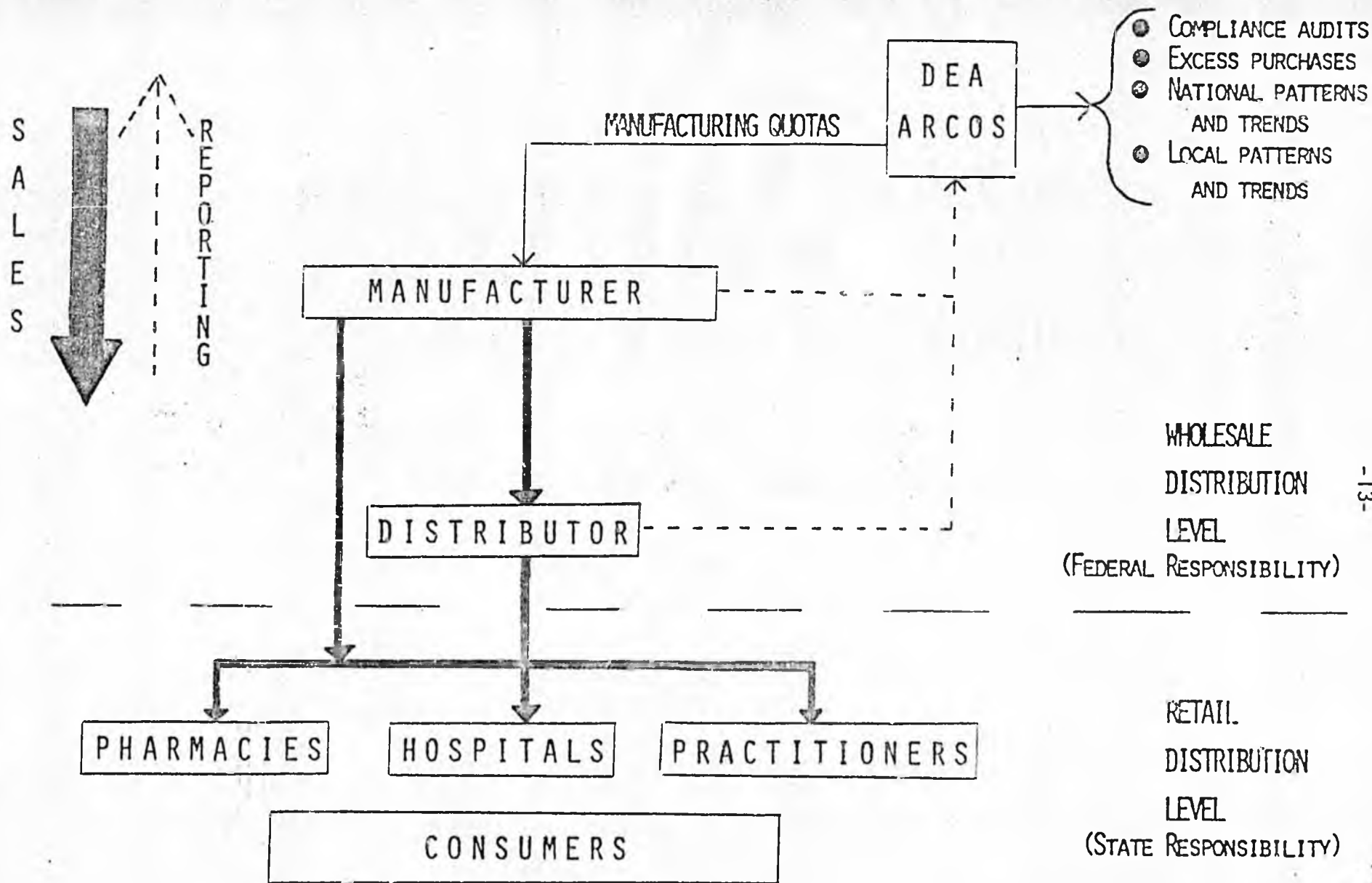
Amobarbital, Pentobarbital and Secobarbital

- Figure 24 - Practitioner Purchases of Amo-, Pento-, Seco-barbital - 1977 - Zip Zone 549

Methaqualone

- Figure 25 - U.S. Distribution of Methaqualone - 1977 - By Population Density
- Figure 26 - U.S. Methaqualone Distribution to Retail Level - 1977
- Figure 27 - Methaqualone (gms.) - Wisconsin
- Figure 28 - Wisconsin Distribution of Methaqualone - 1977
- Figure 29 - Wisconsin Distribution of Methaqualone - 1977 - By Population Density
- Figure 30 - Pharmacy Purchases of Methaqualone - 1977- Zip Zone 532
- Figure 31 - Pharmacy Purchases of Methaqualone - 1977 - Zip Zone 549
- Figure 32 - Pharmacy Purchases of Methaqualone - 1977 - Zip Zone 548
- Figure 33 - Pharmacy Purchases of Methaqualone - 1977 - Zip Zone 537
- Figure 34 - Pharmacy Purchases of Methaqualone, 300 mg. - in Zip Code Area 537 (Madison, Wisconsin) - 1975, 1976, 1977

CONTROLLED SUBSTANCES MONITORING SYSTEM\*



WHOLESALE  
DISTRIBUTION  
LEVEL  
(FEDERAL RESPONSIBILITY)

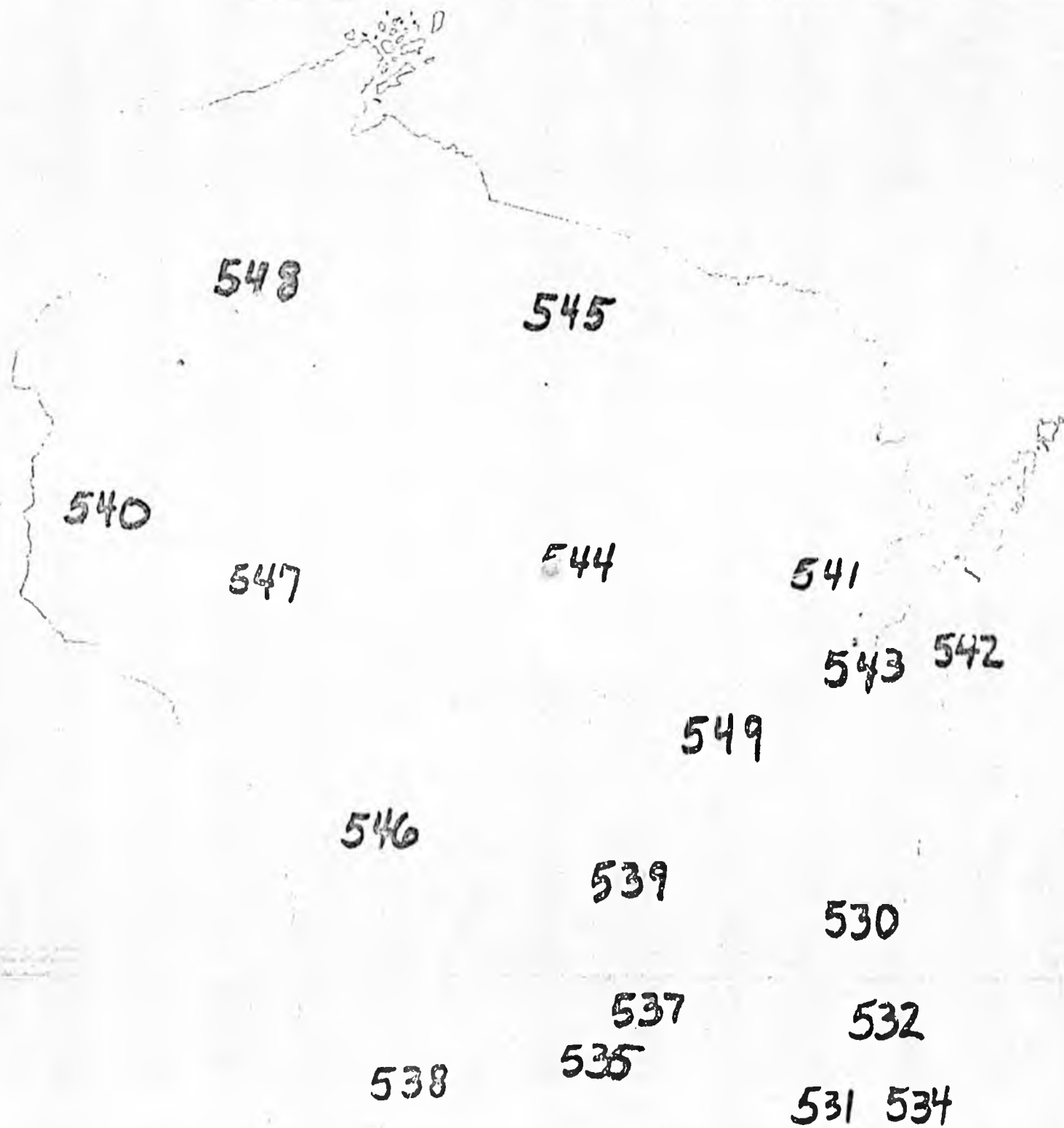
RETAIL  
DISTRIBUTION  
LEVEL  
(STATE RESPONSIBILITY)

-13-

Figure 1

INCLUDES ALL DRUGS  
IN SCHEDULE I, II AND  
NARCOTICS IN III.

# WISCONSIN ZIP CODE ZONE CENTERS

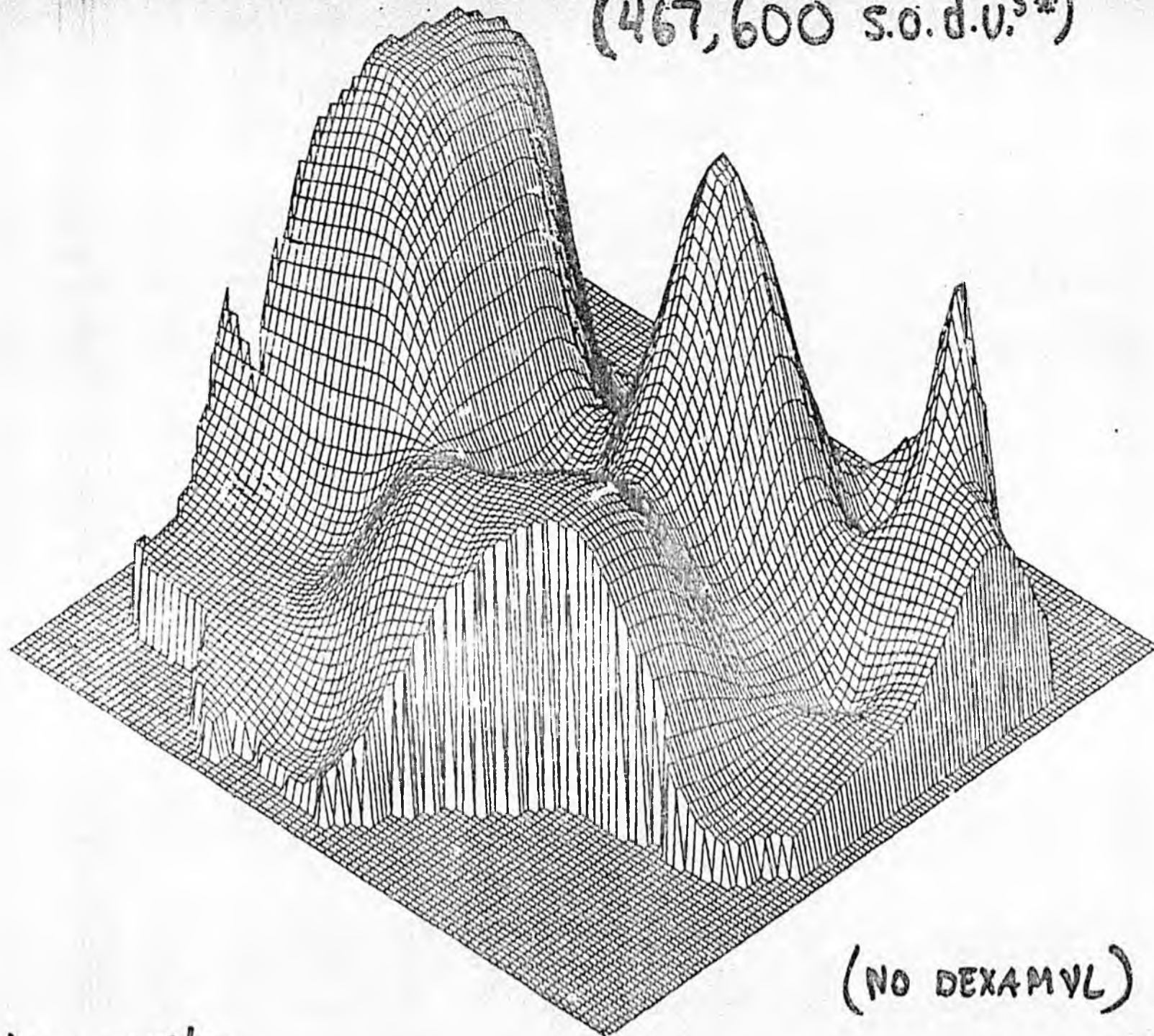


# Amobarbital (gms.)-Wis.

	1976	1977	
Pharmacy	71,664	44,335	-38%
Hospital/Clinic	7,624	5,334	-30%
Practitioner	5,604	3,000	-47%
<b>TOTAL</b>	<b>84,892</b>	<b>52,709</b>	
1976 - 1977 U.S. Trend			-26.1% (DEXAMYL)
1976 - 1977 Wis. Trend			-37.8% (DEXAMYL)

\*includes Teaching Institution - 40g

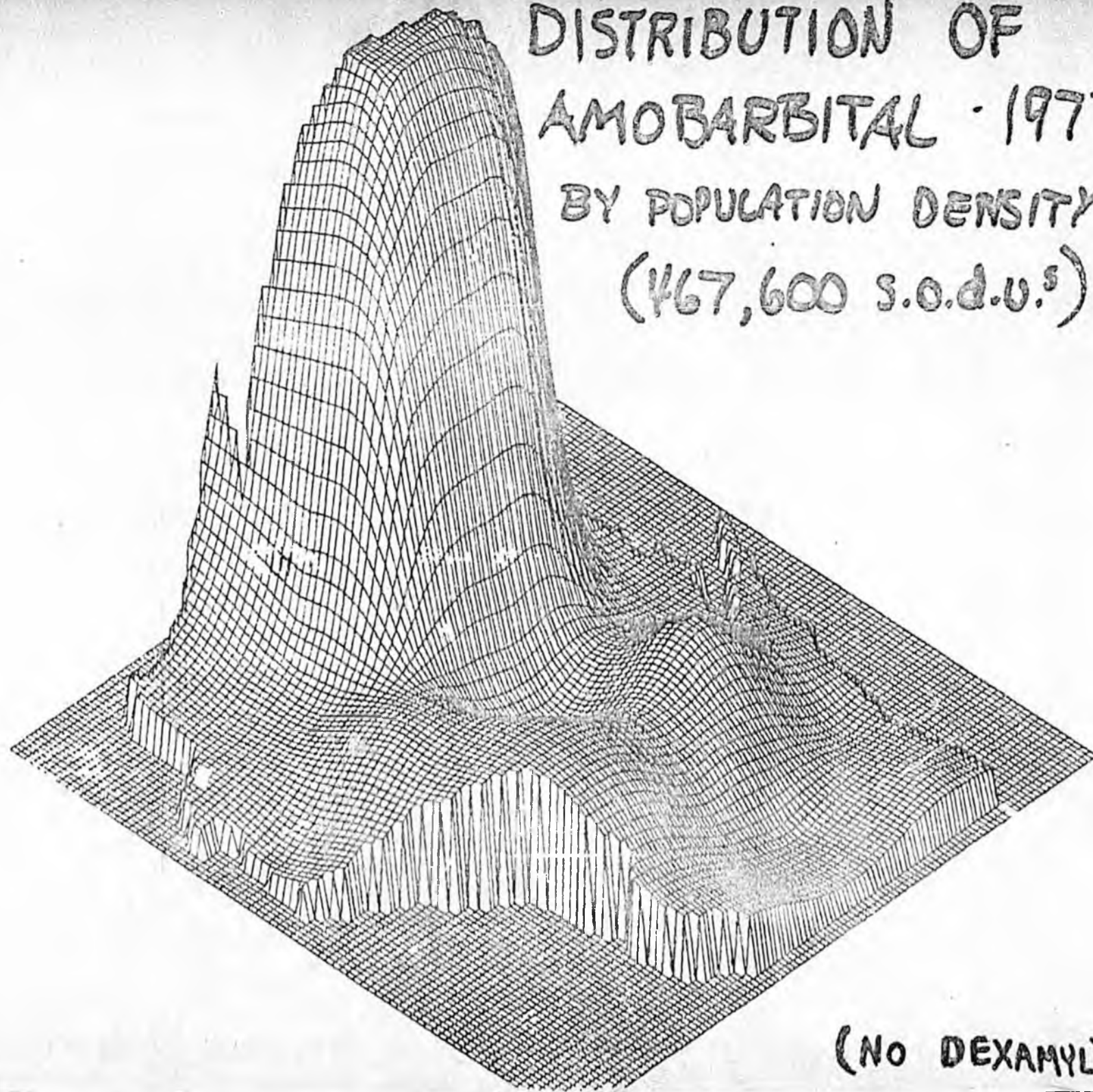
# DISTRIBUTION OF ANOBARBITAL - 1977 (467,600 s.o.d.u.s\*)



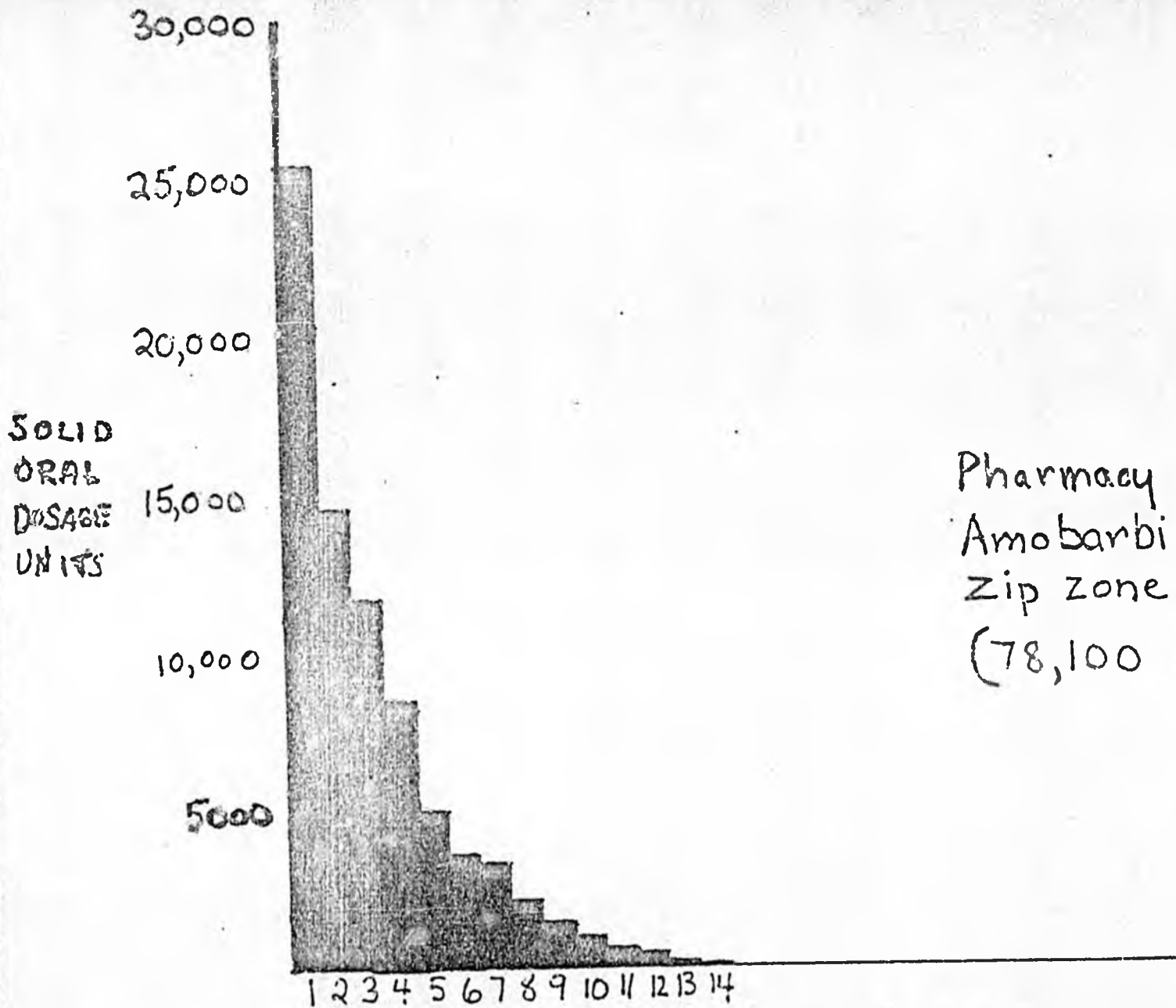
(NO DEXAMYL)

\* solid oral dosage units

DISTRIBUTION OF  
AMOBARBITAL - 1977  
BY POPULATION DENSITY  
(467,600 s.o.d.u.<sup>s</sup>)



(NO DEXAMYL)

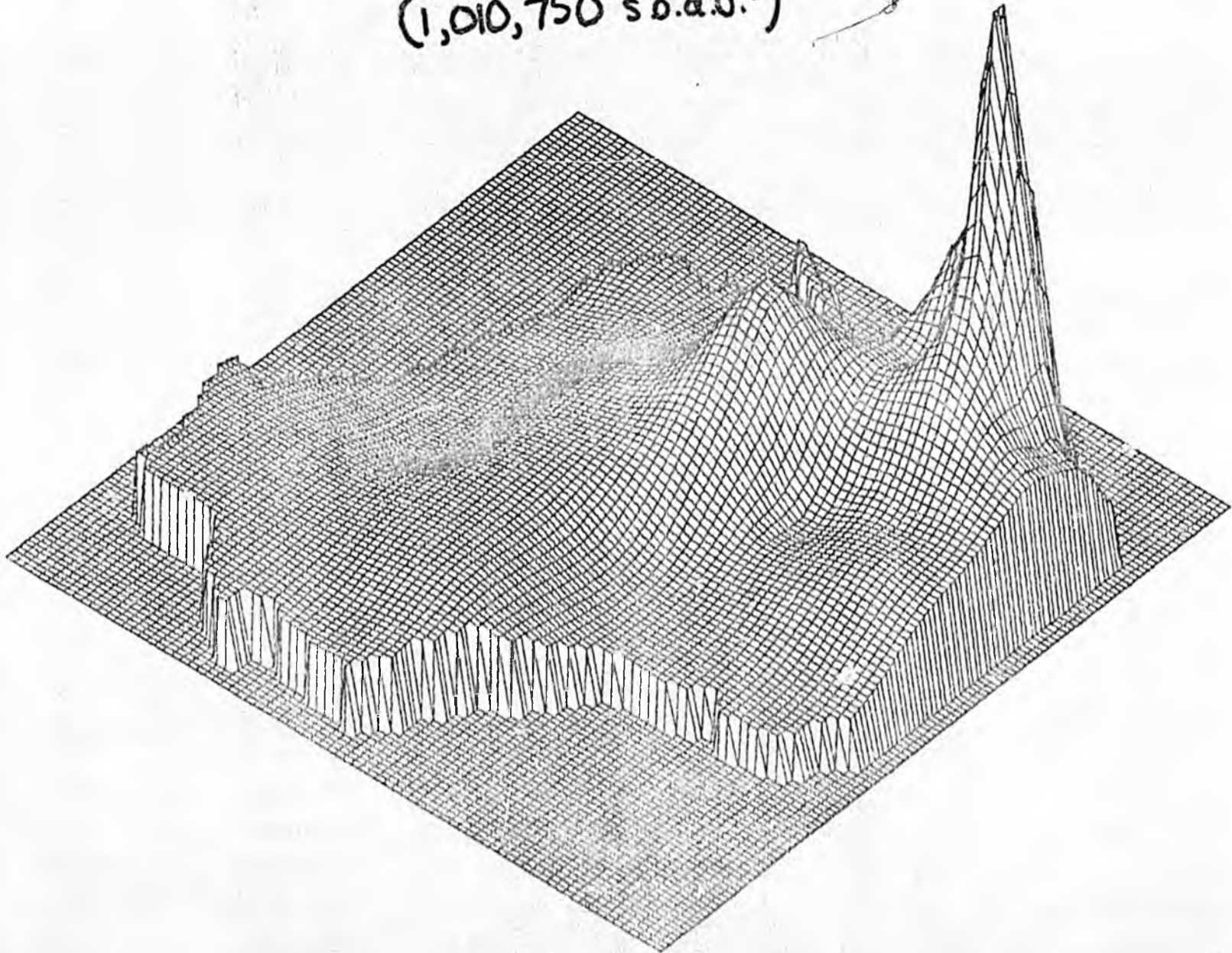


Pharmacy Purchases of  
Amobarbital, 1977,  
Zip zone 545  
(78,100 s.o.d.u.<sup>s</sup>)

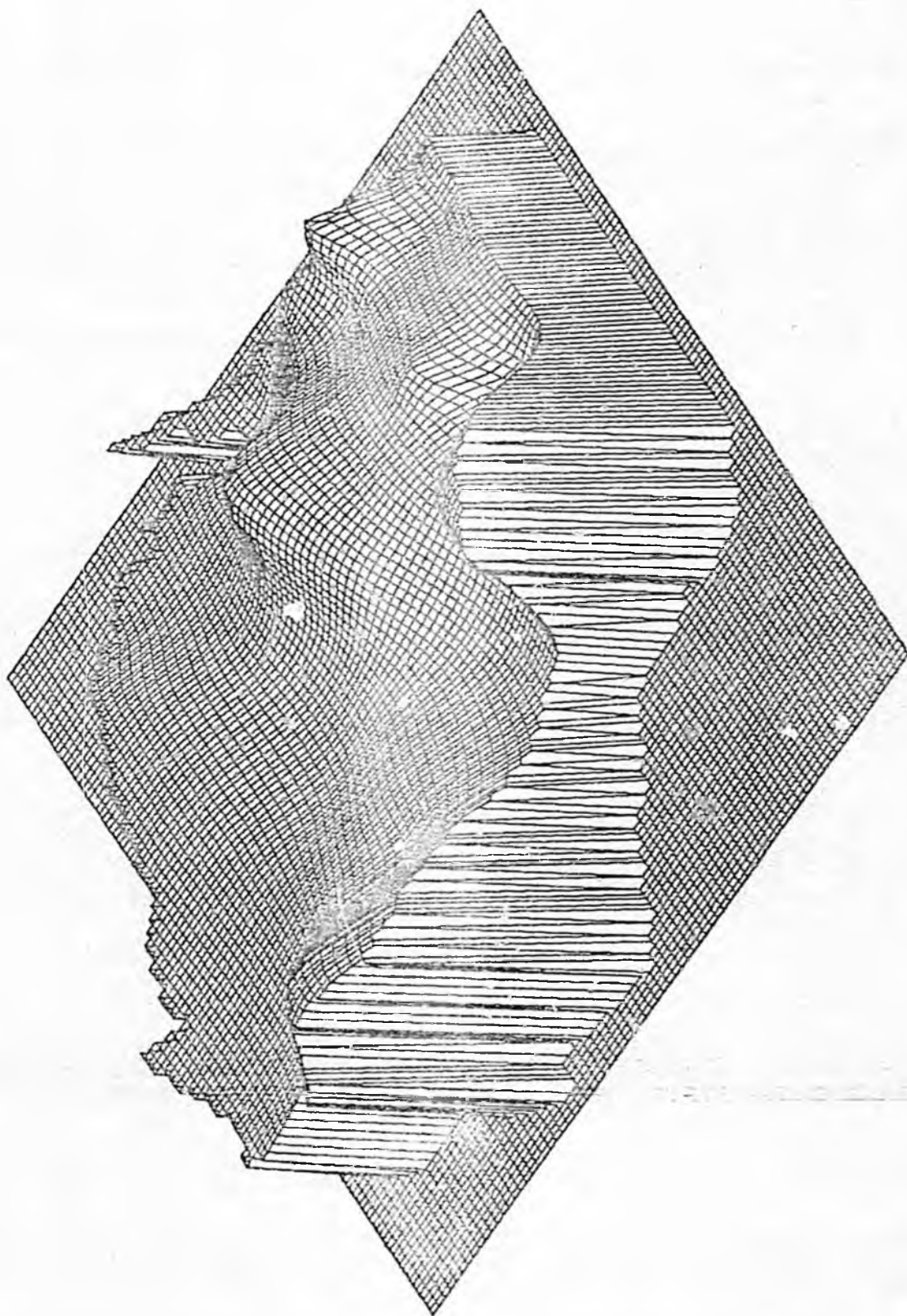
# Pentobarbital (gms.)-Wis.

	1976	1977	
Pharmacy	92,295	63,246	-31%
Hospital/Clinic	23,123	19,546	-16%
Practitioner	58,575	64,930	+10.9%
<b>TOTAL</b>	<b>173,990</b>	<b>147,722</b>	
1976-1977 U.S. Trend			-23.7% (vet. use)
1976-1977 Wis. Trend			-14.3% (vet. use)

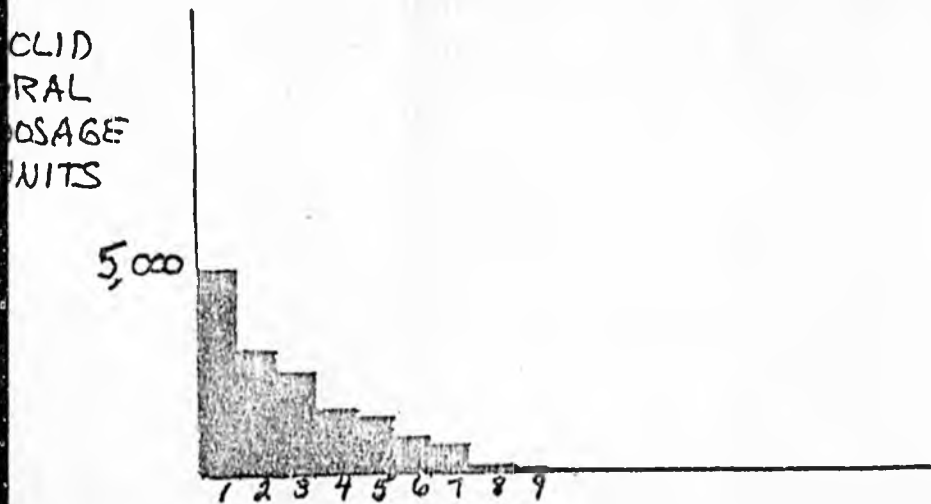
DISTRIBUTION- OF PENTOBARBITAL  
1977  
(1,010,750 s.o.d.u.'s)



DISTRIBUTION OF PENTOBARBITAL  
1977  
BY POPULATION DENSITY  
(1,010,750 s.o.d.u.'s)

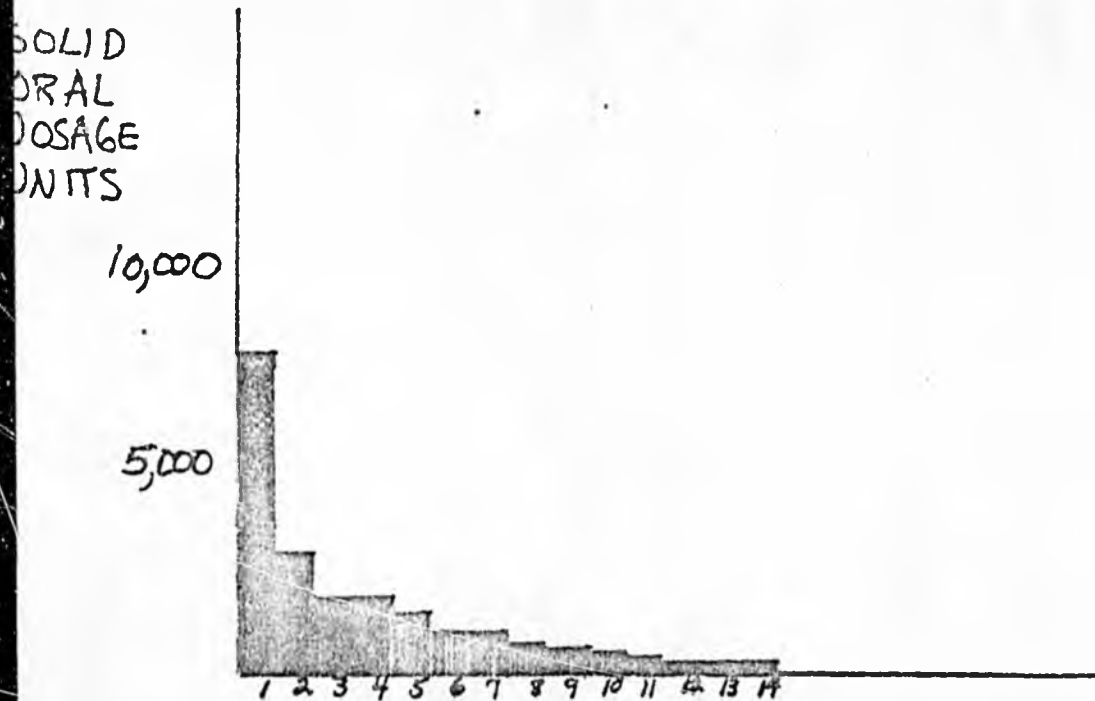


Pharmacy Purchases of  
Pentobarbital, 1977  
zip zone 538  
(16,150 s.o.d.u.'s)



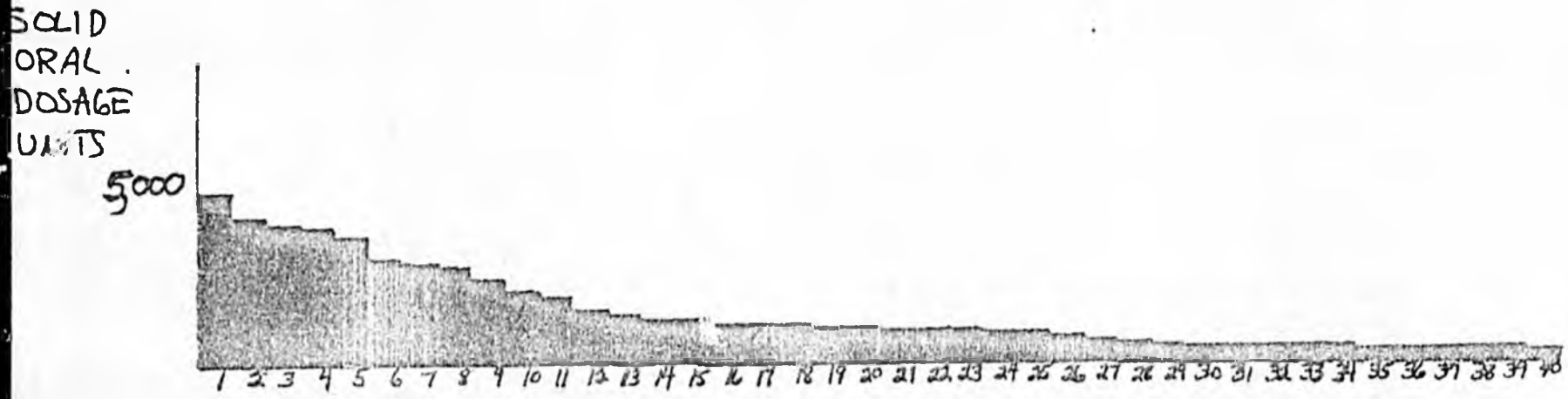
9 PHARMACIES

Pharmacy Purchases of  
Pentobarbital, 1977  
Zip zone 540  
(22,900 s.o.d.u.'s)



14 PHARMACIES

Pharmacy Purchases of  
Pentobarbital, 1977  
zip zone 549  
(66,525 s.o.d.u.'s)



57 PHARMACIES

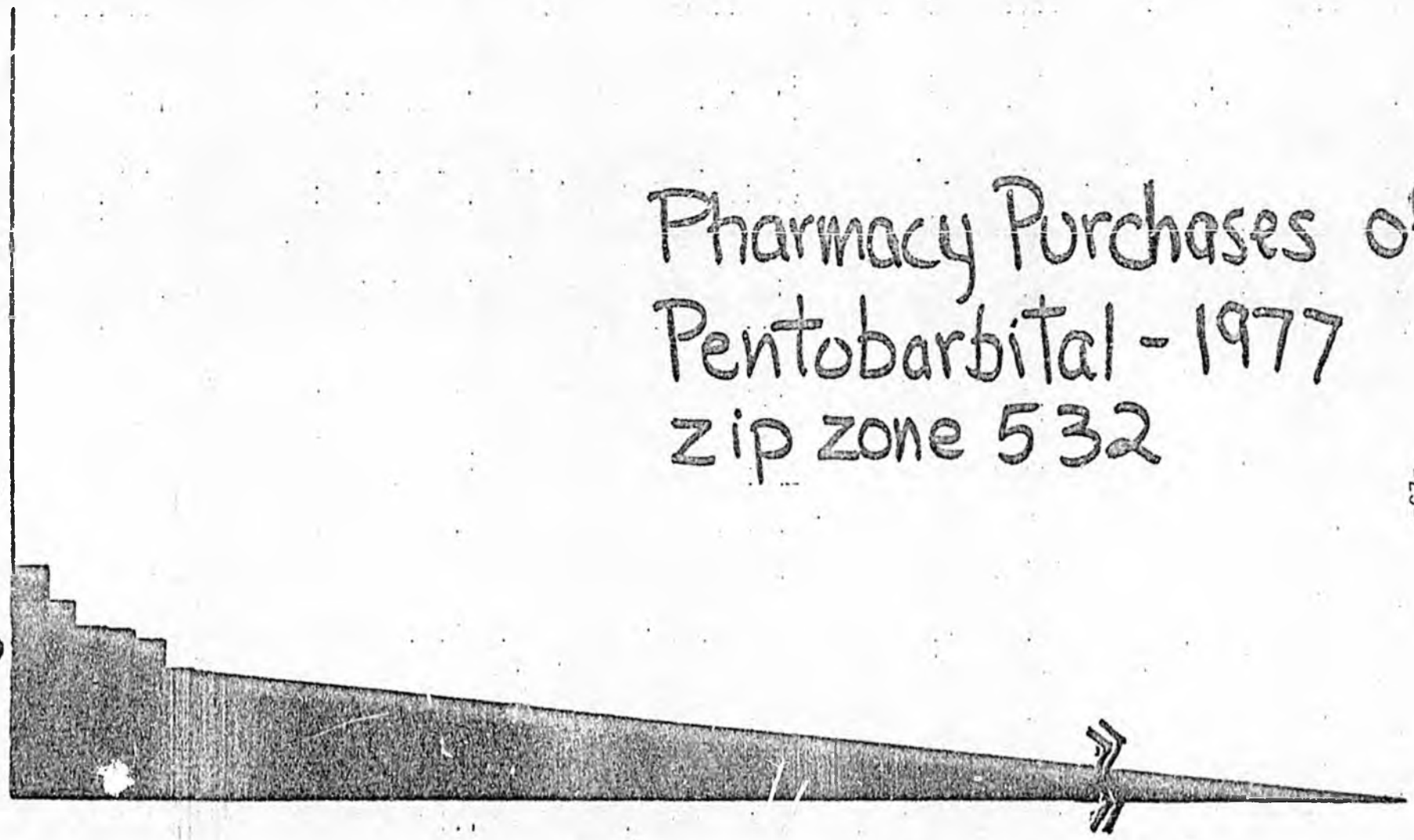
Pharmacy Purchases of  
Pentobarbital - 1977  
zip zone 532

-25-

SOLID  
ORAL  
DOSAGE  
UNITS

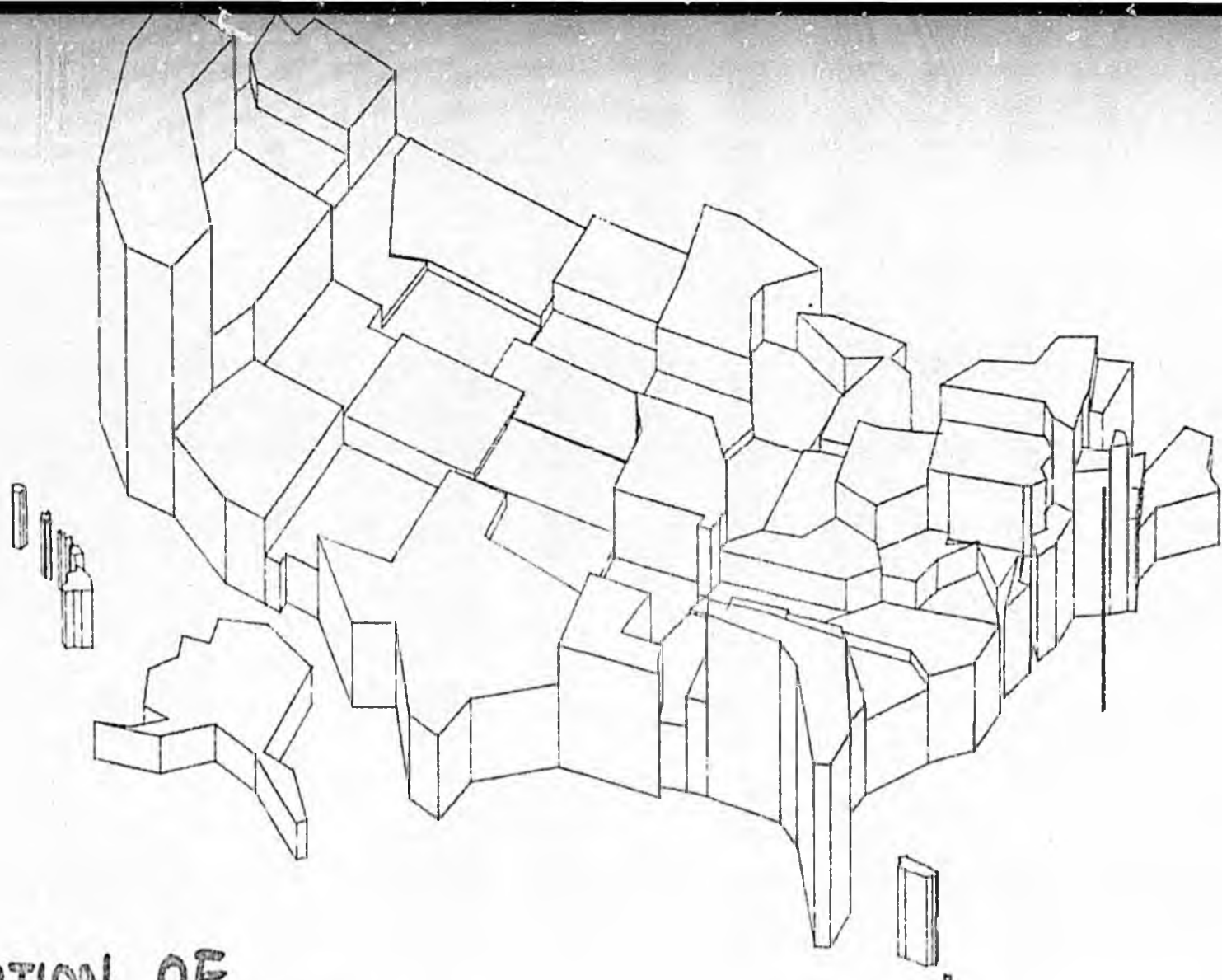
10,000

5,000



163 Pharmacies

Figure 13



DISTRIBUTION OF  
SECOBARBITAL - 1977  
BY POPULATION DENSITY  
(8,737,868 gms.)

U.S. SECOBARBITAL DISTRIBUTION TO RETAIL LEVEL-1977

<u>State</u>	<u>mg./capita</u>	<u>Total Purchases(in gms)</u>
1. California	81.7	1,757,209
2. Washington, D.C.	72.0	50,365
3. New York	61.4	1,110,605
4. Florida	60.0	503,437
5. Rhode Island	54.6	49,134
6. Vermont	54.1	17,057
7. Pennsylvania	50.1	596,350
8. Connecticut	47.5	147,304
9. Nevada	45.6	27,380
10. Ohio	45.3	484,875
11. Missouri	43.1	207,104
12. Minnesota	41.7	166,813
13. Louisiana	40.4	153,496
14. Washington	37.1	133,499
15. Michigan	36.5	332,195
16. New Jersey	33.8	246,921
17. Kentucky	33.0	112,107
18. Indiana	32.1	170,179
19. Alabama	31.0	114,768
20. West Virginia	30.6	55,091
21. Massachusetts	30.3	175,689
22. Georgia	30.0	149,911
23. Puerto Rico	29.1	8,740
24. Oregon	28.7	65,999
25. Maryland	28.6	117,150
26. North Carolina	28.5	145,506
27. Arizona	27.9	64,075
28. Texas	27.6	345,238
29. Iowa	27.5	79,898
30. Delaware	27.2	16,340

## Secobarbital(continued)1977

<u>State</u>	<u>mg./capita</u>	<u>Total Purchases(in gms)</u>
31. Colorado	25.5	66,232
32. Illinois	24.4	272,771
33. South Carolina	24.4	68,226
34. Nebraska	24.2	38,786
35. Wisconsin	23.9	109,917
36. Oklahoma	23.8	66,597
37. Kansas	23.7	54,417
38. New Hampshire	23.5	18,781
39. North Dakota	23.3	14,009
40. Tennessee	22.7	95,422
41. Utah	22.1	26,558
42. Mississippi	21.5	51,550
43. Virginia	20.7	103,442
44. Arkansas	20.5	43,097
45. Hawaii	18.6	16,771
46. Montana	18.1	14,490
47. Idaho	17.2	13,750
48. Maine	16.9	18,579
49. New Mexico	16.1	19,265
50. Wyoming	15.0	5,973
51. South Dakota	13.7	9,581
52. Alaska	12.2	4,878
53. Virgin Islands	1.1	341

SOURCE: Drug Enforcement Administration

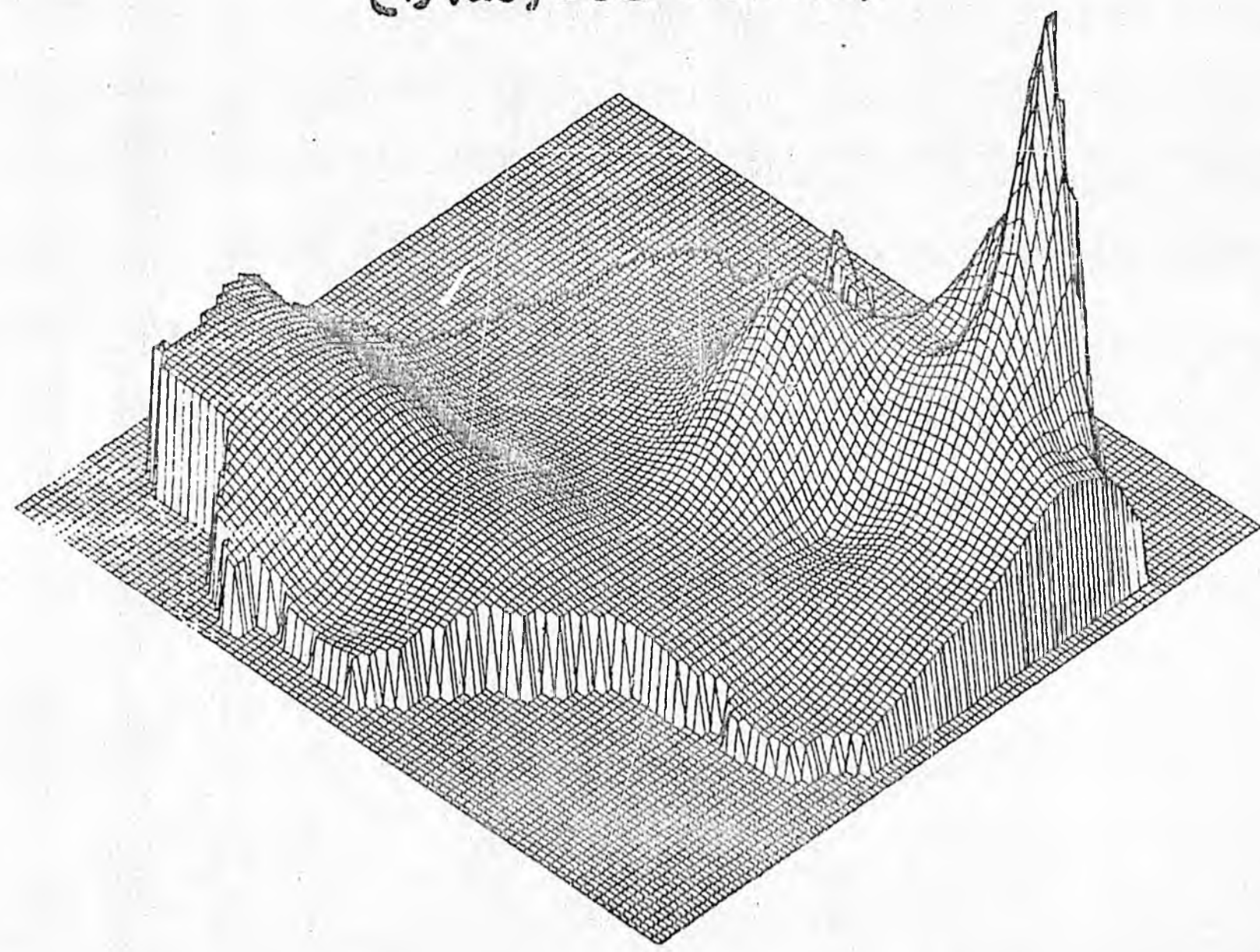
# Secobarbital (gms.)-Wis.

	1976	1977	
Pharmacy	126,014	83,638	-33%
Hospital/Clinic	21,369	14,077	-34%
Practitioner	34,689	11,841	-66%
<b>TOTAL</b>	<b>182,072</b>	<b>109,556</b>	
1976-1977 U.S. Trend		-21.2%	
1976-1977 Wis. Trend		-39.4%	

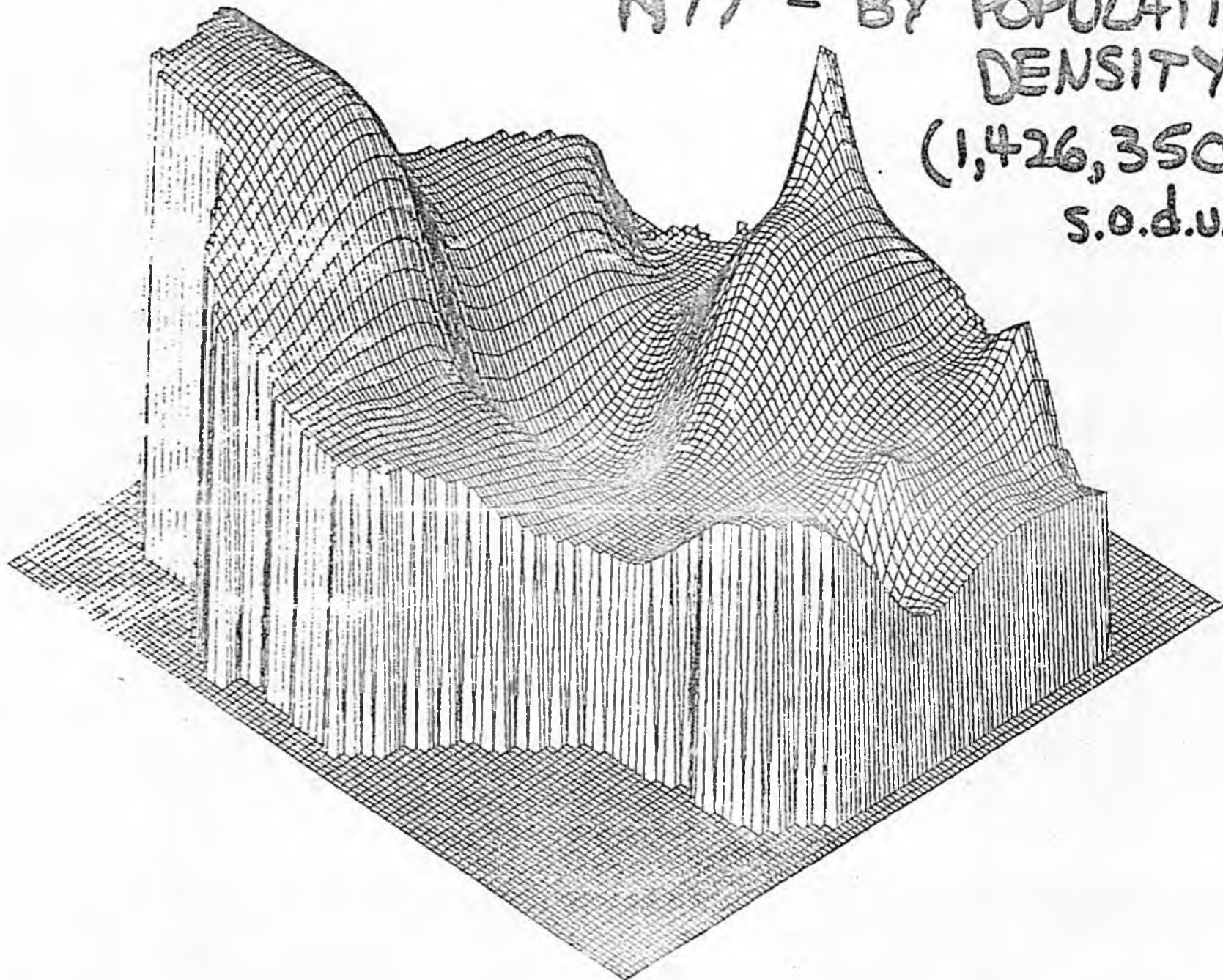
# DISTRIBUTION OF SECOBARBITAL

1977

(1,426,350 S.O.D.U.'S)



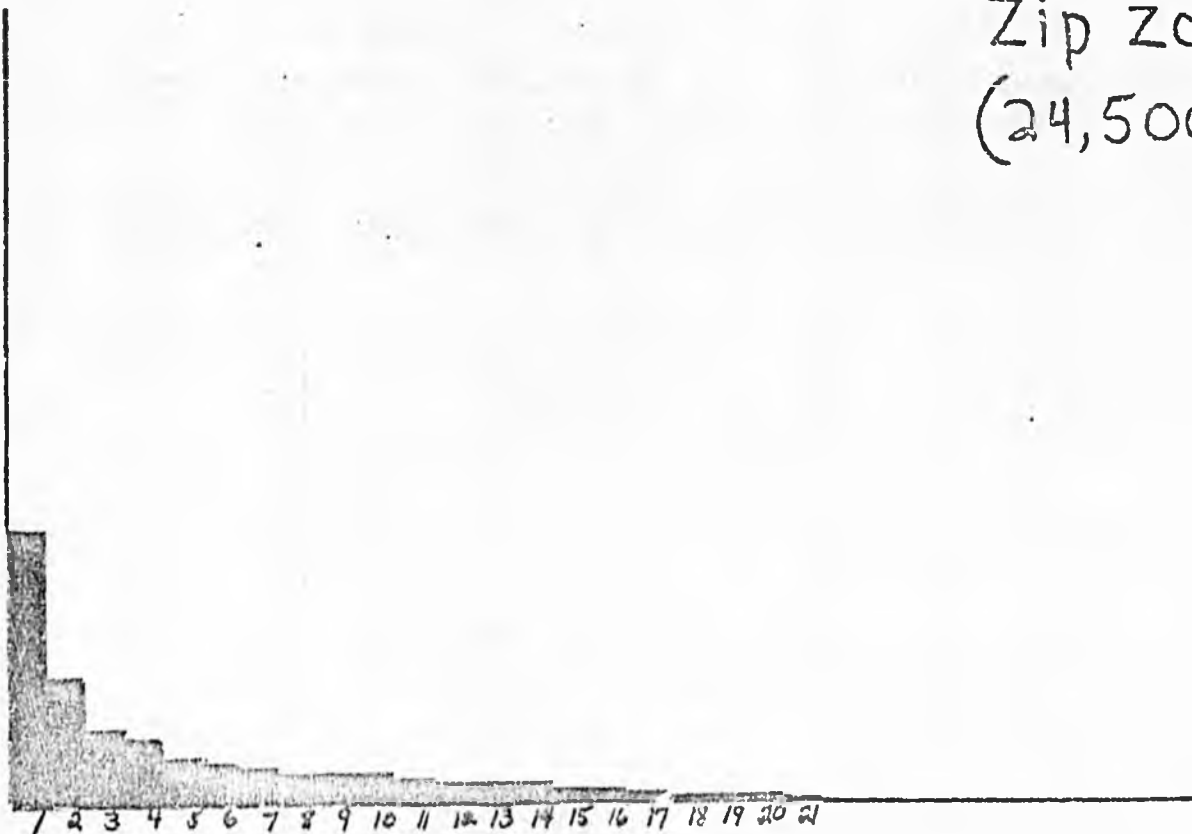
DISTRIBUTION OF SECOBARBITAL  
1977 - BY POPULATION  
DENSITY  
(1,426,350  
s.o.d.u.'s)



Pharmacy Purchases of  
Secobarbital, 1977  
Zip zone 545  
(24,500 s.o.d.u.'s)

OLID  
RAL  
OSAGE  
NITS

5,000

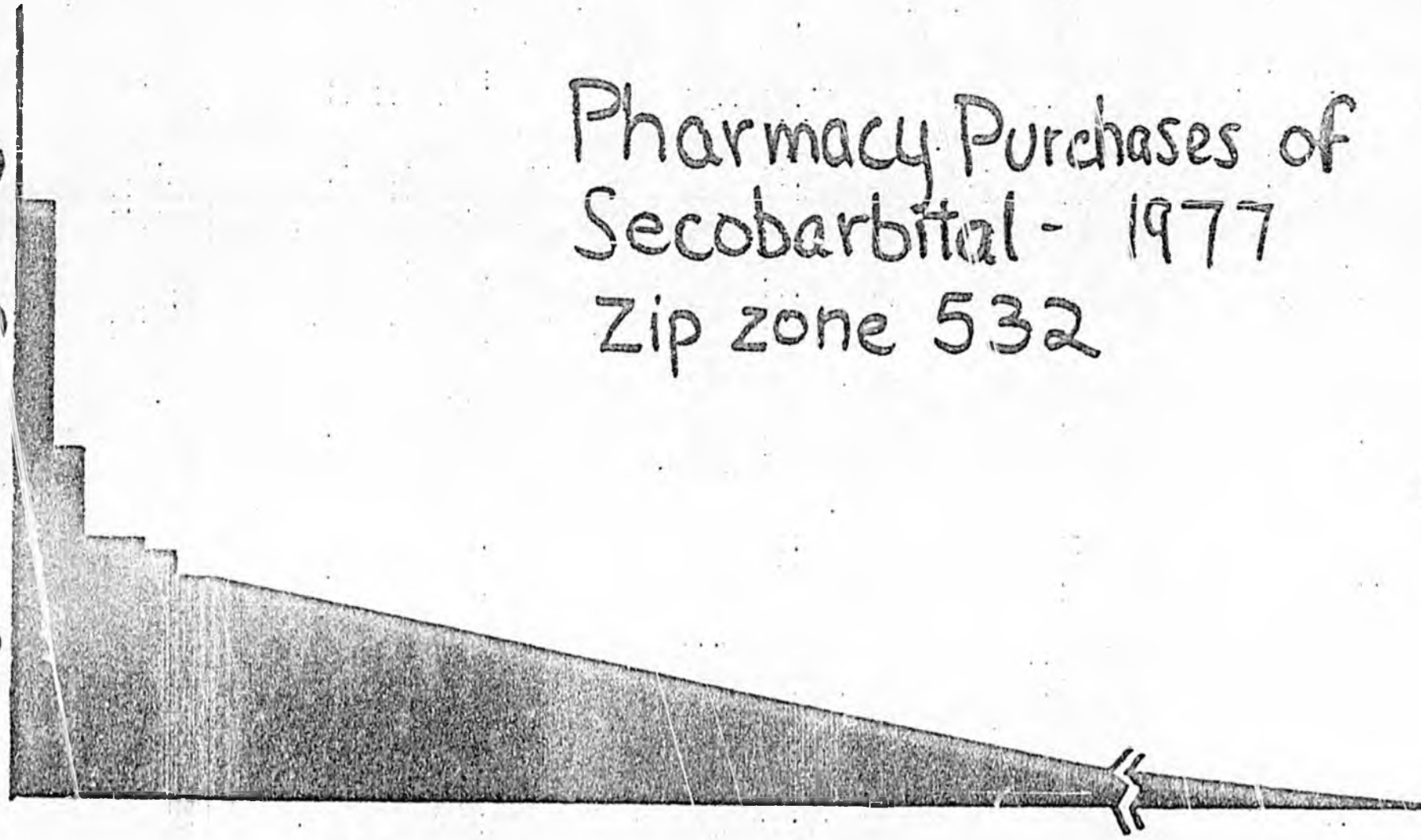


21 PHARMACIES

SOLID  
ORAL  
DOSAGE  
UNITS

20,000  
15,000  
10,000  
5,000

# Pharmacy Purchases of Secobarbital - 1977 Zip zone 532



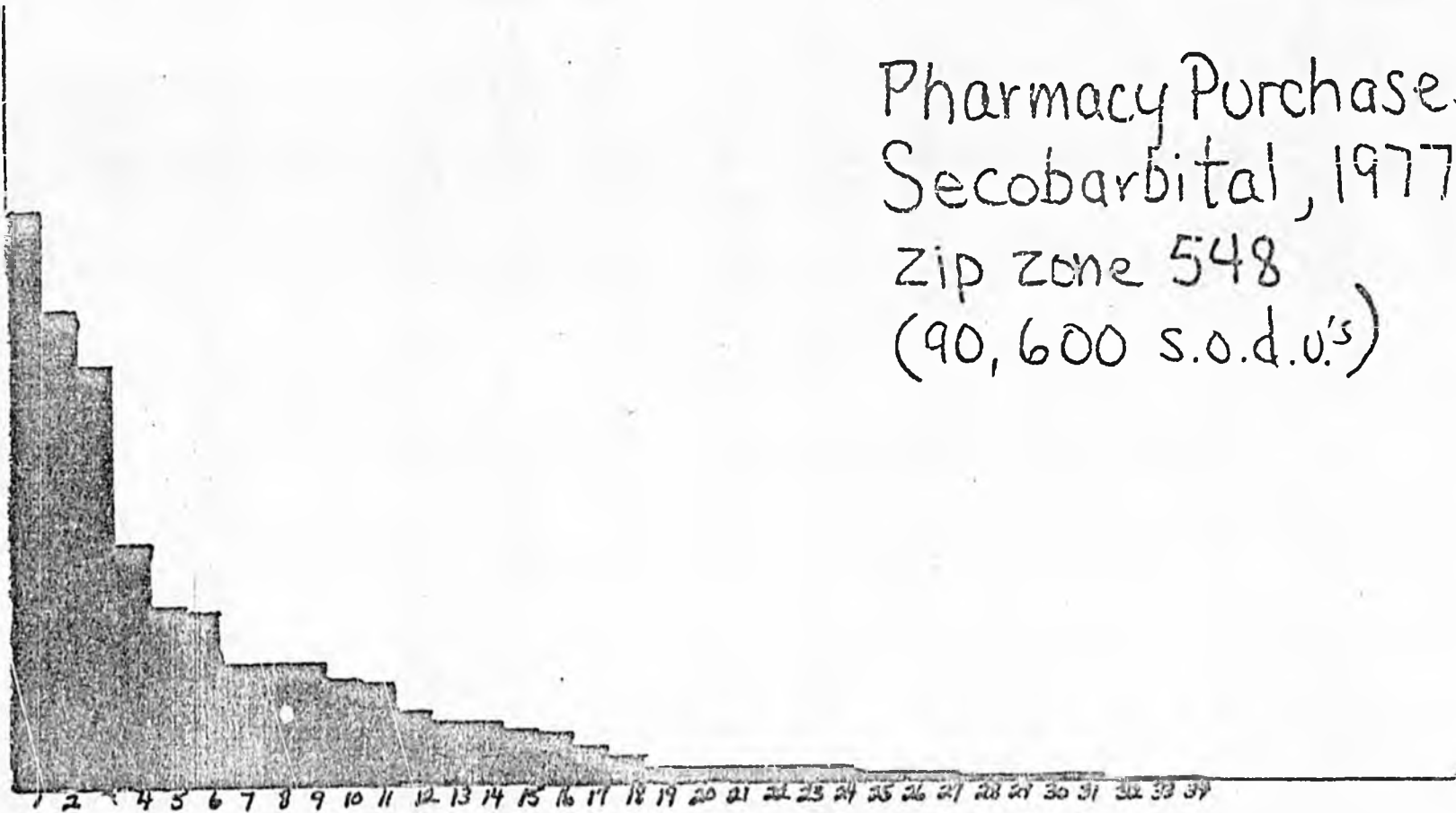
188 Pharmacies

SOLID  
ORAL  
DOSAGE  
UNITS

15,000

10,000

5,000



Pharmacy Purchases of  
Secobarbital, 1977  
Zip zone 548  
(90,600 s.o.d.u.'s)

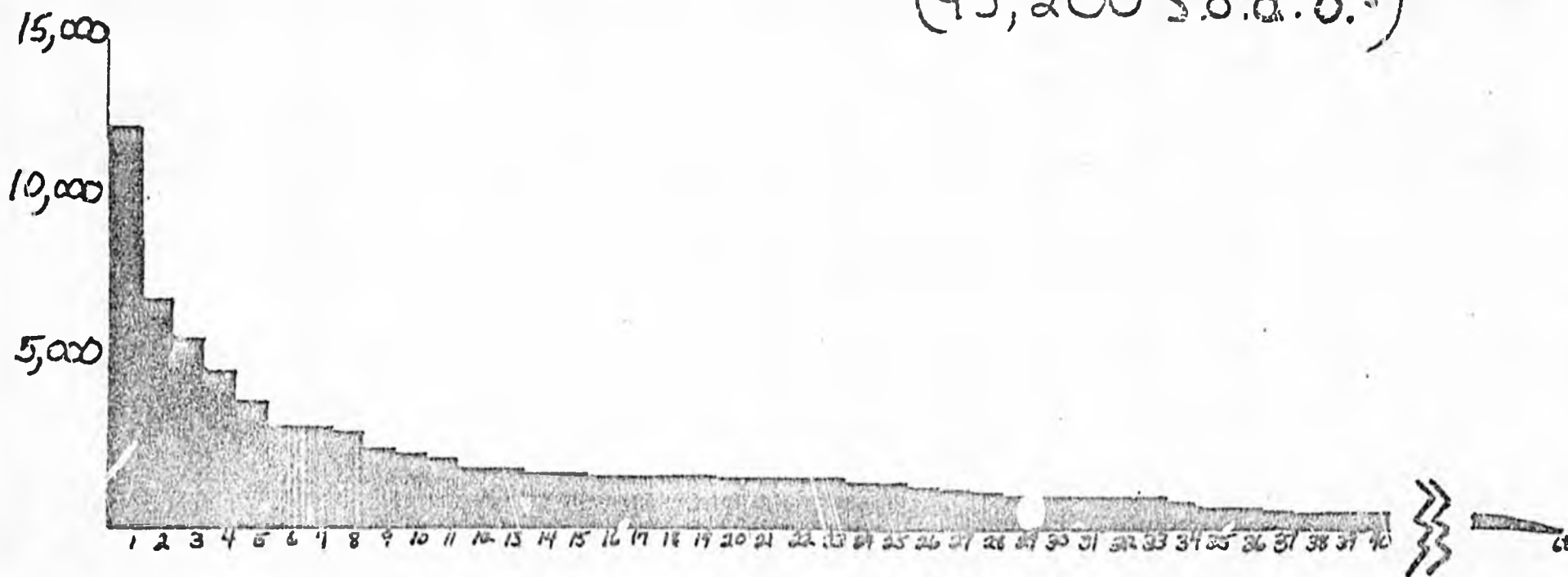
-34-

34 Pharmacies

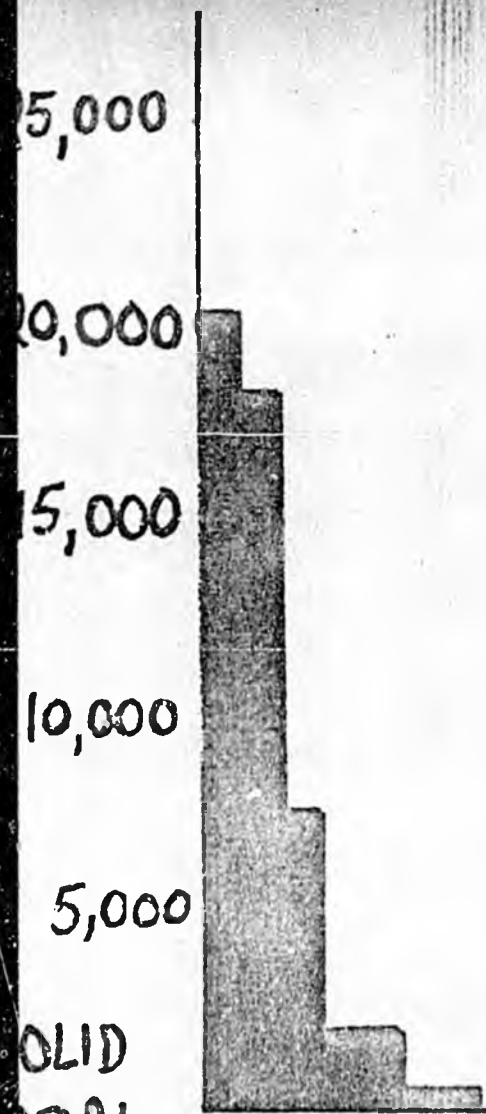
Figure 21

Pharmacy Purchases of  
Secobarbital, 1977  
zip zone 549  
(95,200 s.o.d.u.'s)

SOLID  
ORAL  
DOSAGE  
UNITS



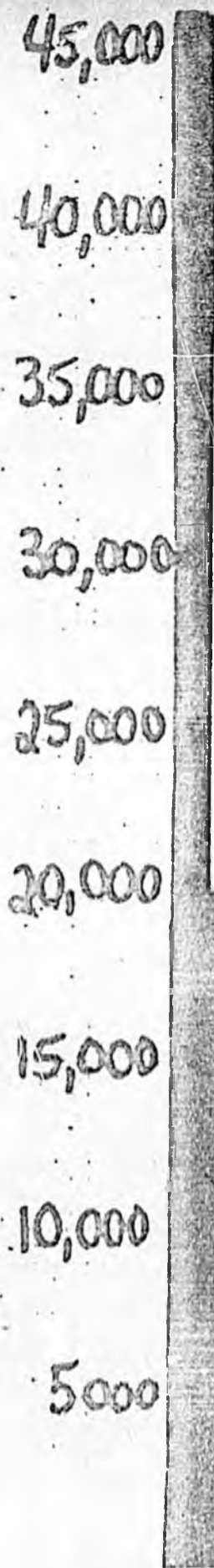
68 Pharmacies



Practitioner Purchases of  
 Secobarbital - 1977  
 zip zone 549  
 (50,300 s.o.d.u.s)

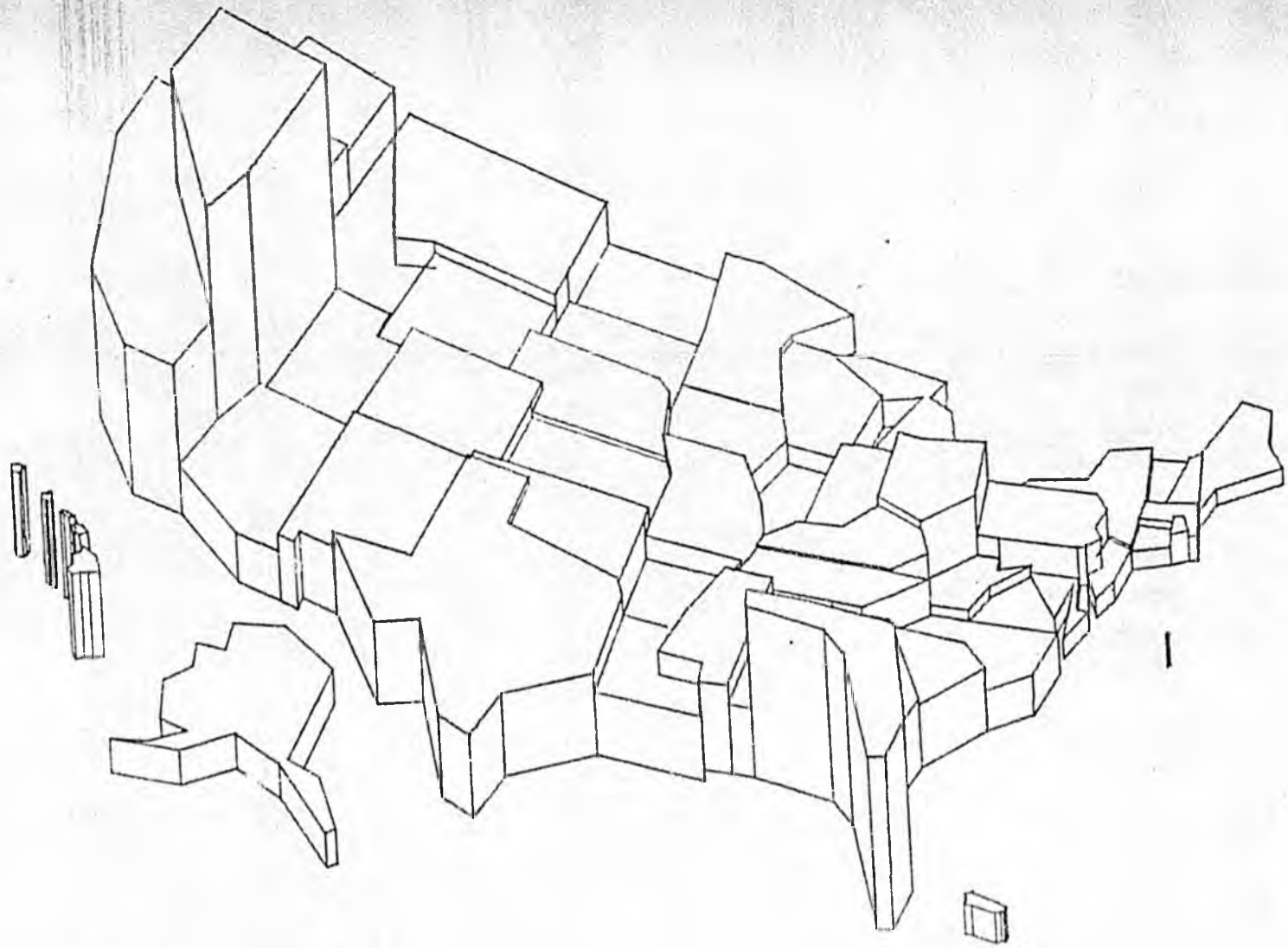
SOLID  
 ORAL  
 DOSAGE  
 UNITS

7 Practitioners



Practitioner Purchases  
of Amo, Pento, Seco-  
barbital - 1977  
Zip zone 549  
(86,100 s.o.d.u.'s)

10 PRACTITIONERS



DISTRIBUTION OF  
METHAQUALONE - 1977  
BY POPULATION DENSITY  
(13,464,575 gms)

U.S. METHAQUALONE DISTRIBUTION TO RETAIL LEVEL-1977

<u>State</u>	<u>mg./capita</u>	<u>Total Purchases (in gms)</u>
1. Nevada	267.9	160,760
2. Florida	177.6	1,491,918
3. California	154.6	3,323,664
4. Mississippi	90.5	217,235
5. Ohio	90.1	964,009
6. Hawaii	87.1	78,396
7. Texas	85.5	1,068,509
8. Kentucky	81.1	275,603
9. Oklahoma	79.4	222,214
10. Tennessee	78.1	328,071
11. Oregon	74.8	172,110
12. Alabama	70.9	262,263
13. Georgia	70.3	351,445
14. New Mexico	69.4	83,273
15. Indiana	69.2	366,699
16. Washington	68.1	245,331
17. Louisiana	65.9	250,412
18. Colorado	64.6	167,959
19. South Carolina	64.2	179,744
20. Missouri	62.9	301,832
21. Nebraska	57.2	91,583
22. Arizona	51.3	1,17,949
23. Kansas	51.2	1,17,655
24. Pennsylvania	49.8	592,358
25. Montana	48.8	39,055
26. North Carolina	40.9	225,075
27. Utah	40.4	48,501
28. Arkansas	39.4	82,731
29. Minnesota	38.8	155,242
30. Iowa	37.2	107,776
31. Wyoming	36.9	14,745

Methaqualone (continued) 1977

-40-

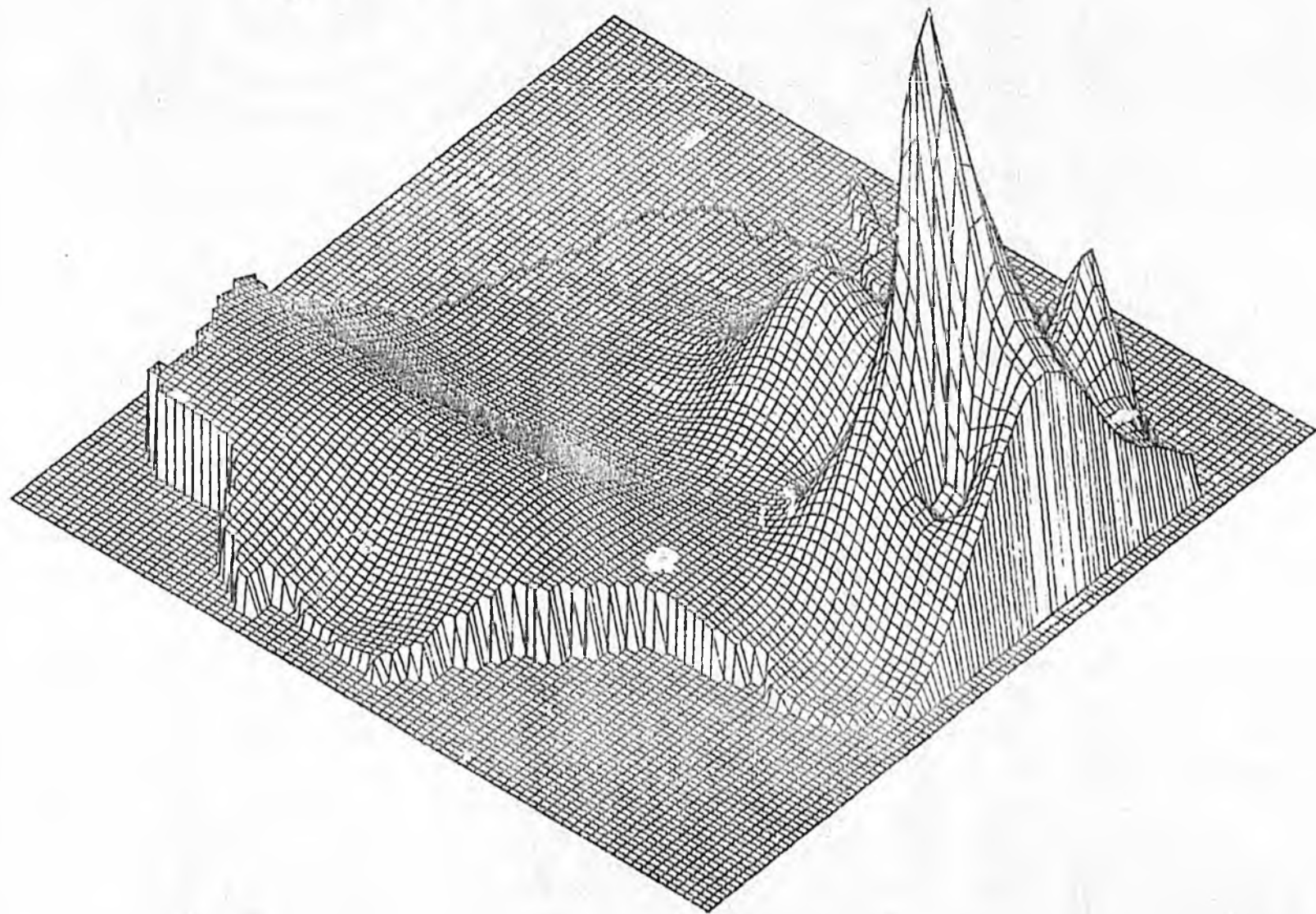
<u>State</u>	<u>mg./capita</u>	<u>Total Purchases (in gms)</u>
32. Alaska	36.2	14,465
33. Wisconsin	31.9	146,845
34. Washington, D.C.	31.4	21,995
35. Rhode Island	31.3	28,192
36. Puerto Rico	31.2	9,345
37. West Virginia	28.9	51,962
38. Michigan	28.0	254,777
39. Massachusetts	25.3	146,847
40. New York	23.9	431,721
41. Idaho	21.6	17,240
42. New Jersey	20.2	147,449
43. South Dakota	19.0	13,282
44. Connecticut	18.3	56,625
45. Maryland	18.0	73,676
46. Virginia	17.7	88,454
47. Maine	16.0	17,507
48. New Hampshire	15.8	12,608
49. Illinois	12.3	138,095
50. Vermont	11.5	5,744
51. Delaware	10.7	6,430
52. North Dakota	7.4	4,468
53. Virgin Islands	1.3	393

SOURCE: Drug Enforcement Administration

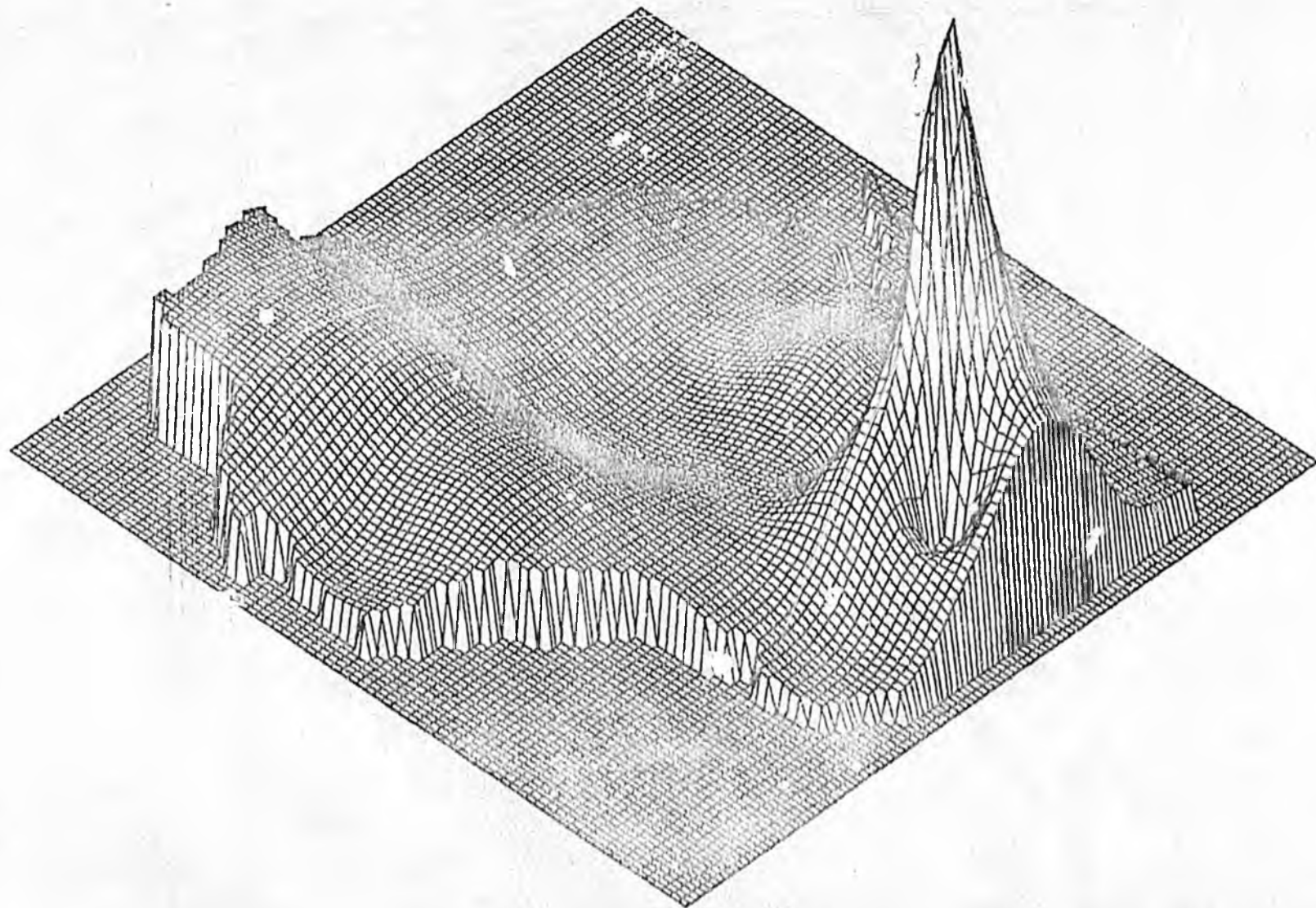
# Methaqualone (gms.)-Wis

	1976	1977	
Pharmacy	170,082	136,404	-20%
Hospital/Clinic	19,484	8,160	-58%
Practitioner	4,963	2,628	-47%
<b>TOTAL</b>	<b>194,529</b>	<b>147,192</b>	
1976-1977 U.S. Trend		-20.9%	
1976-1977 Wis. Trend		-24.5%	

DISTRIBUTION OF METHAQUALONE  
1977  
(503,400 s.d.u.'s)



DISTRIBUTION OF METHAQUALONE  
1977  
BY POPULATION DENSITY  
(503,400 s.o.d.u.'s)



Pharmacy Purchases of  
Methaqualone, 1977  
Zip zone 549  
(42,300 s.o.d.u.'s)

SOLID  
ORAL  
DOSAGE  
UNITS

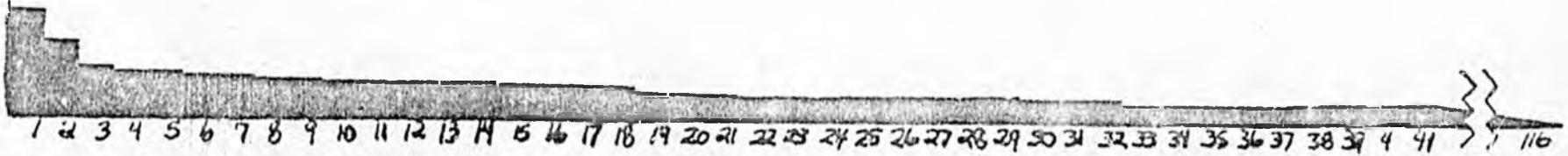
5,000



56 PHARMACIES

Pharmacy Purchases of  
Methaqualone, 1977  
zip zone 532  
(61,100 s.o.d.u.'s)

15,000  
10,000  
5000



116 Pharmacies

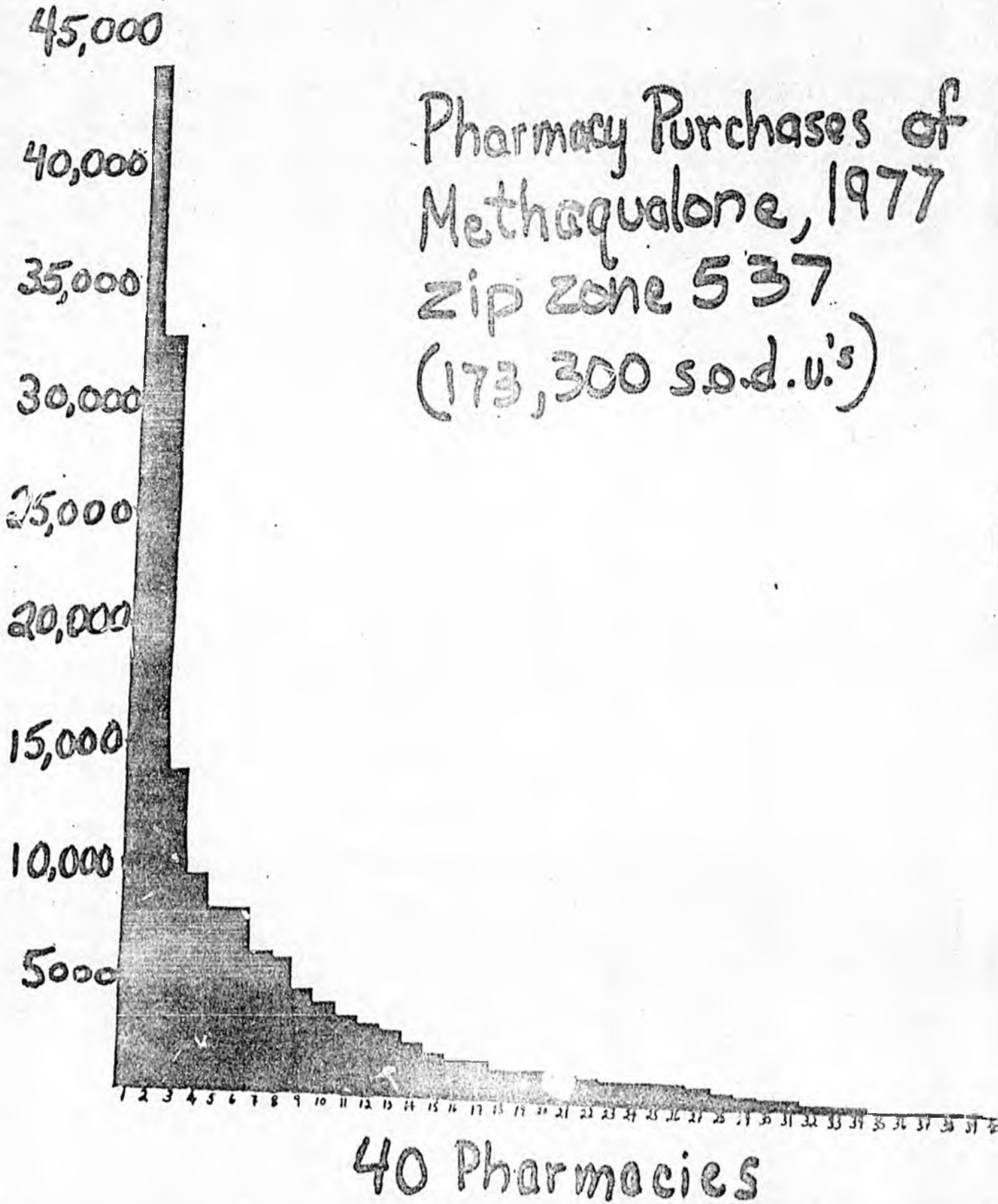
Pharmacy Purchases of  
Methaqualone, 1977  
Zip zone 548  
(27,500 s.o.d.u.s)

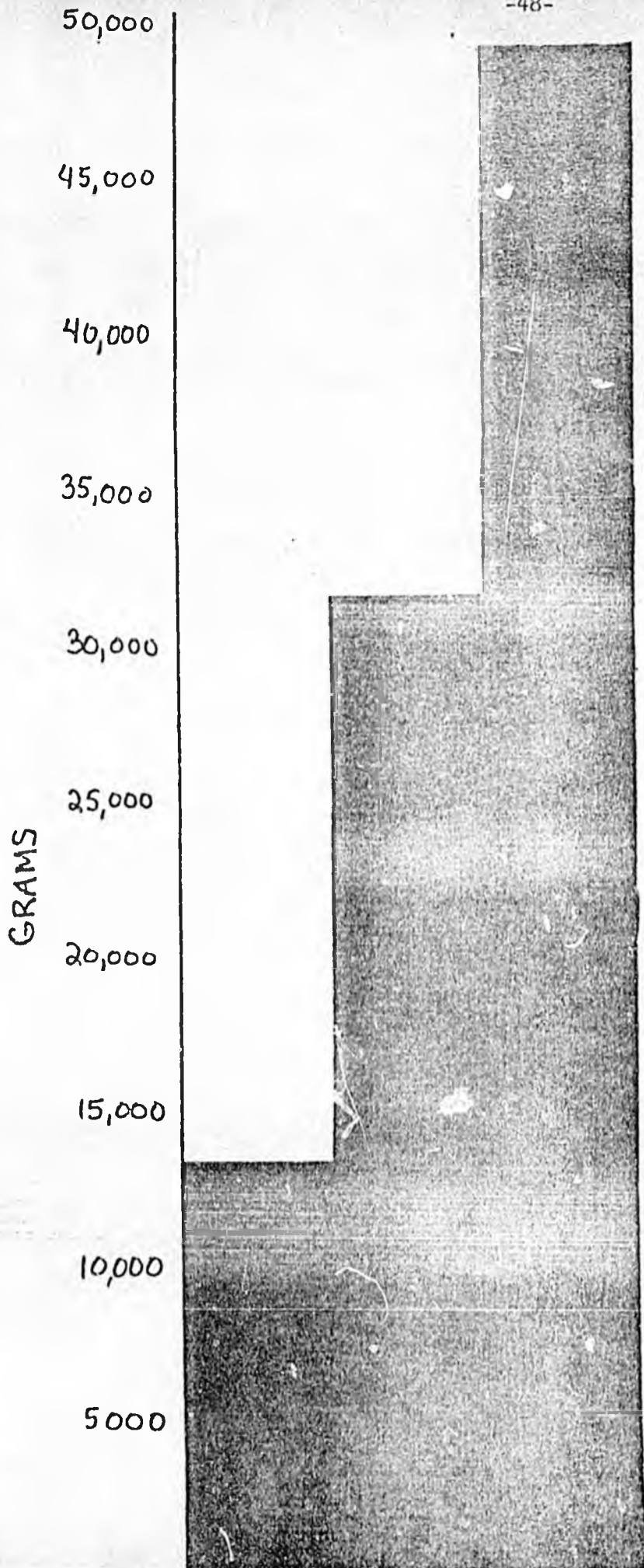
SOLID  
ORAL  
DOSAGE  
UNITS

5,000

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22

22 PHARMACIES





Pharmacy Purchases of Methaqualone, 300 mg., in Zip Code Area 537 (Madison, Wi.), 1975, 1976, 1977.

Source: Drug Enforcement Administration

VII Summary of Reactor Panel  
Afternoon General Discussion

- Reactor Panel:
- Darold Treffert, M.D., State Medical Society
  - Rudolph Link, M.D., Medical Examining Board
  - Paul Bjerke, Pharmacy Examining Board
  - Ralph Paulick, Wisconsin Pharmaceutical Association
  - Moderator: Karl Marquardt, R.Ph., Controlled Substances Board

Dr. Treffert's reactions to the morning presentation were in regard to the role the State Medical Society (SMS) should take (and is taking) as far as its physician members and the sedative-hypnotic issue. The three areas the SMS can take a part are:

- (1) Education - post-graduate alcohol and other drug abuse education for physicians, including contemporary approaches to insomnia
- (2) Encouragement of peer review/self-regulation as far as ethical considerations of prescribing sedative hypnotics
- (3) Specification of the indications for sedative-hypnotics.

Dr. Link explained that 1/3 of the Medical Examining Board (MEB) cases presently under investigation are related to prescribing of controlled substances. The MEB requires continuing medical education for physicians. Dr. Link would like to see the MEB assist the SMS in determining the appropriate uses of barbiturates (e.g., for epilepsy).

Several of the peaks seen in the data presented are already being looked into by the MEB. However, due process requires very careful investigation before legal action is taken.

Dr. Link asked the audience if anyone could tell him the proper medical usage of methaqualone. There seemed to be consensus that one could not be determined.

The Pharmacy Examining Board (PEB) is also a state regulatory board. Mr. Bjerke thinks the PEB should examine the top five pharmacies that distribute secobarbital. The pharmacist, like the physician, has a responsibility here; the pharmacist should not fill prescriptions known to be improperly prescribed or abused. For example, a pharmacist should not refill methaqualone prescriptions after two months. The "physician-patient-pharmacist" relationship is very important.

Mr. Bjerke stated that the medical practitioner should follow the same dispensing rules as does the pharmacist and the PEB should have the authority to conduct audits on dispensing physicians. This would probably eliminate the few practitioners involved in this unprofessional activity, he said.

According to Mr. Bjerke, the dispensing physicians should be examined just as pharmacies are investigated.

Mr. Paulick, Wisconsin Pharmaceutical Association, expressed his support of the PEB in their concern about these drugs and the continued monitoring of pharmacies.

A two-hour open discussion followed.

Mr. Angarola and Dr. Treffert explored the use of peer pressure and education of physicians.

Ms. Reddin (MEB) responded to Mr. Bjerke's remarks, and agreed that the PEB should regulate physician dispensing. She then asked about the legitimate medical use of barbiturates. Dr. Link explained that barbiturates are not effective except for short periods of time. Dr. Treffert and Dr. Link explained that this is a complex question. Some prescribe these drugs for insomnia and anxiety, and anesthesia is a common usage.

Mr. Marquardt stated that this is a much more complex problem than the amphetamine issue where obesity was clearly not considered a proper indication for amphetamines.

The complexity of this problem was reiterated by Dr. Dahl. She said that there are honest differences of opinion over the barbiturates and the other sedative-hypnotics; some success with the barbiturates has been observed. However, physicians must take a closer look at complaints of, for example, insomnia - if upon closer examination the patient complains of early morning awakening, the problem may be depression which calls for other treatment. Dr. Dahl also said that the sleep laboratory data unfortunately is obtained from an artificial situation.

Dr. Ferguson explained that Dalmane is the only sedative-hypnotic effective over a longer period of time. He also pointed out that the discoveries of practitioners are often not published or disseminated, so some known information may not be available to us.

Dr. Halikas referred to pages 4-5 of the NIDA report which describes the use of the central nervous system depressants for insomnia and emphasized the importance of diagnosis preceding treatment.

Dr. Dahl said that people must realize that anxiety and insomnia are normal reactions to some life situations. We are indoctrinated to turn to pills when something ails us and we need to realize that pharmacological solutions are not always necessary.

In conjunction with this, Dr. Ferguson pointed out that insomnia is a symptom, not a disease.

Dr. Cushman referred to page 93 of the NIDA report and noted the high purchase records. Dr. Ferguson explained that it is very difficult to relate Drug Abuse Warning Network (DAWN) data to prescription data. Dr. Cushman said it would be interesting to know if this same tendency is showing up at medical examiners. Dr. Ferguson then said that it is difficult to tell if the reduction of sedative-hypnotic cases at medical examiners is because of less use or less availability.

One drug abuse population that is presently underserved is women. Mr. Joranson brought up the benefits to women if less sedative-hypnotics are being prescribed. Dr. Treffert agreed that women will benefit more from a decline in use; however, he pointed out that more women are affected by this problem because there is an over-representation of women in the medical system. Dr. Ferguson agreed that the data regarding women and drug abuse must be evaluated carefully.

Mr. Liegel suggested that these drugs should not be stocked in oral dosage units in hospitals. For accreditation, hospitals must have pharmacy and therapeutics committees which monitor issues as this.

Dr. Link emphasized the importance of education for physicians and consumers, while Dr. Cushman and Dr. Dahl told of the importance of pharmacokinetics. Dr. Halikas would like to see continuing medical education (CME) credits specifically required in alcohol and other drug abuse.

Mr. Hannon commended the CSB for its extensive efforts on this and other projects.

Dr. Treffert brought up the regulatory implications of the data presented. Dr. Link emphasized the need for this sound data, rather than hearsay, before the MEB can revoke licenses.

Dr. Cushman pointed out that there are a variety of ways in which people decide what drugs to take and not to take, especially through media.

The problems of "package inserts" were discussed by Dr. Ferguson and Dr. Treffert.

Then, Dr. Treffert discussed the addicted physician. The practicing of prescribing for self and family is now illegal. Mr. Marquardt explained that there are federal and state regulations that prohibit anything other than prescribing in the "usual course of professional practice" and that it is up to the state regulatory boards to interpret the meaning of this. It was stated that a person may just go to a different pharmacy if a pharmacist hesitates to fill a prescription. Mr. Bjerke stated that the PEB should come out with a statement as to what action should be taken if unprofessional conduct is suspected by a pharmacist in regard to prescribing practices. Mr. Paulick explained that pharmacists are reluctant to not fill a prescription but when they have a rather good idea that something wrong is going on, they will call a physician.

Mr. Angarola said that at the federal level, a reduction has already been seen and cooperation exists, so the U.S. Food and Drug Administration will not be scheduling hearings on barbiturates in the near future. Previous to this, Dr. Treffert recommended not interfering since the use of barbiturates is decreasing anyway - there's been a 30% drop in the last year.

Mr. Angarola stated that the President's message expressed that these drugs have a high abuse potential. They are so dangerous that this is why so much time is being spent on them.

Dr. Dahl asked if abuse of methaqualone would continue if it is banned, because of drugs coming in from other countries. Mr. Andersen said that this would probably be the case.

Mr. Ferguson stated that a special NIDA panel on sedative-hypnotics was unwilling to recommend that any of these drugs be banned.

Dr. Treffert summarized the afternoon discussion. He said that there are still questions as to the extent of use, though it is known that this is decreasing. Dr. Treffert emphasized the importance of education and persuasion - or prosecution if necessary. Bans are not necessary at this point, he concluded, but he added that this could change. The Medical Society will continue to accelerate education, knowledge and awareness of barbiturates and sedative-hypnotics.

Dr. Treffert stated that the CSB will continue its annual symposiums, but that the topic of the next one is not yet known. His overall feeling from this meeting was that state agencies seem to be working well together.

Dr. Treffert expressed his appreciation to the federal representatives present.

POSITION PAPER  
ON  
HOUSE BILL NO. 479

"An act revising the drug laws of the state."

The Department of Health and Social Services endorses and supports the concept of the need to revise and update Chapter 17: Controlled Substances Act. The Department is pleased with the bill's similarity of the schedule of controlled substances in H.B. 479 with its federal counterpart.

The bill though appears to lack recognition of the public health aspects of drug addiction and use. Therefore, the Department would recommend that H.B. 479 could be strengthened by consideration of the following:

1. The bill does not address the matter of treatment. There is little doubt that many of the offenders who would be prosecuted under this legislation would be abusers of drugs in need of help. It would be appropriate to include provisions for such treatment of offenders while they are incarcerated and specially for counselling and treatment services after their confinement is completed. At present the Department of Health and Social Services, Division of Corrections, has little in the way of effective drug abuse treatment, due in part to fiscal constraints.
2. Include a mechanism whereby persons arrested under this act would be afforded an opportunity for pre-sentence screening and diagnosis to determine if habitual or chronic drug abuse or addiction was a contributing factor in the commission of the person's offense. If indicated, and depending upon the severity of the offense, and prior criminal record, the offender may be afforded treatment as a part of his or her sentence at some point while the person is in the custody of the State of Alaska.
3. Since data prepared in conjunction with the development of the Drug Abuse State Plan indicates Alaskans suffer more health problems and death from the abuse of prescription drugs rather than illicit drugs, perhaps H.B. 479 should set forth policies regarding monitoring the distribution of prescription drugs in Alaska paid by the State under Medicaid and General Relief-Medical programs to look for patterns of abuse or improper distribution. The states of Washington, California, Wisconsin, and Illinois have instituted such programs with significant success. Although the institution of such a system could possibly be done by administrative means, the Department sees placing it in law as an advantage for funding and enforcement purposes.
4. Since ethanol C<sub>2</sub>H<sub>5</sub>OH is the drug present in beverage alcohol - beer, wine, and liquor; and data indicates that alcohol abuse is

the major contributing factor to human suffering, and social costs in Alaska, consideration may be given to its inclusion in H.B. 479 as a Schedule VI Substance. Although regulation of beverage alcohol presently exists in Title 04, the educative value of its mention in the Controlled Substances Act as a potentially harmful drug appears worthwhile.

It would be desirable from the standpoint of public health be to include the recommendations listed above.

APPROVED BY:

Helen D. Beirne  
Helen D. Beirne, Commissioner  
Department of Health and Social  
Services

1-21-80  
DATE

POSITION PAPER/Department of Health & Social Services

Name	Address & Phone #	Organization	Bill No.
Helen D. Beirne	D H SS 465-3030	DNSS	# HB 479
Commissioner Nichols	Dept of Public Safety		HB 479
Rep Charlie Parr (Sponsor)	House Judiciary		
Reggy Berck (Judiciary staff)	420 L St. Suite 502 Anchorage, Ak. 99501	Ak. Judicial Council	HB 479
Teri White (AHS)	279-2526		

Penalties	SB 65 (1979)	Federal Controlled Substances Act	H.B. 549 (1978)	Existing AK. LAW	Uniform Act	HAWAII LAW
Possession of Amphetamines (Parr Sch. II)	0-1 yr. / \$1000	0-1 yr. / \$5000 1 <sup>st</sup> . 0-2 yr. / \$10,000 2 <sup>nd</sup> .  If no prior convictions conditional discharge is permitted.	0-1 yr. / \$10,000 - 1 <sup>st</sup> . 0-2 yr. / \$10,000 - 2 <sup>nd</sup> .  \$2,000 presumptive for 1 <sup>st</sup> . 3 months presumptive for 2 <sup>nd</sup> .	0-1 yr. / \$1000	Misdemeanor	If 2 oz. or more: 20 yrs. / \$10,000 If 50 caps or more or 1/2 oz or more: 10 yrs. / \$10,000 If less than above: 5 yrs. / \$5000
Possession of Hallucinogens (Parr Sch. II)	0-1 yr. / \$1000	0-1 yr. / \$5000 1 <sup>st</sup> . 0-2 yr. / \$10,000 2 <sup>nd</sup> .  If no prior convictions conditional discharge is permitted.	0-1 yr. / \$2000 \$1,000 presumptive sentence	0-1 yr. / \$1000	Misdemeanor	SAME AS AMPHETAMINES
Possession of Methamphetamines (Parr Sch. II)	0-1 yr. / \$1000	0-1 yr. / \$5000 1 <sup>st</sup> . 0-2 yr. / \$10,000 2 <sup>nd</sup> .  If no prior convictions conditional discharge is permitted.			Misdemeanor	SAME AS AMPHETAMINES
Possession of Valium (Parr Sch. IV)	0-1 yr. / \$1000	0-1 yr. / \$5000 1 <sup>st</sup> . 0-2 yr. / \$10,000 2 <sup>nd</sup> .  If no prior convictions conditional discharge is permitted.			Misdemeanor	If 400 caps or more: 20 yrs / \$10,000 If 50 caps or more: 10 yrs. / \$10,000 If less than above: 1 yr. / \$1000

Penalties	SB 65 (1979)	Federal Controlled Substances Act	H.B. 549 (1978)	Existing AK. LAW	Uniform Act	HAWAII LAW
Possession of Hash, Hash oil  (Parr Sch. IV) (Hawaii-Sch. III)		0-1 yr. / \$5000 1st. 0-2 yr. / \$10,000 2nd.  IF no prior convictions CONDITIONAL DISCHARGE is permitted.	0-1 yr. / \$2000 \$1,000 presumptive SENTENCE		Misdemeanor	If 400 or more cigs. OR 1 oz or more: 20 yrs / \$10,000  If 50 or more cigs. or 1/8 oz or more: 13 yrs / \$10,000  If less than above: 1 yr. / \$1,000

# STATE OF ALASKA

DEPT. OF HEALTH AND SOCIAL SERVICES

JAY S. HAMMOND, GOVERNOR

DIVISION OF MENTAL HEALTH AND  
DEVELOPMENTAL DISABILITIES

POUCH H 04 - JUNEAU 99811

January 23, 1980

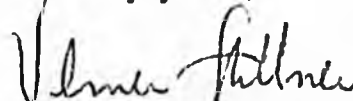
Honorable Thelma Buchholdt  
House of Representatives  
Alaska State Legislature  
Pouch V  
Juneau, Alaska 99811

Document# 2-80

Dear Ms. Buchholdt:

I have compared the drugs listed in House Bill 479 and compared them to FDA Regulations 4/1/79, Chapter II, Drug Enforcement Administration, Department of Justice, § 1308.02, pages 85-90. You will find in the left hand margin of House Bill 479 where the drug is listed in the Federal Schedule if there is a difference. Best wishes in your hearings on House Bill 479.

Sincerely yours,



Verner Stillner, M.D., M.P.H.  
Director

VS:prp

cc: Helen D. Beirne, Commissioner  
Department of Health & Social Services

Enclosure

Name, address, and official title of the person or agency to whom the controlled drugs are to be delivered, including the name and quantity of the substances desired and the purpose for which intended. The delivery of such controlled drugs shall be ordered by the Administrator, if, in his opinion, there exists a medical or scientific need therefor.

EXCEPTED STIMULANT OR DEPRESSANT COMPOUNDS

- Sec.  
1308.31 Application for exception of a stimulant or depressant compound.  
1308.32 Excepted compounds.

HEARINGS

- 1308.41 Hearings generally.  
1308.42 Purpose of hearing.  
1308.43 Waiver or modification of Rules.  
1308.44 Initiation of proceedings for rule-making.  
1308.45 Request for hearing or appearance; waiver.  
1308.46 Burden of proof.  
1308.47 Time and place of hearing.  
1308.48 Final order.  
1308.49 Control required under international treaty.  
1308.50 Control of immediate precursors.  
1308.51 Pending proceedings.

AUTHORITY: Secs. 201, 202, 501(b), 84 Stat. 1245, 1246, 1247, 1248, 1249, 1250, 1251, 1252, 1271, 21 U.S.C. 811, 812, 871(b).

SOURCE: 38 FR 8254, Mar. 20, 1973, unless otherwise noted. Redesignated at 38 FR 26609, Sept. 24, 1973.

NOMENCLATURE CHANGES: 38 FR 26609, Sept. 24, 1974.

SPECIAL EXEMPT PERSONS

1307.31 Native American Church.  
The listing of peyote as a controlled substance in Schedule I does not apply to the nondrug use of peyote in bona fide religious ceremonies of the Native American Church, and members of the Native American Church so using peyote are exempt from registration. Any person who manufactures peyote for or distributes peyote to the Native American Church, however, is required to obtain registration annually and to comply with all other requirements of law.

GENERAL INFORMATION

§ 1308.01 Scope of Part 1308.  
Schedules of controlled substances established by section 202 of the Act (21 U.S.C. 812), as they are changed, updated, and republished from time to time, are set forth in this part.

§ 1308.02 Definitions.  
As used in this part, the following terms shall have the meanings specified:  
(a) The term "Act" means the Controlled Substance Act (84 Stat. 1242; 21 U.S.C. 801) and/or the Controlled Substances Import and Export Act (84 Stat. 1285; 21 U.S.C. 951).

(b) The term "hearing" means any hearing held pursuant to this part for the issuance, amendment, or repeal of any rule issuable pursuant to section 201 of the Act.

(c) The term "isomer" means, except as used in § 1308.11(d), the optical isomer. As issued in § 1308.11(d), the term "isomer" means the optical, position or geometric isomer.

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

GENERAL INFORMATION

- Sec.  
1308.01 Scope of Part 1308.  
1308.02 Definitions.  
1308.03 Administration: Controlled Substances Code Number.  
1308.04 Submission of information by manufacturers.

SCHEDULES

- 1308.11 Schedule I.  
1308.12 Schedule II.  
1308.13 Schedule III.  
1308.14 Schedule IV.  
1308.15 Schedule V.

EXCLUDED NONNARCOTIC SUBSTANCES

- 1308.21 Application for exclusion of a non-narcotic substance.  
1308.22 Excluded substances.

EXEMPT CHEMICAL PREPARATIONS

- 1308.23 Exemption of certain chemical preparations; application.  
1308.24 Exemption chemical preparations.

(d) The term "interested person" means any person adversely affected or aggrieved by any rule or proposed rule issuable pursuant to section 201 of the Act.

(e) The term "proceeding" means all actions taken for the issuance, amendment, or repeal of any rule issued pursuant to section 201 of the Act, commencing with the publication by the Administrator of the proposed rule, amended rule, or repeal in the FEDERAL REGISTER.

(f) Any term not defined in this section shall have the definition set forth in section 102 and 1001 of the Act (21 U.S.C. 802 and 951) and § 1301.02 of this chapter.

**§ 1308.93 Administration Controlled Substances Code Number.**

(a) Each controlled substance, or basic class thereof, has been assigned a "Administration Controlled Substances Code Number" for purposes of identification of the substances or class on certain Certificates of Registration issued by the Administration pursuant to § 1301.44 of this chapter and on certain order forms issued by the Administration pursuant to § 1305.05(d) of this chapter. Certain applicants for registration must include the appropriate numbers on the application as required in § 1301.32(d) and applicants for procurement and/or individual manufacturing quotas must include the appropriate number on the application as required in §§ 1303.12(b) and 1303.22(a).

(b) Except as stated in paragraph (a) of this section, no applicant or registrant is required to use the Administration Controlled Substances Code Number for any purpose.

**§ 1308.01 Submission of information by manufacturers.**

(a) Each person who manufactures, packages, repackages, labels, relabels, or distributes under his own label any product (including any compound, mixture, or preparation, diagnostic, reagent, buffer, or biological) containing any quantity of any controlled substance (whether such product is itself controlled or is excepted, exempted, or excluded from some or

all controls pursuant to § 1308.21-24 or § 1308.31-32) shall submit information required in paragraph (b) of this section for each such product being manufactured or sold on July 1, 1972. The information should be submitted by registered mail, return receipt requested, to the Assistant Director for Scientific Support, Attention: Label Project, Drug Enforcement Administration, Department of Justice, Washington, D.C. 28083, by August 31, 1972. In the case of new products manufactured after July 1, 1972, or new dosage forms or other unit forms manufactured after July 1, 1972, or changes in information submitted by August 31, 1972, the registrant shall submit the information regarding such item within 30 days after the date on which the manufacture commences or information change occurs. In the case of products, the manufacture of which is discontinued after July 1, 1972, the registrant shall submit notice of such discontinuance within 30 days after the date on which manufacture ceases. In the case of products the manufacture of which was discontinued before July 1, 1972, which are still being sold, the registrant shall submit a notice of such discontinuance with his initial submission.

(b) Two labels or other documents reflecting the following information shall be submitted with reference to each dosage form or other unit form of each item containing any quantity of any controlled substance:

(1) The trade name, brand name, or other commercial name of the product;

(2) The generic or chemical name and quantity of each active ingredient, including both controlled and noncontrolled substances (if any of this information is a proprietary trade secret, please indicate those portions);

(3) The National Drug Code Number assigned to the product, if any; and

(4) The weight (in metric measure) of each dosage unit or the weight (in metric measure) of the controlled substance per 100 grams of finished product for all items containing any quantity of any narcotic controlled substance in solid dosage forms.

SCHEDULES

§ 1308.11 Schedule I.

(a) Schedule I shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section. Each drug or substance has been assigned the DEA Controlled Substances Code Number set forth opposite it.

(b) Opiates. Unless specifically excepted or unless listed in another schedule, any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever the existence of such isomers, esters, ethers, salts is possible within the specific chemical designation:

(1) Acetylmethadol.....	9601
(2) Alphacetylmethadol.....	9602
(3) Alphacetylmethadol.....	9603
(4) Alphamethadol.....	9604
(5) Alphamethadol.....	9605
(6) Benzethadol.....	9606
(7) Betacetylmethadol.....	9607
(8) Betameprodol.....	9608
(9) Betamethadol.....	9609
(10) Betaprodol.....	9611
(11) Clovazone.....	9612
(12) Dextromoramide.....	9613
(13) Dampremide.....	9615
(14) Diethylthambutene.....	9616
(15) Etonevin.....	9618
(16) Dimevoradol.....	9617
(17) Dimepheptandol.....	9618
(18) Dimethylthambutene.....	9619
(19) Dioxaphetyl butyrate.....	9621
(20) Dipipanone.....	9622
(21) Ethylmethylthambutene.....	9623
(22) Etorazene.....	9624
(23) Etorphine.....	9625
(24) Etorphine.....	9626
(25) Hydroxypethidine.....	9627
(26) Ketobemidone.....	9628
(27) Levonoramide.....	9629
(28) Levopropylmorpphan.....	9631
(29) Morphinone.....	9632
(30) Noracetylmethadol.....	9633
(31) Norlevorphanol.....	9634
(32) Normethadone.....	9635
(33) Norpipanone.....	9636
(34) Phenadoxone.....	9637
(35) Phenampromide.....	9638
(36) Phenomorphan.....	9647
(37) Phenopropiandol.....	9641
(38) Pitramide.....	9642
(39) Proheptazine.....	9643
(40) Propenidine.....	9644
(41) Propylm.....	9641
(42) Racemoramide.....	9645
(43) Transiprodol.....	9646

(c) *Opium derivatives.* Unless specifically excepted or unless listed in another schedule, any of the following opium derivatives, its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Acetorphine.....	9319
(2) Acetylhydricodone.....	9051
(3) Benzylmorphine.....	9052
(4) Codeine methylbromide.....	9070
(5) Codeine-N-Oxide.....	9053
(6) Cyrenorphine.....	9054
(7) Desomorphine.....	9055
(8) Dihydromorphine.....	9145
(9) Drotebanol.....	9335
(10) Etorphine (except hydrochloride salt).....	9056
(11) Heroin.....	9700
(12) Hydromorphone.....	9301
(13) Methylmorphine.....	9302
(14) Methylhydromorphone.....	9304
(15) Morphine methylbromide.....	9305
(16) Morphine methylsulfonate.....	9306
(17) Morphine-N-Oxide.....	9307
(18) Myrophine.....	9308
(19) Nicocodine.....	9309
(20) Nicomorphine.....	9312
(21) Normorphine.....	9313
(22) Pholcodine.....	9314
(23) Thebaine.....	9315

(d) *Hallucinogenic substances.* Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation, which contains any quantity of the following hallucinogenic substances, or which contains any of its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation (for purposes of this paragraph only, the term "isomer" includes the optical, position and geometric isomers):

(1) 4-bromo-2,5-dimethoxy-amphetamine.....	7391
Some trade or other names: 4-bromo-2,5-dimethoxy- <i>o</i> -methylphenethylamine; 4-bromo-2,5-DMA.	
(2) 2,5-dimethoxyamphetamine.....	7396
Some trade or other names: 2,5-dimethoxy- <i>o</i> -methylphenethylamine; 2,5-DMA.	
(3) 4-methoxyamphetamine.....	7411
Some trade or other names: 4-methoxy- <i>o</i> -methylphenethylamine; paramethoxyamphetamine; PMA.	
(4) 5-methoxy-3,4-methylenedioxy-amphetamine.....	7401
(5) 4-methyl-2,5-dimethoxy-amphetamine.....	7395
Some trade and other names: 4-methyl-2,5-dimethoxy- <i>o</i> -methylphenethylamine; "DOM"; and "STP"	

(6) 3,4 - methylenedioxy amphetamine .....	7400
(7) 3,4,5-trimethoxy amphetamine .....	7390
(8) Bufotenin .....	7433
Some trade and other names: 3 - (β - Dimethylaminoethyl) - 5 - hydroxyindole, 3 - (2-dimethylaminoethyl) - 5 - indole, N, N - dimethylserotonin, 5 - hydroxy - N, N - dimethyltryptamine, mappino.	
(9) Diethyltryptamine .....	7434
Some trade and other names: N, N-Diethyltryptamine, DET.	
(10) Dimethyltryptamine .....	7435
Some trade or other names: DMT.	
(11) Ibogaine .....	7260
Some trade and other names: 7 - Ethyl - 6,6β,7,8,9,10,12,13 - octahydro - 2 - methyl-6,9-methano-5H-pyrido [1',2'] azepino [5,4-b] indole, Tabernanthe iboga.	
(12) Lysergic acid diethylamide .....	7315
(17) Marijuana .....	7360
(14) Mescaline .....	7381
(15) Peyote .....	7415
Meaning all parts of the plant presently classified botanically as <i>Lophophora williamsii Lemay</i> , whether growing or not, the seeds thereof, any extract from any part of such plant, and every compound, manufacture, salts, derivative, mixture, or preparation of such plant, its seeds or extracts.	
(Interprets 21 U.S.C. 812(c), Schedule I(c) (12))	
(16) N-ethyl-3-piperidyl benzilate .....	7402
(17) N-methyl-3-piperidyl benzilate .....	7494
(18) Psilocybin .....	7437
(19) Psilocyn .....	7431
(20) Tetrahydrocannabinols .....	7370
Synthetic equivalents of the substances contained in the plant, or in the resinous extracts of <i>Cannabis</i> , sp. and/or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following:	
Δ1 cis or trans tetrahydrocannabinol, and their optical isomers	
Δ6 cis or trans tetrahydrocannabinol, and their optical isomers.	
Δ3,4 cis or trans tetrahydrocannabinol, and its optical isomers	
(Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions covered)	
(21) Ethylamine analog of phencyclidine .....	7455
Some trade or other names: N-ethyl-1-phenylcyclohexylamine, (1-phenylcyclohexyl)ethylamine, N-(1-phenylcyclohexyl)ethylamine, cyclohexamine, PCE.	
(22) Pyrrolidine analog of phencyclidine .....	7458
Some trade or other names: 1-(1-phenylcyclohexyl)pyrrolidine, PCPy, PHP	
(23) Thiophene analog of phencyclidine .....	7470
Some trade or other names: 1-(1-(2-thienyl)cyclohexyl)pyrrolidine, 2-thienyl analog of phencyclidine, TPCP, TCP.	

(c) *Depressants*. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) mectloqualone .....	2572
(39 FR 22141, June 20, 1974, as amended at 40 FR 19613, May 7, 1975; 40 FR 28611, July 8, 1975; 41 FR 4016, Jan. 28, 1976; 41 FR 43401, Oct. 1, 1976; 42 FR 15679, Mar. 23, 1977; 43 FR 43295, Sept. 25, 1978)	

§ 1308.12 Schedule II.

(a) Schedule II shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section. Each drug or substance has been assigned the Controlled Substances Code Number set forth opposite it.

(b) Substances, vegetable origin or chemical synthesis. Unless specifically excepted or unless listed in another schedule, any of the following substances whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(1) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate, excluding apomorphine, dextrorphan, nalbuphine, naloxone, and naltrexone, and their respective salts, but including the following:

1 Raw opium .....	9600
2 Opium extracts .....	9610
3 Opium fluid extracts .....	9620
4 Powdered opium .....	9639
5 Granulated opium .....	9640
6 Tincture of opium .....	9650
7 Codeine .....	9190
8 Ethylmorphine .....	9059
9 Etorphine hydrochloride .....	9191
10 Hydrocodone .....	9150
11 Hydromorphone .....	9260
12 Meperon .....	9300
13 Morphine .....	9143
14 Oxycodone .....	9652
15 Oymorphone .....	9331
16 Thebaine .....	

(2) Any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in paragraph (b) (1) of this section, except that these substances shall not include the isoquinoline alkaloids of opium.

(3) Opium poppy and poppy straw.

(4) Coca leaves (9040) and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, except that the substances shall not include decocainized coca leaves or extraction of coca leaves, which extractions do not contain cocaine (9041) or ecgonine (9180).

(5) Concentrate of poppy straw (the crude extract of poppy straw in either liquid, solid or powder form which contains the phenanthrine alkaloids of the opium poppy), 9670.

(c) Opiates. Unless specifically excepted or unless in another schedule any of the following opiates, including its isomers, esters, ethers, salts and salts of isomers, esters and ethers whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation, dextrorphan excepted:

(1) Alphaprodine .....	9010
(2) Anileridine .....	9020
(3) Beztramide .....	9000
(4) Dihydrocodeine .....	9120
(5) Diphenoxylate .....	0170
(6) Fentanyl .....	0001
(7) Isonitrazodone .....	9226
(8) Levorphanol .....	9210
(9) Levorphanol .....	9220
(10) Melazocine .....	9240
(11) Methadone .....	9250
(12) Methadone intermediate, 4-cyano-2-dimethylamino-4,4-diphenylbutane .....	9254
(13) Moramide intermediate, 2-methyl-3-morpholino-1,1-diphenylpropane-carboxylic acid .....	9802
(14) Pethidine (meperidine) .....	9230
(15) Pethidine intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine .....	9232
(16) Pethidine intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate .....	9233
(17) Pethidine intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid .....	9234
(18) Phenazocine .....	9715
(19) Pimmedine .....	9730
(20) Racemorphan .....	9732
(21) Racemorphan .....	9733

(d) Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound,

mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system:

(1) Amphetamine, its salts, optical isomers, and salts of its optical isomers .....	1100
(2) Methamphetamine, its salts, isomers, and salts of its isomers .....	1105
(3) Phenmetrazine and its salts .....	1631
(4) Methylphenidate .....	1724

(c) Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Amobarbital .....	2125
(2) Methaqualone .....	2565
(3) Pentobarbital .....	2270
(4) Phencyclidine .....	7471
(b) Phencyclidine immediate precursors .....	
(a) 1-phenylcyclohexylamine .....	7460
(b) 1-piperidinocyclohexanecarbonitrile (PCC) .....	8603
(6) Secobarbital .....	2515

[39 FR 22142, June 20, 1974, as amended at 40 FR 6780, Feb. 14, 1975; 40 FR 10456, Mar. 6, 1975; 41 FR 26568, June 28, 1976; 41 FR 43401, Oct. 1, 1976; 42 FR 15680, Mar. 23, 1977; 43 FR 21325, May 17, 1978]

§ 1308.13 Schedule III.

(a) Schedule III shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section. Each drug or substance has been assigned the DEA Controlled Substances Code Number set forth opposite it.

(b) Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers (whether optical, position, or geometric), and salts of such isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (1) Those compounds, mixtures, or preparations in dosage unit form containing any stimulant substances listed in schedule II which compounds, mixtures, or preparations were listed on August 25, 1971, as excepted compounds under § 308.32, and any other drug of the quantitative composition shown in that list for those drugs or which is the same except that it contains a lesser quantity of controlled substances..... 1495
- (2) Benzphetamine..... 1228
- (3) Chlorphentermine..... 1645
- (4) Clortermine..... 1647
- (5) Mazindol..... 1605
- (6) Phendimetrazine..... 1615

(c) *Depressants.* Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system:

- (1) Any compound, mixture or preparation containing:
  - (i) Amobarbital..... 2125
  - (ii) Secobarbital..... 2315
  - (iii) Pentobarbital..... 2270
 or any salt thereof and one or more other active medicinal ingredients which are not listed in any schedule.
- (2) Any suppository dosage form containing:
  - (i) Amobarbital..... 2125
  - (ii) Secobarbital..... 2315
  - (iii) Pentobarbital..... 2270
 or any salt of any of these drugs and approved by the Food and Drug Administration for marketing only as a suppository.

- (3) Any substance which contains any quantity of a derivative of barbituric acid or any salt thereof..... 2100
- (4) Chlorhexadol..... 2510
- (5) Glutethimide..... 2550
- (6) Lysergic acid..... 7300
- (7) Lysergic acid amide..... 7310
- (8) Mallypylon..... 2575
- (9) Sulfonethyilmethane..... 2600
- (10) Sulfonethylmethane..... 2605
- (11) Sulfonmethane..... 2610

(d) Nalorphine 9400.

(e) *Narcotics drugs.* Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof:

- (1) Not more than 1.8 grams of cocaine per 100 milliliters or not more than 30 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium..... 9803

- (2) Not more than 1.8 grams of cocaine per 100 milliliters or not more than 30 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts..... 9804
- (3) Not more than 300 milligrams of dihydrocodonone per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium..... 9805
- (4) Not more than 300 milligrams of dihydrocodonone per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active nonnarcotic ingredients in recognized therapeutic amounts..... 9806
- (5) Not more than 1.8 grams of dihydrocodonone per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active nonnarcotic ingredients in recognized therapeutic amounts..... 9807
- (6) Not more than 300 milligrams of ethylmorphine per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts..... 9808
- (7) Not more than 500 milligrams of opium per 100 milliliters or per 100 grams or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts..... 9809
- (8) Not more than 50 milligrams of morphine per 100 milliliters or per 100 grams, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts..... 9810

[39 FR 22142, June 20, 1974, as amended at 41 FR 43401, Oct. 1, 1976; 43 FR 3359, Jan. 25, 1978]

§ 1308.14 Schedule IV.

(a) Schedule IV shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section. Each drug or substance has been assigned the DEA Controlled Substances Code Number set forth opposite it.

(b) *Narcotic drugs.* Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof:

- (1) Not more than 1 milligram of difenoxin (DEA Drug Code No. 9618) and not less than 25 micrograms of atropine sulfate per dosage unit.

(c) **Depressants.** Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Barbitol.....	2145
(2) Chloral hydrate.....	2460
(3) Chloral hydrate.....	2465
(4) Chloridiazepoxide.....	2744
(5) Clonazepam.....	2737
(6) Clorazepate.....	2768
(7) Diazepam.....	2765
(8) Ethchlorvynol.....	2540
(9) Ethnamate.....	2545
(10) Flurazepam.....	2767
(11) Lorazepam.....	2005
(12) Mebutamate.....	2800
(13) Meprobamate.....	2820
(14) Methohexital.....	2264
(15) Methylphenobarbital (mephobarbital).....	2250
(16) Oxazepam.....	2835
(17) Paraldehyde.....	2505
(18) Petrichoral.....	2591
(19) Phenobarbital.....	2285
(20) Prazepam.....	2764

(d) **Fenfluramine.** Any material, compound, mixture, or preparation which contains any quantity of the following substances, including its salts, isomers (whether optical, position, or geometric), and salts of such isomers, whenever the existence of such salts, isomers, and salts of isomers is possible:

(1) Fenfluramine.....	1670
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(e) **Stimulants.** Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers (whether optical, position, or geometric), and salts of such isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Diethylpropion.....	1600
(2) Phentermine.....	1640
(3) Pemoline (including organometallic complexes and chelates thereof).....	1530

(f) **Other substances.** Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances, including its salts:

(1) Dextropropoxyphene (alpha - (+) - 4 - dimethylamino - 1, 2 - diphenyl - 3 - methyl - 2 - propionoxybutane).....	8121
(2) Pentazocine.....	9709

[39 FR 22143, June 20, 1974; 40 FR 4150, Jan. 28, 1975, as amended at 40 FR 24001, June 4, 1975; 41 FR 43402, Oct. 1, 1976; 41 FR 55176, Dec. 17, 1976; 42 FR 8636, Feb. 11, 1977; 42 FR 54546, Oct. 7, 1977; 43 FR 38383, Aug. 28, 1978; 44 FR 2170, Jan. 10, 1979]

§ 1308.15 Schedule V.

(a) Schedule V shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section.

(b) Narcotic drugs containing non-narcotic active medicinal ingredients. Any compound, mixture, or preparation containing any of the following limited quantities of narcotic drugs or salts thereof, which shall include one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualities other than those possessed by the narcotic drug alone:

(1) Not more than 200 milligrams of codeine per 100 milliliters or per 100 grams.

(2) Not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams.

(3) Not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams.

(4) Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit.

(5) Not more than 100 milligrams of opium per 100 milliliters or per 100 grams.

(6) Not more than 0.5 milligram of difenoxin (DEA Drug Code No. 961B) and not less than 25 micrograms of atropine sulfate per dosage unit.

(c) Loperamide 8125.

(39 FR 22143, June 20, 1974, as amended at 42 FR 25499, May 18, 1977; 43 FR 38383, Aug. 28, 1978)

#### EXCLUDED NONNARCOTIC SUBSTANCES

§ 1308.21 Application for exclusion of a nonnarcotic substance.

(a) Any person seeking to have any nonnarcotic substance which may, under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301), be lawfully sold over the counter without a prescription, excluded from any schedule, pursuant to section 201(g) (1) of the Act (21 U.S.C. 811 (g) (1)), may apply to the Administrator, Drug Enforcement Administration, Department of Justice, Washington, D.C. 20537.

(b) An application for an exclusion under this section shall contain the following information:

(1) The name and address of the applicant;

(2) The name of the substance for which exclusion is sought; and

(3) The complete quantitative composition of the substance.

(c) Within a reasonable period of time after the receipt of an application for an exclusion under this section, the Administrator shall notify the applicant of his acceptance or non-acceptance of his application, and if not accepted, the reason therefore. The Administrator need not accept an application for filing if any of the requirements prescribed in paragraph (b) of this section is lacking or is not set forth as to be readily understood.

If the applicant desires, he may amend the application to meet the requirements of paragraph (b) of this section. If the application is accepted for filing, the Administrator shall issue and publish in the FEDERAL REGISTER his order on the application, which shall include a reference to the legal authority under which the order is issued and the findings of fact and conclusions of law upon which the order is based. This order shall specify the date on which it shall take effect. The Administrator shall permit any interested person to file written comments on or objections to the order within 60 days of the date of publication of his order in the FEDERAL REGISTER. If any such comments or objections raise significant issues regarding any finding of fact or conclusion of law upon which the order is based, the Administrator shall immediately suspend the effectiveness of the order until he may reconsider the application in light of the comments and objections filed. Thereafter, the Administrator shall reinstate, revoke, or amend his original order as he determines appropriate.

(d) The Administrator may at any time revoke any exclusion granted pursuant to section 201(g) of the Act (21 U.S.C. 811(g)) by following the procedures set forth in paragraph (c) of this section for handling an application for an exclusion which has been accepted for filing.

§ 1308.22 Excluded substances.

The following nonnarcotic substances which may, under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301), be lawfully sold over the counter without a prescription, are excluded from all schedules pursuant to section 201(g) (1) of the Act (21 U.S.C. 811(g) (1)):

To: Representative Charlie Parr, Chairman  
House Judiciary Committee  
From: Margaret W. Berck, Administrative Assistant *MWB*  
House Judiciary Committee  
Date: August 2, 1979

## OVERVIEW OF HB 479

### Introduction

Generally, the bill incorporates the basic principles established in the Federal Controlled Substances Act of 1970 and the Uniform Controlled Substances Act adopted for consideration by the various states by the Uniform Commissioners of State Laws. Similar drug legislation has been passed by some 44 states.

The basic goals and elements of this legislation are: (1) to list all the substances which require control and to divide them into several categories according to their dangers to society; (2) to establish a committee to factually determine the need for adjusting these schedules when, for example, new scientific information becomes available and/or new substances are discovered; (3) to provide the most serious penalties for illicit trafficking in drugs, particularly in connection with distribution to minors while classifying simple use possession of all substances as a misdemeanor; (4) closely regulate the legitimate drug industry to prevent diversion of controlled substances into illicit markets; and (5) promote research into drug issues in general and education of society on the dangers of drug abuse.

HB 479 differs from the federal and model state legislation in two primary respects. First, in determining the penalty to be given in either a possession or distribution offense, the quantity of the controlled substances involved is a decisive factor. The larger the amount possessed or distributed, the higher the penalty. In addition, the bill does not establish a separate offense for possession with intent to distribute. Because of difficulties of proof, the offense of intent to sell was eliminated in favor of establishing varying penalties based on the amount of the controlled substance possessed. Second, HB 479 sets out slang terms for included controlled substances to help lay persons understand the legislation. However, the use of slang terms has no effect on the prosecution of a particular drug offense. Another key feature of HB 479 is the fact that it ties its terminology and penalty system into the new criminal code.

### Key Provisions

1. Controlled Substances Advisory Committee: HB 479 establishes a committee in the Department of Law with the *Chairman*. This provision follows

the federal law in which a similar committee is established in the U.S. Justice Department with the U.S. Attorney General serving as Chairman. Under HB 479, other members of the committee are the Commissioner of Public Safety, the Commissioner of Health and Social Services, a private pharmacist and a private criminal defense attorney, both of which are to be appointed by the governor.

Decisions of the committee are subject to close legislative scrutiny. Any regulation sought to be adopted by the committee would have to be submitted to the legislature which then would have 56 days to annul the proposed regulation through the passage of a bill. Without passage of a bill by both the House and Senate, the proposed regulation would become effective. However, once a proposed regulation was annulled by the legislature, the committee would be prohibited from raising the same issue again for three years. Finally, any change in the scheduling of controlled substances contained in the federal law would not automatically become law in the State of Alaska. In cases of changes in the federal schedules, the state advisory committee would have to hold hearings to determine whether a similar change would be appropriate for Alaska. And if the committee adopted the federal alteration, the proposed regulation would have to receive the same legislative oversight as outlined previously.

2. Criteria for Scheduling of Substances: HB 479 establishes six categories of controlled substances. These categories are enumerated as Schedule I through Schedule VI. Except for Schedule VI, which includes only marijuana, each schedule contains numerous substances. The most dangerous substances are contained in Schedule I, less dangerous substances are contained in Schedule II, and so on down to Schedule VI. The schedule assigned to a particular controlled substance is significant in determining the penalty for any drug offense. The higher the schedule, the greater the penalty.

Since future adjustments to the schedules are to be determined by the advisory committee with legislative oversight, HB 479 sets forth specific criteria for making such decisions. The bill specifies the "danger or probable danger" of any substances as the predominant criteria with a number of sub-criteria similar to but more inclusive than those in the uniform act. But unlike the uniform act, which follows a medical classification system HB 479 adopts a more simple public safety classification system much like the State of Hawaii.

Under this classification system, a separate schedule was created for marijuana. Such an approach was thought more logical than the five-schedule system utilized in the federal and uniform act, in which marijuana, heroin and LSD are contained in the same schedule because they lack any acceptable medical use. But because of this placement, both the federal and uniform acts must ultimately distinguish among the narcotic,

non-narcotic and hallucinogenic substances contained in the same schedule. However, in the public safety classification approach, the necessity of further classifying substances into such categories is avoided. Aside from these variations, the schedules provided in HB 479 are substantially the same as those established in the federal and uniform acts.

3. Offenses and Penalties: HB 479 establishes four basic drug offenses, including distribution of a controlled substance to a minor, manufacturing of a controlled substance, distribution of a controlled substance to an adult and possession of a controlled substance. Additionally, the bill creates certain other offenses such as possession of marijuana while operating a motor vehicle, maintaining a shop or airplane for use in drug trafficking and obtaining possession of a controlled substance by misrepresentation or fraud.

The most severe penalties contained in HB 479 would be levied against those over 18 years of age who distribute controlled substances to anyone under 18, reflecting society's special interest in protecting the young from those who encourage or induce them to experiment with drugs. In each category, the offense of distributing to a minor receives the most serious sanctions, except that the recipient must be at least three years younger than the distributor. The three-year difference was included to prevent imposition of stiffer penalties in a case where, for example, a 19-year-old college student gives marijuana cigarettes to his 17-year-old roommate. In this situation, it was felt there was not the element of seduction so often found in cases where the distributor and recipient were far apart in age.

Both the federal law and the uniform act include the offense of manufacturing a controlled substance together with distribution and possession with intent to distribute a controlled substance for penalty purposes. Hence, the penalty is the same with regard to manufacturing or distributing a particular substance. However, HB 479 treats the manufacturing offense separately and subjects manufacturing to stiffer penalties because of the particular dangers associated with illicit drug laboratories and the substances involved. But in order to justify these heavier penalties, the offense of manufacturing set forth in HB 479 is limited to those who manufacture for other than their own personal use. The offense, however, does include cultivation of marijuana for other than personal use.

Under HB 479 the offenses of distribution to an adult and simple possession have varying penalties dependant upon the amount of the controlled substance involved in the offense. Current Alaska law, the Federal Controlled Substances Act, and the Uniform Act make no such differentiations. The approach taken in HB 479 attempts to provide some indicia of the defendant's role in the drug world. This approach permits more severe sanctions to be applied to the drug dealers involved in large scale trafficking operations. A similar

emphasis is also achieved by making simple possession of small amounts of each particular controlled substance a misdemeanor. Under both the Federal Controlled Substances Act and the Uniform Act, simple possession of any amount of a controlled substance is a misdemeanor. Unlike those acts, HB 479 establishes both felony and misdemeanor offenses for simple possession dependant upon the amount of the controlled substance involved in the offense.

4. Regulation of Legitimate Drug Industry: HB 479 requires the same reporting information by the drug industry as currently mandated by the federal law. Even though it was felt that the state has an interest in obtaining even more information, it was not believed necessary to demand additional reporting requirements. Under HB 479, reporting information must be submitted to the Commissioner of Health and Social Services. Existing Alaska law lodges regulatory responsibility with the Commissioner of Health and Social Services for depressant, hallucinogenic and stimulant drugs and gives the Board of Pharmacy responsibility for narcotic drugs. It was felt that this monitoring could more efficiently be done by one agency.



# CITY of BETHEL

P. O. Box 388 • Bethel, Alaska 99559

543-2297 — Area Code 907

Robert Buttane  
Phillip's Alcoholism Treatment Center

January 23, 1980

Commissioner Helen Beirne  
Dept. of Health and Social Services  
Pouch H-01  
Juneau, Alaska 99811

Dear Dr. Beirne,

I am writing to express my appreciation for the remarks you made to the legislature on HB-479. Your desire to include provisions for treatment and rehabilitation services to those incarcerated for drug related offenses in this bill has my full support.

An effective program of diagnosis, counseling and rehabilitation would provide a valuable supplement to the states effort to control the problems of drug abuse.

Sincerely,

Robert Buttane  
Program Director

cc: Representative Charlie Parr  
Representative Thelma Buchholdt.

RB/mh



# Alaska State Legislature

LEGISLATIVE AFFAIRS AGENCY

January 25, 1980

FAIRBANKS LEGISLATIVE  
INFORMATION OFFICE  
Room 250, Building F  
101 College Road  
Fairbanks, Alaska 99701  
(907) 452-4448

Rep. Thelma Bucholdt  
Chairperson: H.E.S.S.

Enclosed is the copy of Mr. Strauss's speech that you requested on the teleconference concerning the drug bill #HB479.

Sincerely,

A handwritten signature in cursive script that reads "Maxine".

Maxine Walton  
Moderator FBX/LIO

January 25, 1980

Joe H. Strauss  
1 mile Persinger Dr.  
Fairbanks, Alaska

House Bill 479

I would like to begin by saying that House bill 479 is, in my opinion, a superior bill to the present legislation concerning drugs in this state. However being better does not make it perfect and I feel that there are ambiguities and inconsistencies and in my opinion outright mistakes in this bill. I will try to address these in the order they appear in the bill.

It is my understanding of the bill that the classification of drugs into sections 1-6 basically follows guidelines and standards set up by the Federal Government. However I feel that there is something inconsistent about classifying the compound T.H.C. as as schedule II substance and hashish as a schedule IV substance when marijuana is classified as a schedule VI substance. This apperas to be the only case in which the derivitives of a <sup>substance</sup> drug are classified as more dangerous than the <sup>substance.</sup> ~~compound~~ they are derived from.

Also it would appear that marijuana is classed by itself as the least dangerous of classified substances. However I have with me an article which appeared in the Fairbanks Daily News Miner only tuesday of this week which indicates that in the minds of many of our countrys best medical people, marijuana may be much more dangerous than some people now contend. Wouldn't it be much better to classify it as a more dangerous drug until we know for sure? And at least as dangerous as T.H.C., the active compound found in marijuana?

Thirdly, while the stated goal of this bill is to provide more stringent penalties for distribution of drugs. It classifies distribution of small amounts of marijuana in the most common amount found in the distribution of this drug as only a class B misdemeanor essentially giving the common pusher a free hand.

Fourth, it is the stated purpose and accomplished fact of this bill to make possession of small amount of any drug a misdemeanor. I don't think I need to remind our legislators of the effect the common possession of drugs by large segments of a society has on the society as a whole. They need only look to countries where the possession of drugs has been tolerated in the past to see this effect. Do we really wish this sort of thing on ourselves as a whole? At least when a substance is controlled its effects can be contained in a small segment of society.

This bill also makes it completely legal, as I read it, for a person to possess any amount of marijuana up to one pound. I don't know if Mr. Parr was aware of how much a pound of marijuana is when he wrote this bill, but it is my understanding that this is far more than what the average user of marijuana would consume in a month. Ladies and Gentlemen, few of us keep more food in our homes than we can consume in a month, yet this bill makes it legal to keep more of a drug classed as dangerous in our homes that would be consumed in a month. Does this seem resonable or responsible?

On the humorous side, it might be noted that while this bill would make it legal to posses up to a pound of marijuana - if a person who did so owned a home where he kept said marijuana (section 17. 17. 380) makes owning that home a felony. Another inconsistency.

Sixth. This bill makes the possession or use of any amount of marijuana while operating a vehicle illegal and this is good. However, I believe more strict penalties should be designated for this and it should at least carry the same mandatory sentencing as OMVI does.

Seventh. While this bill does make the public display or use of marijuana and the possession of it by a minor illegal, in neither case does it classify the violation or provide a penalty for it. To me this is like telling your child not to do something but not punishing him when he does. Or perhaps a better illustration would be to compare it to Salt 2.

In conclusion let me reiterate that while we feel that this bill is better than the drug laws we have at present we still feel that if we are to prevent the moral degeneration of our society, we must have more stringent penalties for the possession and distribution of all drugs.

## Doctors debate marijuana dangers

By JANET STAIHAR  
Associated Press Writer

WASHINGTON—People who smoke marijuana are endangering their brain, lungs and reproductive and immune systems, says a Columbia University medical professor. But a Harvard professor argues frequent marijuana use does not seriously damage the mind or body.

The two were appearing today before a Senate subcommittee, examining the health effects of marijuana.

The hearing of the Judiciary Committee's subcommittee on criminal justice was called by Sen. Charles McC. Mathias Jr., R-Md., who is re-evaluating his past support for a Senate move to lessen the criminal penalties for marijuana possession. A Mathias spokesman, asking not to be named, said the senator feels that in the past few years, there has been new medical evidence on marijuana's health hazards.

Dr. Gabriel G. Nahas, professor of anesthesiology at the Columbia University College of Physicians and Surgeons, said in prepared testimony that marijuana harms the brain, the reproductive system, the lungs and the body's immune system.

"In man, marijuana smoking decreases sperm production . . . and is associated with an increased incidence of abnormal forms of sperm," said Nahas.

"In women," he said, "marijuana smoking is associated with a higher incidence of shorter menstrual cycles . . . and a cycle without an ovum."

Nahas said children and teen-agers are the most vulnerable to marijuana's harmful effects because their brain and hormone system are still developing.

The Columbia doctor said at least five groups of people should be warned against using marijuana: people with lung or heart disorders, adolescents, women of child-bearing age, epileptics, and people with a tendency toward schizophrenia and mental illness.

But Dr. Lester Grinspoon, associate professor of psychiatry at Harvard Medical School, said, "The chronic use of marijuana does not do serious damage to the body or mind."

In prepared testimony, he said marijuana is "markedly safe" compared with alcohol and drugs. He also discounted researchers who say it permanently alters the mind or personality.

The Senate will likely vote this year on an overall proposal to revise the federal criminal code, part of which contains a section softening the penalties for the possession of small amounts of marijuana.

Under current law, possession of small amounts of marijuana is punishable by up to a year in prison plus a \$5,000 fine for the first offense. Subsequent offenses may bring up to two years in prison and a maximum \$10,000 fine.

MRS. BUCHHOLDT/MR. CHATTERTON

I WAS THE THIRD FAIRBANKS PERSON TO TESTIFY AT THE HEARING TODAY, AND I MUST APOLOGIZE FOR MY INCOHERENT TESTIMONY. I'M NEW AT SPEAKING, BUT I WILL SOON BE BETTER.

THERE ARE SEVERAL PROVISIONS IN THIS BILL THAT I WOULD LIKE TO ADDRESS. FIRST, I DO NOT LIKE THE IDEA OF GRADUATING SENTENCES TO MATCH GROWING STOCKPILES OF DRUGS. IS IT REALLY RESPONSIBLE TO SAY THAT 'X' AMOUNT IS REAL BAD, BUT THAT 'Y' AMOUNT IS JUST BAD. YOU ARE DEALING WITH THE LIMITS A ILLEGAL OPERATION WILL OPERATE IN. THAT OPERATION WILL NOT CEASE, BUT WILL CHOOSE THE AVENUE OF LEAST RESISTANCE. I WOULD LIKE TO SEE THE SOURCE OF THE PRODUCT DRIED UP, WITHOUT TOO MUCH HARM TO THE CONSUMER.

I RECOMMEND THAT THERE SHOULD LEGALLY BE TWO AMOUNTS ASSIGNED TO A GIVEN DRUG. ONE AMOUNT BEING DEFINED AS THE AMOUNT OF NORMAL CONSUMPTION AND THE OTHER BEING DEFINED AS ANY AMOUNT OVER THE PREVIOUS AMOUNT. A BY-PRODUCT OF THIS SYSTEM IS THE FACT THAT A PERSON WOULD NO LONGER HAVE TO PROVE INTENT TO SALE. A PERSON ARRESTED WITH ANY AMOUNT OVER THE AMOUNT OF CONSUMPTION WOULD BE GUILTY OF A CLASS C FELONY. WITH THE STIPULATION THAT THAT PERSON SERVE A MANDATORY FIVE YEARS. A PERSON ARRESTED WITH THE DEFINED AMOUNT OF CONSUMPTION WOULD RECEIVE A LIGHT SENTENCE, SAY A CLASS B MISDEMEANOR. A SECOND OFFENDER WOULD HAVE TO DEALT WITH HARSHER IN BOTH CASES. I REALIZE THAT THIS MAY SOUND SOMEWHAT HYPOCRITICAL IN VIEW OF THE ABOVE PARAGRAPH. BUT I DO NOT HONESTLY PERCEIVE OF A ORGANIZATION PUSHING A PRODUCT ONE OR TWO PILLS AT A TIME. HOPEFULLY, AS A BY-PRODUCT OF INCREASED RESTRICTIVENESS AND THE SLOWER TIME OF MOVEMENT FOR THE PRODUCT, THE COST WOULD ALSO RISE. THIS COULD FORCEFULLY ASSIST SOME OF OUR GOOD PEOPLE OUT OF THE DRUG CULTURE.

SECONDLY, I WOULD LIKE TO ADDRESS SEC. 17.17.200. THIS MINOR PROVISION IS DEFINITELY A PAPER TIGER. THIS BILL, UNDER SECTION 17.17.900 DEFINES A

OUR CURRENT DRUG PROBLEM COULD BE A BY-PRODUCT OF THE BIGGEST PROBLEM THAT OUR INCREASED TECHNOLOGY HAS GIVEN US...TIME.

IN CLOSING, LET US LOOK TO THE FUTURE. DOES NOT THE USE OF DRUGS TO ESCAPE REALITY REVEAL A DETERIORATION OF OUR SOCIETY. IS IT INDICATIVE OF A WEAKENING OF OUR NATIONS CHARACTER AND FORTITUDE, NOT ALONE TURNING AWAY FROM OUR CREATOR DRUG ABUSE IS NOT ENLIGHTENMENT, IT IS ESCAPISM. TO PUT IT IN PERSPECTIVE, MY QUESTION IS, WHAT HAPPENS AFTER I EXERCISE MY RIGHT TO INGEST A DRUG? DO I STILL KNOW THE DISTINCTION BETWEEN GOOD AND EVIL NOW THAT MY JUDGEMENT IS IMPAIRED? AM I EVEN CAPABLE OF DETERMINING IF MY JUDGEMENT IS IMPAIRED? YET, IF I'M NOT CAPABLE OF REASON AND JUDGEMENT, THEN I'M NO LONGER SUPERIOR TO A COMMON ANIMAL. IN OUR HEARTS WE KNOW THE ANSWER.

THE LORD GAVE US A DECENT PLACE TO LIVE, LET US KEEP IT THAT WAY.

SINCERELY,

RIC L. ADAMS

415 LAKEVIEW TRAILER COURT

FAIRBANKS, ALASKA 99701

HOME PHONE #456-8078

THANKFULLY IT IS NOT NEEDED, THE OFFENSES ARE DEFINED BY THE AMOUNTS IN PREVIOUS PROVISIONS.

I DO HAVE TWO OTHER RECOMMENDATIONS: ONE; A RIDER, SIMILAR TO PRESENT FISH AND GAME REGULATIONS, BE INSERTED TO ALLOW FOR FORFEITURE OF PERSONAL PROPERTY THAT WAS USED WHILE ENGAGED IN ILLEGAL DRUG ACTIVITIES. TWO; A SECOND RIDER, SIMILAR TO SEC. 17.12.120, REHABILITATION, BUT REVISED TO ADDRESS ONLY ADDICTS SERVING THEIR DRUGS. THIS PROVISION SHOULD ALLOW FOR A MEDICALLY PROVEN ADDICT TO BE PUT IN THE CARE OF A DRUG REHABILITATION CENTER. UPON GRADUATION, SAID PERSON SHOULD BE REWARDED WITH THE ERASING OF THE RECORD OF THE ARREST THAT ORIGINALLY PUT HIM IN THE CENTER. THIS PERSON WOULD THEN HAVE THE HELP NEEDED TO BREAK HIS HABIT IF HE WANTED TO. IF NOT, SAID PERSON IS A THREAT AND SHOULD BE DEALT WITH ACCORDINGLY.

IN RETROSPECT LET ME SAY THAT WHEN I SPEAK OF DRUGS I INCLUDE MARIJUANA. I RECOGNIZE THAT GRASS IS THE LESSER OF THE EVILS. AT ONE TIME IN MY LIFE I SMOKED QUITE A BIT OF GRASS, AND PLAYED WITH OTHER DRUGS AS WELL. TO ANSWER MR. CHATTERTON'S QUESTION, A OUNCE IS WHAT WE WOULD ALWAYS BUY FOR PERSONAL USE. WHEN WE WOULD GET LOW ON OUR SUPPLY WE WOULD BUY ANOTHER OUNCE, ECT.

THE BIGGEST EVIL IN MARIJUANA IS ITS WIDESPREAD ACCEPTANCE AND THE PROBLEMS OF ENFORCEMENT THAT ACCOMPANY THAT ACCEPTANCE. I BELIEVE THAT GRASS IN ITSELF IS NO GREAT DANGER, BUT IT PUTS YOU IN A ENVIRONMENT WITH DIFFERENT PEOPLE WHO COULD BE A DANGER TO YOU. MRS. JAN TAYLOR'S TESTIMONY ABOUT THE CHILD WHO HAD STARTED TO SMOKE GRASS AND THE RESULTING DROP IN HIS ACADEMIC ACHIEVEMENT, IS INDICATIVE OF WHAT I'M TRYING TO SAY. I DO NOT BELIEVE THAT THE GRASS ITSELF WAS THE CAUSE OF HIS LOWER SCORES, BUT THE ATTITUDE THAT COMES WITH THE DRUG. FOR LACK OF A BETTER DEFINITION, I WILL CALL IT A SEMI-REBELLIOUS, CARE-FREE ATTITUDE. THE SWORD OF PEER PRESSURE CUTS A BIG SWATH AMONG PEOPLE. PEOPLE DO NOT NEED GRASS AND IT SHOULD BE ABLISHED.

MINOR AS A PERSON UNDER 18 YEARS OF AGE. WE CAN ALMOST REST EASY, KNOWING THAT A INTELLIGENT DISTRIBUTOR CAN FIND SOMEONE IN HIS SUB-CULTURE OF A AGE YOUNG ENOUGH TO NOT ONLY SUPERSEDE THIS PARER BARRIER, BUT TO DO IT LEGALLY. HERE AGAIN IS IT RESPONSIBLE TO SAY, (FOR EXAMPLE) THAT IT IS WRONG FOR A 30 YEAR OLD MAN TO SELL DRUGS TO A HIGH SCHOOL STUDENT. BUT THEN TURN A-ROUND AND ALLOW THIS SAME 30 YEAR OLD MAN DELEGATE HIS OBJECTIVE TO SOMEONE YOUNGER.

I HAVE A RECOMMENDATION, WE SHALL DRAW A LINE. FIRST, LET US REDEFINE THE AGE OF A MINOR. THIS NEW BRACKET WOULD BE "UNDER 19 YEARS OF AGE". HOPEFULLY THIS WOULD PLACE ALL HIGH SCHOOL STUDENTS IN THE CATEGORY OF MINOR FOR THE CONSIDERATION OF THIS CHAPTER. NOW, ANY ADULT, SELLING TO ANY MINOR A CONTROLLED SUBSTANCE, WILL BE GUILTY OF A CLASS B FELONY. WITH A FIDEI STIPULATING A MANDATORY 7 YEARS.

WE MUST REMEMBER THAT THE YOUTH MARKET IS A GROWING (sic) MARKET. HABITS AND PREFERENCES DEVELOPED NOW CAN LAST A LIFETIME. IT MUST BE STOPPED.

THIRD, I WOULD LIKE TO ADDRESS SEC. 17.17.400 OFFENSES DEFINED BY AMOUNTS. IN RESPECT TO THIS BILL, THIS PROVISION DEFINITELY NEEDS CLARIFICATION. YOU CANNOT PLEAD A LOWER CLASS OF OFFENSE THAN THAT OFFENSE WHICH IS ESTABLISHED BY THE EVIDENCE. BECAUSE IT IS THE EVIDENCE THAT ESTABLISHES THE OFFENSE, PERIOD. AND IN DIRECT REBUTTAL TO THE WORDING OF THAT SECTION, IF A LOWER CLASS OF OFFENSE IS ESTABLISHED BY THE EVIDENCE, THE AMOUNT IN QUESTION (READ EVIDENCE) CANNOT BE LARGER THAN THE AMOUNT WHICH WOULD MAKE THE OFFENSE A HIGHER CLASS OF OFFENSE, BECAUSE IT ESTABLISHED THE LOWER CLASS OF OFFENSE. (IN THE FIRST PLACE). I HAD THE HARDEST TIME TRYING TO LOGICALLY DECIPHER THIS PROVISION UNTIL I REALIZED THAT IT IS IMPOSSIBLE. THIS PROVISION MUST BE ABOLISHED, IF FOR NO OTHER REASON THAN THE CONFUSION IT WILL INITIATE.


HOUSE RESEARCH AGENCY  
Pouch Y - State Capitol  
Juneau, Alaska 99811  
465-3991

MEMORANDUM

February 26, 1980

TO: Representative Thelma Buchholdt  
Chairperson, HESS

Committee Members Munson, Hurlbert, Miles, Barnes,  
Beirne and Chatterton

FROM: Jan Erickson  Issues Analyst

RE: California Drug Laws  
Research Request No. 47

Enclosed please find as requested a summary of the California drug laws (California Uniform Controlled Substances Act, Sections 11000 - 11835, with amendments). Schedules for the drugs as well as key definitions are included with the attached relevant statutes.

A summary of the 1972 act is also included for comparison with the amended version of 1977-78. The amendments significantly alter the earlier act insofar as penalties are often not specified, nor is there much distinction for repeat offenses. Additional minor amendments from 1979 are being sent from the California Attorney General's office. (A single reference copy of the Act and amendments has been placed with the staff for your use.)

If you should have any questions concerning these materials, please do not hesitate to contact me.

JF/bf  
Encls.

CALIFORNIA UNIFORM CONTROLLED SUBSTANCES ACT

PENALTIES FOR CERTAIN OFFENSES\*

Brief Summary

1. Unlawful Possession.

- A. Heroin -- Punishment by imprisonment, no specified terms.  
(HS 11350) No distinction as to repeat offenders. Fine:  
up to \$50,000.
- B. Cocaine -- Punishment by imprisonment, no specified terms.  
(HS 11350) No distinction as to repeat offenses and penal-  
ties.
- C. Marijuana -- Possession of any amount of concentrated cannabis,  
(HS 11357) not less than one year in county jail or \$500 fine  
or both. Possession of less than 1 oz. of mari-  
juana \$500 fine and release, repeat offenders  
rehabilitated.
- D. Amphetamines -- Not more than 1 year county jail or state prison.  
(HS 11377)
- E. Barbiturates -- Not more than 1 year county jail or in state  
(HS 11377) prison.

2. Unlawful Possession for Sale.

- A. Heroin -- Punishment by imprisonment for 2, 3 or 4 years.  
(HS 11351) No distinction for repeat offenses and specific  
penalties. Fine of up to \$50,000.
- B. Cocaine -- Punishment by imprisonment for 2, 3, or 4 years.  
(HS 11351) No distinction for repeat offenses.
- C. Marijuana -- Punished by imprisonment, no specified terms.  
(HS 11359)
- D. Amphetamine -- Punishment by imprisonment, no specific terms.  
(HS 11378)
- E. Barbiturate -- Punished by imprisonment, no specified terms.  
(HS 11378)

3. Unlawful Transportation, Sale, Administration, etc.

- A. Heroin -- Punished by imprisonment for 3, 4, or 5 years.  
(HS 11352) Fine of up to \$50,000 imposed in addition.
- B. Cocaine -- Punishment by imprisonment for 3, 4, or 5 years.  
(HS 11352)
- C. Marijuana -- Punishment by imprisonment for any amount 2, 3  
(HS 11360) or 4 years. Less than 1 oz. fine of \$100 and  
released.

\* In addition to terms of imprisonment, trial court may impose a fine up to \$20,000 for each offense under Sections 11350, 11351, 11353, 11355, 11359, 11360, 11361.

3. Unlawful Transportation, Sale, Administration, etc. (Con't.)

D. Amphetamines -- Same as barbiturates.  
(HS 11352)

E. Barbiturates -- Punishment by imprisonment 2, 3, or 4 years.  
(HS 11379)

4. Adult Influence a Minor.

A. Heroin -- Punishment by imprisonment, no specified terms.  
(HS 11353)

B. Cocaine -- Same as heroin.  
(HS 11353)

C. Marijuana -- Punishment by imprisonment for 3, 4, or 5 years.  
(HS 11361)

D. Amphetamines -- Punishment by imprisonment 3, 4, or 5 years.  
(HS 11380)

E. Barbiturates -- Punishment by imprisonment 3, 4, or 5 years.  
(HS 11380)

5. Miscellaneous.

Minor Influence a -- Punishment by imprisonment - no specified terms.  
Minor (Jurisdiction maintained in juvenile court.)  
(HS 11354)

Paraphernalia -- Unlawful to possess instrument, paraphernalia,  
(HS 11364) etc. for injection or smoking substances. No  
penalty prescribed.

Education -- Trial court shall as condition of probation  
(HS 11376) for anyone convicted of possession of controlled  
substance, Sched. I & II, order education or  
treatment. In case of juveniles, parents or  
guardians to participate.

Unlawful Presence -- Unlawful to visit or be present in any room  
(HS 11365) where any controlled substance or narcotic drugs  
are being unlawfully smoked or used. No penalty  
specified.

CALIFORNIA UNIFORM CONTROLLED SUBSTANCES ACT

PENALTIES FOR CERTAIN OFFENSES\*

Brief Summary

1. Unlawful Possession.

- A. Heroin -- (HS 11350) First: 2-10, elig. parole/release after 2 yrs.  
Second: 5-20, elig. parole/release after 5 yrs.  
Third or more: 15-life, elig. parole after 15 yrs.
- B. Cocaine -- (HS 11350) First: 5-15, elig. parole/release after 2½ yrs.  
Second: not less than 10, elig. parole/release 6 yrs.  
Third or more: not less than 15 yrs., elig. parole/release after 15 yrs.
- C. Marijuana -- (HS 11357) First: Possession of any amount, not less than 1 yr. in county jail or more than 10 in state prison.  
Second: 2-20, elig. parole/release after 2 yrs.  
Third or more: 5-life, elig. parole/release 5 yrs.
- D. Amphetamines-- (HS 11377) First: Not more than 1 yr., county jail, to 10 yrs. state prison.  
Second: 2-20, elig. parole/release after 5 yrs.
- E. Barbiturates -- (HS 11377) First: Not more than 1 yr. county jail, to 10 yrs. in state prison.  
Second: 2-20, elig. parole /release after 2 yrs.

2. Unlawful Possession for Sale.

- A. Heroin -- (HS 11351) First: 5-15, elig. parole /release after 2½ yrs.  
Second: not less than 10, elig. parole /rel. 6 yrs.  
Third or more: not less than 15 yrs., elig. parole /release after 15 yrs.
- B. Cocaine -- (HS 11351) Same as heroine.
- C. Marijuana -- (HS 11359) First: 2-10, elig. parole/release after 2 yrs..  
Second: 5-15, elig. parole/release after 3 yrs.  
Third or more: 10-life, elig. parole/release 6 yrs
- D. Amphetamine -- (HS 11378) Same as barbiturates.
- E. Barbiturate -- (HS 11378) First: 2-10, elig. parole / release after 2 yrs.  
Second: 5-15, elig. parole /release after 3 yrs.  
Third or more: 10-life, parole /release after 6 yrs

3. Unlawful transportation, sale, administration, etc.

- A. Heroin -- (HS 11352) First: 5-life, elig. parole/release after 3 yrs.  
Second: 10-life, elig. parole/release after 10 yrs  
Third or more: 15-life, elig. parole/release 15 yr
- B. Cocaine (HS 11352) Same as heroin.

\*In addition to terms of imprisonment, trial court may impose a fine up to \$20,000 for each offense under Sections 11350, 11351, 11353, 11355, 11359, 11360, 11361.

3. Unlawful transportation, sale, administration, etc. (Con't.)

C. Marijuana -- First: 5-life, elig. parole/release after  
(HS 11360) 3 yrs.  
Second: 5-life, elig. parole/release after  
5 yrs.  
Third or more: 10-life, elig. parole/release  
after 10 yrs.

D. Amphetamines -- Same as barbiturates.  
(HS 11352)

E. Barbiturates -- First: 5-life, elig. parole/release after 3 yrs.  
(HS 11379) Second: 5-life, elig. parole/release after 5 yrs.  
Third or more: 10-life, elig. parole/release after  
10 yrs.

4. Adult Influence a Minor.

A. Heroine -- First: 10-life, elig. parole/release after 5 yrs.  
(HS 11353) Second: 10-life, elig. parole/release after 10 yrs.  
Third or more: 15-life, elig. parole/release  
after 15 yrs.

B. Cocaine -- Same as heroin.  
(HS 11353)

C. Marijuana -- First: 10-life, elig. parole/release after 5 yrs.  
(HS 11361) Second: 10-life, elig. parole/release after 10 yrs.  
Third or more: 15-life, elig. parole/release after  
15 yrs.

D. Amphetamines -- First: 10-life, elig. parole/release after 5 yrs.  
(HS 11380) Second: 10-life, elig. parole/release after 10 yrs.  
Third or more: 15-life, elig. parole/release after  
15 yrs.

E. Barbiturates -- First: 10-life, elig. parole/release after 5 yrs.  
(HS 11380) Second: 10-life, elig. parole/release after 10 yrs.  
Third or more: 15-life, elig. parole/release after  
15 yrs.

5. Miscellaneous.

Minor Influence A Minor--

Specified controlled First: Not less than 5 yrs.  
Substances and Narc- Second: Not less than 10 yrs.  
otic Drugs (HS11354) (Jurisdiction maintained in juvenile court.)

Paraphernalia --  
(HS 11364)

Unlawful to possess instrument, paraphernalia,  
etc. for injection or smoking substances.  
No penalty prescribed.

Education --  
(HS 11376)

Trial court shall as condition of probation  
for anyone convicted of possession of control-  
led substance, Sched. I & II, order education  
or treatment. In case of juveniles, parents  
or guardians to participate.

Unlawful Presence --  
(HS 11365)

Unlawful to visit or be present in any room  
where any controlled substance or narcotic  
drugs are being unlawfully smoked or used.  
No penalty specified.

HOUSE BILL 479 REVISION STATE DRUG LAWS

The advisory committee is composed of five members. I suggest two additional members for better representation: #6 Physician Appointed by Governor

#7 Citizen Appointed by Governor

The majority of the Committee have special expertise in dealing with drugs. A public member would insure an opportunity for Citizen participation.

We cannot understand what the author had in mind when he wrote this bill. It's okay for adults to have a pound of marijuana and children cannot. If this bill passes, it tells children it's alright for parents to sneak out and find his pusher, obtain at least a pound of marijuana, then sneak home again and then the parent is legal. Again it's obvious misinterpretation by young people. One ounce of marijuana will provide 40 to 50 marijuana cigarettes.

This bill makes possession of one fourth ounce of cocaine a misdemeanor. I can not believe anyone would give a serious thought to passing a law like this. We have had two suicides of 17 and 18 year olds, cocaine connected. Cocaine should continue to be a felony.

We feel the penalties in this bill changed on each classification from the criminal code detracts and will continue to be confusing. We also feel when a person is convicted of a drug related arrest of furnishing, they should not be able to bail out of jail.

The Citizens of Kodiak feel the intent of a drug bill should discourage narcotics trafficking. Therefore, we recommend you do not pass House Bill No. 479.

I sincerely believe if you give a pass on House Bill No. 479 you will set a course that will profoundly affect the quality of life for hundreds of your fellow Alaskans.

*James L. Rhines*  
*Chief of Police*  
*Box 509*  
*Kodiak 99615*

HOUSE BILL 479 REVISION STATE DRUG LAWS

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*James L. Rines*  
*Chief of Police*  
*Box 509*  
*Kodiak 99615*

Name	Address and Phone	Organization/Self	For/Against or Observing
1/ DAN Hickey		att general off.	
2/			
3/ Mr. McConele		Pharmacist w/ Bd of Pharm	would like to testify
4/ <del>DAN Hickey</del>			mace
5/ Frank Gold	3098 Airport Way Ft. Belknap, AK 99701	Kila, Inc. Ft. Belknap Drug Treatment Center	"addiction"
6/			
7/			
8/			
9/			
10/			
11/			
12/			
13/			

TO: Thelma Buchholdt, Chairman, and members of  
the House HESS Committee

FROM: Margaret W. Berck, Counsel to House Judiciary  
Committee

TITLE: HOUSE BILL NO. 479 .

1. CONTROLLED SUBSTANCES ADVISORY COMMITTEE
2. SCHEDULES
3. OFFENSES AND PENALTIES
  - A. DISTRIBUTING CONTROLLED SUBSTANCES TO MINORS
  - B. DISTRIBUTING CONTROLLED SUBSTANCES TO ADULTS
  - C. MANUFACTURING CONTROLLED SUBSTANCES
  - D. POSSESSION OF CONTROLLED SUBSTANCES
  - E. MARIJUANA OFFENSES
    - a. POSSESSION OF MARIJUANA WHILE OPERATING A MOTOR VEHICLE, VESSEL, OR AIRCRAFT
    - b. PUBLIC DISPLAY OR USE OF MARIJUANA
    - c. POSSESSION OF MARIJUANA BY A MINOR
4. REGULATION OF LEGITIMATE DRUG INDUSTRY
5. FORFEITURES
6. EDUCATION AND RESEARCH

Commissioner Nick  
testimony  
on HB 479 Dept of  
Public Safety

I appreciate the opportunity to give testimony before this Committee concerning the importance of revising the State's Drug Laws.

Our Department's statutory responsibilities deal primarily with the enforcement activity of Legislation passed by you. My testimony today is directed at that aspect of HB 479.

I am very encouraged at this Bills attempt to modernize Alaska's Drug Laws. The consolidation of existing laws and tying those into the sentencing structure of the new Criminal Code are major steps in discouraging illicit drug trafficking and the use of drugs. There has obviously been a great deal of work and expertise in developing this bill.

There are certain provisions on HB 479 that I would like to address from strictly a law enforcement view.

In HB 479 the responsibility for scheduling/rescheduling controlled substances is vested in a controlled substances committee.

The criteria whether a drug should be controlled basically follows the Federal Controlled Substances Act, which I feel could be greatly improved upon if additional criteria were added. Such as, the relationship between the use of the substance and other criminal activity including:

Whether a persons engaged in illicit trafficking are also engaged in other criminal activities.

Whether the nature of the relative profitability of the substance encourages illicit trafficking in the substance.

Whether the commission of other crimes is one of the effects of the use of the substance.

Whether addiction to the substance relates to the commission of other crimes related to the continued use of the substance.

We feel strongly that this additional criteria should be used in controlling and scheduling drugs. Where drugs are placed on the schedule which ties them to the sentencing scheme, directly affects the use and trafficking of drugs.

There is a direct relationship between use, abuse, and other criminal activities. For instance, as the popularity of cocaine as a recreational drug increased so did our homicide rate. From 1976 through 1979 we are aware of 29 homicide cases in Alaska, directly related to drug trafficking with cocaine being the primary drug involved.

The penalty provisions of the Bill appear reasonable. However, I am concerned with the manner in which possession of specific amounts are tied to the penalty provisions.

*In* the Bill it refers to exact amounts, be it in the form of capsules, tablets, syrettes, or bulk. But as I read the Bill it does not address the size of the container, or the purity of the substance. This raises

(3)

some very interesting problems in prosecuting defendants, which will be addressed by the Department of Law. It raises some serious problems for the enforcement person, such as, field testing for small amounts, expending our limited resources on apprehending drug traffickers where there are only trace amounts involved. Such as, the State vs. Davis Stone. *Corle*

HB 479 makes the possession of 0 to <sup>25</sup>~~29~~ capsules, etc. or 1/8th or less of an ounce of heroin a misdemeanor. If the contents of the 25 capsules is more than 1/8th of an ounce, is it still a misdemeanor? 1/8th of an ounce of pure heroin would produce approximately 1/2 pound of heroin for street use, worth between 36/40 K. Another example is cocaine, 1/4 oz. of pure coke in possession would produce 1 oz. for street <sup>use</sup> or 28 slips or approximately 56 hits. In the past, we have found that persons trafficking drugs are as versed in the law as we are, and will adjust their business accordingly. So, may I suggest that we will seldom find a vendor with more than enough in their possession, at first blush anyway, to warrant a felony charge. I believe the same holds true for any substance contained in Schedule I or II as presently written in HB 479.

In summary, I would like to again express my thoughts, or concern if you will, over certain provisions in HB 479.

1. The criteria for deciding whether a drug should be controlled and the criteria for deciding in which Schedule a drug should be classified should include factors concerning the relationship between use of the drug and other criminal activities.
2. The association between penalties and specific amounts of controlled substances listed in Schedule I and II creates serious if not

insurmountable problems for law enforcement.

I would like to mention that Governor Hammond will introduce to this Legislature a Drug Bill which ~~will~~ addresses the concerns expressed by me today.



January 25, 1980

Thelma Buchholdt, Chairman  
House H.E.S.S. Committee  
Alaska State Legislature  
Pouch V  
Juneau, Alaska 99811

Dear Chairman Buchholdt and other Committee members;

In regard to HB 479, you have already heard from AKEELA HOUSE via teleconference public testimony. This letter reiterates the basic points which we wished to make at that time:

1.) Sec. 17.17.010 outlines the creation and composition of a Controlled Substances Advisory Committee. It is our belief that this Committee should include an expert in the field of addiction rehabilitation, someone with a professional background and a successful track record in getting criminal abusers back into society as law-abiding citizens. The occupational history of this person might include counseling, psychology, or administrative work in such a program. Such a person could assist the Committee in determining the association between specific drugs, use and abuse patterns, and criminal or anti-social behavior, as well as the general mechanics of the considerations spelled out in Sec. 17.17.020 (c).

2.) Sec. 17.17.020 (e) states that the Controlled Substances Advisory Committee has no jurisdiction over alcohol. It is our hope that this provision will be given careful reconsideration by you. There is no question that alcohol is Alaska's most serious drug problem and that tighter controls on alcohol as a substance should be investigated. The physical, psychological, and social damage resulting from alcohol is many times greater than all other controlled substances combined. The situation, if left unaddressed, is especially dangerous for our native populations; the latest statistics strongly indicate that our native people will join the ranks of the Mandans and other extinct groups of indigenous Americans if measures are not taken, soon, to reverse the trend of alcoholism, alcohol-related deaths, and infant alcohol syndrome.

3.) Sec. 17.17.780 refers to education. We ask the Committee to consider strengthening this section to include rehabilitation as an alternative to or in addition to use-related incarceration and fines. We respectfully remind the Committee of the success rate of our kind

(Continued)

of program (@ 60%) versus the success rate of the corrections system (@ 20-30%), as well as the cost difference between our program and the prisons. We believe that the taxpayer realizes a more efficient use of public monies and a more crime-free society over all when every option and avenue of genuine rehabilitation is utilized.

Also, pursuant to a request by members of your committee, AKEELA HOUSE staff has obtained copies of SB 65 and HB 101, and reviewed these bills. Our observations are:

- 1.) That HB 479 evidences greater care in preparation, pharmacology, and ascertaining the sociological implications of substance abuse. The language of this bill, also, is easier for the layman to understand.
- 2.) SB 65 and HB 101--the two are for all practical purposes identical--make no reference to rehabilitation or education and do not provide for an advisory board to respond to new developments such as: the discovery and entry into the market of new substances, new research data about existing substances, or on-going social realities of substance use/abuse. These bills appear to have been written to address the concerns only of some law enforcement personnel without considering the impact and implications to the social order as a whole; and because of the complexity of language, these bills present a greater risk of being disproportionately applied to less advantaged members of the Alaskan population than does HB 479.
- 3.) The difference in penalties dictated between the various bills will probably have no impact on the problem of substance abuse as it currently exists. No evidence exists to suggest that the degree of punishment has any measurable impact on illicit use of controlled substances.

We appreciate being given the chance to present our views to the Committee. If you would like us to make any further comments, we will be glad to do so.

Yours for a drug-free lifestyle,

Sincerely,



Joseph C. DiMatteo  
Executive Director

HOUSE RESEARCH AGENCY  
Pouch Y - State Capitol  
Juneau, Alaska 99811  
465-3991

MEMORANDUM

January 28, 1980

TO: Representative Charles Parr

FROM: Jack Fagnoli, Issues Analyst  
House Research Agency

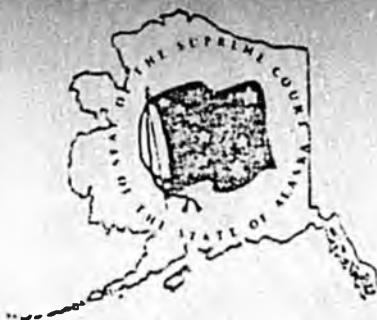
RE: Research Request No. 23  
(Drug Possession and Sales: Hawaii)

Prosecutor Lee Nakamura of the Prosecutor's Office, Department of the Attorney General in Honolulu, confirmed in a January 25 telephone conversation that the purity or concentration of controlled substances is not addressed specifically in Hawaii statutes and that, further, it is not considered as a factor in enforcement or in judicial proceedings. The purity or concentration of a drug is not used as the basis for determining the "amount" of a drug held in possession, as described in the Hawaii statutes; nor is it used as a basis in decisions to prosecute or in setting criminal sentences. However, occasionally a decision not to proceed with prosecution is reached in cases where extremely small, i.e., "trace," amounts of a controlled substance have been found in a mixture.

Mr. Nakamura informed us that all decisions to prosecute in Hawaii drug cases are made on a case by case basis, and that to date the question of drug purity has not produced any problems (or even been raised as an issue) in the federal courts. Should the courts object in the future, he said, adjustments would be made in the statutes; he did not view this as likely to occur, however.

Please let us know if you have any additional questions.

/dp



## Alaska Judicial Council

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MICHAEL M. HOLMES  
JOSEPH L. YOUNG

CHAIRMAN EX OFFICIO  
JAY A. RABINOWITZ  
CHIEF JUSTICE  
SUPREME COURT

January 23, 1980

### MEMORANDUM

TO: MARGARET BERCK, STAFF COUNSEL  
HOUSE JUDICIARY COMMITTEE

FROM: MICHAEL L. RUBINSTEIN, EXECUTIVE DIRECTOR  
ALASKA JUDICIAL COUNCIL

RE: STATISTICS ON DRUGS

I hope the enclosed memo is useful. If you need more information, please call. If you give me a week's notice, Nick Maroules, who prepared the statistics, can testify.

M. L. R.

Enclosure



## Alaska Judicial Council

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SUPREME COURT

January 23, 1980

### M E M O R A N D U M

TO: MICHAEL L. RUBINSTEIN

FROM: NICK MAROULES

RE: HOUSE JUDICIARY COMMITTEE DATA REQUEST

This memo is in response to the House Judiciary Committee's request of October, 1979 for empirical information regarding drug offenses. The data upon which this analysis is predicated consists of 1901 felony convictions rendered in all ten Superior Court locations from July, 1976 to July, 1979. The first part of the analysis concerns the relationship of drug and alcohol use to crime. The request deals in part with the use of cocaine in relation to other criminal behavior. Unfortunately, our data sources (including court case files and pre-sentence reports) did not include systematic information concerning the specific type of past drug use. We do have general information, however, concerning drug and/or alcohol addiction and heavy drug use. The analysis here presented should facilitate some understanding of the relationship of drug/alcohol use and crime. The request also concerned the relationship between the use of one drug, particularly marijuana, and other drugs. Again, our data is not amenable to this issue.

The second part of this analysis concerns the range of drug quantities typically involved in sale and possession offenses and corresponding penalties.

#### I. RELATIONSHIP OF DRUG AND ALCOHOL USE TO CRIME

Our new felony sentencing data contains information from pre-sentence reports about drug and alcohol use. The information includes (1) indications of past (or ongoing) drug and/or alcohol addiction, (2) drug and/or alcohol use at the time of the offense, and (3) the defendant's record of previous (or current) treatment for drug and/or alcohol problems.

Table I, below, indicates that a significant positive relationship exists between drug or alcohol addiction and severity of the defendant's prior record. Specifically, those defendants identified by the presentence reporter as having had alcohol or drug problems also had substantially more serious criminal histories than those without such problems.

TABLE I

	<u>Severity of Prior Record By</u> <u>Drug/Alcohol Addiction</u> (N=1669) *		
	<u>Drug Addiction</u> <u>History</u>	<u>Alcohol Addiction</u> <u>History</u>	<u>Neither</u>
<u>No Prior</u> <u>Record</u>	12.8%	14.0%	49.6%
<u>Misdem.</u> <u>Only</u>	37.6%	52.0%	30.7%
<u>One Prior</u> <u>Felcny</u>	25.2%	21.1%	13.7%
<u>Two/More</u> <u>Felonies</u>	<u>24.3%</u> 100.0% (218)	<u>12.9%</u> 100.0% (450)	<u>6.1%</u> 100.0% (1001)

Significant at .001

\*(There were 232 cases for which information of past drug/alcohol use was unavailable.)

The above contingency distributions indicate that defendants with no histories of drug or alcohol problems were four times more likely to have been first offenders than those with a history of drug/alcohol abuse. Nearly half of those with no histories of substance abuse were first offenders, compared to 12.8% and 14.0%, respectively, for those with drug and alcohol problems. At the other end of the scale, those with a drug or alcohol problem were substantially more likely to have prior felony convictions than those with no such history. These observed differences are statistically significant at the .001 level which means that there is only one chance in a thousand that the differences were due to chance.

Table I represents the overall relationship between prior record and drug/alcohol use for all defendants without regard to the type (or class) of their offense. Table A, in the appendix to this memorandum sets forth the relationship between these two variables for each of five broad classes of offense--violent felonies, property felonies (burglary, larceny, etc.), frauds/forgeries/embezzlements, drug crimes, and "morals" offenses. An examination of these tables reveals that the relationship observed in Table I persists among all offense classes.

As noted above, our data also includes information on drug or alcohol use at the time of the offense. Table II, below, indicates the proportion of cases in which the defendant was reported to have used drugs, drugs in combination with alcohol, or alcohol alone at the time of his offense, for each of four classes of offenses (drug offenses are eliminated from this aspect of the analysis).

TABLE II

Frequency of Use of Drugs and Alcohol  
At Time of Offense for Four Offense Classes\*

	<u>Total</u> <u>Cases</u>	<u>Used</u> <u>Drugs</u>	<u>Used Drugs</u> <u>&amp; Alcohol</u>	<u>Used</u> <u>Alcohol</u>
<u>Violent</u> <u>Offenses</u>	(N=586)	3.2% (19)	4.9% (29)	56.3% (330)
<u>Property</u> <u>Offenses</u>	N=729)	4.0% (29)	4.4% (32)	39.2% (286)
<u>Forgery/Fraud</u> <u>Offenses</u>	(N=264)	2.7% ( 7)	0.8% ( 2)	9.1% ( 24)
<u>"Morals"</u> <u>Offenses</u>	(N=91)	1.1% ( 1)	9.9% ( 9)	46.2% ( 42)

\* (Percents indicate proportion of all cases within class.)

Table II shows that alcohol use is much more often associated with criminal behavior than is drug use. The magnitude of alcohol use is staggering in comparison with drugs. It should be mentioned, however, that the relative difficulty in detecting drug intoxication as compared with alcohol use probably accounts for at least a portion of the difference.

## II. DRUG QUANTITIES AND SENTENCES FOR SALE AND POSSESSION

Table III, below, reflects a distribution of drug types and amounts for possession and sale offenses. The proportion of cases within each amount-group receiving probation (or no active jail sentence) and the corresponding mean sentence (computed only for those with an active sentence) is also included.

TABLE III

Quantities and Sentences for  
Possession and Sale Offense Convictions

I. POSSESSION OF NARCOTIC

	<u>N of Cases</u>	<u>Proportion Probation</u>	<u>Mean* Sentence (In Months)</u>
TYPE AND AMOUNT OF DRUG:			
<u>Cocaine</u> - <u>Less than 1 gm.</u>	15	53.3%	3.24 (7)
- <u>1 to 14 gms.</u>	12	75.0%	15.00 (3)
- <u>Over 14 gms.</u>	7	57.1%	24.08 (3)
<u>Heroin</u> - <u>Less than 1 gm.</u>	6	33.3%	24.75 (4)
- <u>1 to 7 gms.</u>	6	33.3%	54.00 (4)
- <u>Over 7 gms.</u>	5	20.0%	124.50 (4)
	N=51		

II. SALE OF NARCOTIC

TYPE AND AMOUNT OF DRUG:			
<u>Cocaine</u> - <u>Less than 1 gm.</u>	11	36.4%	8.34 (7)
- <u>1 to 14 gms.</u>	40	40.0%	26.58 (24)
- <u>Over 14 gms.</u>	10	20.0%	39.85 (8)
<u>Heroin</u> - <u>Less than 1 gm.</u>	2	0.0%	30.00 (2)
- <u>1 to 14 gms.</u>	3	33.3%	46.00 (6)
- <u>Over 14 gms.</u>	4	25.0%	24.00 (3)
	N=76		

III. POSSESSION SALE HDS \*\*

TYPE AND AMOUNT OF DRUG:			
<u>Cocaine</u> - <u>Over 14 gms.</u>	(1)	0.0%	36.00 (1)
<u>Marijuana</u> - <u>Over 2 #s</u>	(10)	50.0%	16.80 (5)
	N=11		

TABLE III (CON'T)

IV. SALE OF HDS

	<u>N of Cases</u>	<u>Proportion Probation</u>	<u>Mean* Sentence</u> (In Months)
TYPE AND AMOUNT OF DRUG:			
<u>Marijuana</u> - <u>Less than 2 oz.</u>	4	0.0%	15.25 (4)
- <u>2 oz. to 2 #</u>	8	87.5%	48.00 (1)
- <u>Over 2 #</u>	6	33.3%	34.00 (4)
<u>Amph-Barb.</u> - <u>Less than 100</u>	2	0.0%	7.00 (2)
- <u>100 to 999</u>	1	100.0%	----
- <u>Over 1000</u>	1	0.0%	1.00 (1)
<u>Hallu- cinogens</u> - <u>Less than 20</u>	7	57.1%	6.11 (3)
- <u>20 - 99</u>	--	--	--
- <u>Over 100</u>	1	0.0%	12.00 (1)
	N=30		

\* Mean sentences calculated excluding straight probation, or no time to serve.

\*\* Three cases involving amphetamines or hallucinogens not included.

According to Table III, of N=51 convictions for Possession of a Narcotic ( A.S. 17.10.200), 15 involved less than 1 gram of cocaine. Of these 15 cases, 53.3% received straight probation (or no active jail sentence). The mean sentence for the 7 defendants actually sentenced to jail time was 3.24 months.

Among narcotic offenses, cases involving heroin generally received longer (mean) sentences and were less likely to receive probation than those involving cocaine. Offenses involving cocaine received more severe penalties when the conviction was for sale rather than possession.

The opposite was true for heroin: possession offenses were sentenced more severely than sale offenses. This was especially surprising because often the amounts of heroin possessed were equal to or smaller than the amounts sold, but the sentences imposed were still longer.

N. M.

## APPENDIX

TABLE A

SEVERITY OF PRIOR RECORD BY PAST  
DRUG/ALCOHOL USE FOR EACH OFFENSE CLASS

I. <u>Violent Felonies</u>	(N=586)		
	<u>Past Drug Problem</u>	<u>Past Alcohol Problem</u>	<u>Neither</u>
<u>No Priors</u>	9.3%	16.0%	47.1%
<u>Misdmsrs. Only</u>	40.0%	53.1%	28.6%
<u>One Felony</u>	16.0%	17.8%	16.8%
<u>Two/More Felonies</u>	34.7%	13.1%	7.6%
	100.0%	100.0%	100.0%
	(75)	(213)	(238)

(60 Missing Cases)\*  
Significant at .001

II. <u>Burqlary, Larceny Offenses</u>	(N=729)		
	<u>Past Drug Problem</u>	<u>Past Alcohol Problem</u>	<u>Neither</u>
<u>No Priors</u>	7.1%	10.9%	54.8%
<u>Misdmsrs. Only</u>	27.1%	52.4%	28.5%
<u>One Felony</u>	40.0%	23.8%	11.4%
<u>Two/More Felonies</u>	25.7%	12.9%	5.3%
	100.0%	100.0%	100.0%
	(70)	(147)	(376)

(136 Missing Cases)\*  
Significant at .001

TABLE A, (Cont.)

III. Fraud, Forgery, Embezzlement Offenses (N=264)

	<u>Past Drug Problem</u>	<u>Past Alcohol Problem</u>	<u>Neither</u>
<u>No Priors</u>	26.1%	10.3%	49.2%
<u>Misdmsrs. Only</u>	39.1%	35.9%	26.0%
<u>One Felony</u>	26.1%	35.9%	17.7%
<u>Two/More Felonies</u>	8.7%	17.9%	7.2%
	100.0%	100.0%	100.0%
	(23)	(39)	(181)

(21 Missing Cases)\*  
Significant at .001

IV. Drug Offenses (N=231)

	<u>Past Drug Problem</u>	<u>Past Alcohol Problem</u>	<u>Neither</u>
<u>No Priors</u>	23.8%	7.1%	41.3%
<u>Misdmsrs. Only</u>	50.0%	64.3%	41.9%
<u>One Felony</u>	11.9%	21.4%	12.0%
<u>Two/More Felonies</u>	14.3%	7.1%	4.8%
	100.0%	100.0%	100.0%
	(42)	(14)	(167)

(8 Missing Cases)\*  
Significant at .05

TABLE A, (Cont.)

V. <u>"Morals" Offenses</u>	(N=91)			
		<u>Past Drug Problem</u>	<u>Past Alcohol Problem</u>	<u>Neither</u>
<u>No Priors</u>		0%	21.6%	51.3%
<u>Misdmsrs. Only</u>		37.5%	56.8%	38.5%
<u>One Felony</u>		50.0%	13.5%	5.1%
<u>Two/More Felonies</u>		12.5%	8.1%	5.1%
		<u>100.0%</u>	<u>100.0%</u>	<u>100.0%</u>
		(8)	(37)	(39)

Significant at .01

\* Cases noted as missing from the breakdown analysis concern theft for which past drug/alcohol histories or prior record information was unascertainable.



# Alaska State Legislature

## House of Representatives

### Committee on Judiciary

Pouch V  
State Capitol  
Juneau, Alaska 99811

Official Business

#### M E M O R A N D U M

February 28, 1980

TO: Charlie Parr, Chairman, House Judiciary Committee  
FROM: Margaret W. Berck, Staff  
SUBJECT: Sectional Analysis of HB 479

#### I. STANDARDS AND PROCEDURES.

##### \*Section 1

Sec. 17.17.010. This section establishes a Controlled Substances Advisory Committee in the Department of Law. The members of the Committee are the Attorney General, Commissioners of Health and Social Services and Public Safety, a pharmacist and a criminal defense attorney. The latter two members are appointed by the Governor. All members serve without pay, but are entitled to travel expenses and per diem.

Sec. 17.17.020. This section defines the authority of the Controlled Substances Advisory Committee. The Committee is empowered to add, delete or re-schedule substances. All such actions must be adopted under the Administrative Procedures Act and in accord with the "public safety" criteria contained in this section. Should there be a change in the Federal schedules, the Committee is required to consider a similar change to Alaska law. The Committee is free to determine that such a Federal change is not warranted in Alaska, but must report such a decision, together with findings of fact, to the Lieutenant Governor.

Decisions by the Committee have no legal effect until the Legislature is given an opportunity to review them. Committee decisions must be submitted to the Legislature within the first 10 days of a session. The Legislature must act by the 56th day of the session if it wants to annul a proposal. All legislative annulments must take place in the form of a bill. Should the Legislature reject a proposal by

the Committee, the Committee cannot re-assert such a proposal to the Legislature for three years.

The Committee has no authority over tobacco or alcohol.

Sec. 17.17.030. This section provides that the inclusion of slang terms for drugs to assist the layperson in identifying controlled substances, has no bearing or effect in a criminal prosecution.

Sec. 17.17.040 - Sec. 17.17.090. These sections establish six schedules of controlled substances. The most dangerous substances are contained in Schedule I, while the least dangerous, marijuana, is contained in Schedule VI.

## II. OFFENSES AND PENALTIES.

Sec. 17.17.200. This section creates a criminal offense and provides penalties for distributing a controlled substance to a minor. Although the penalties vary depending upon the schedule classification of the particular controlled substance distributed, all violations of this section would constitute a felony.

This section is designed to impose stiffer penalties on those persons over 18 years of age who distribute controlled substances to persons under 18 years of age. However, the recipient must be at least three years younger than the distributor before this section comes into effect. If the three-year age differential does not exist, the distributor would be subject to prosecution under the general distribution offenses.

This scheme was taken from the Uniform Controlled Substances Act and their rationale is as follows: "The three-year age differential is included to prevent imposition of the stiffer penalties in a case such as where a 19-year-old college student distributes two or three marijuana cigarettes to his 17-year-old roommate. In this situation, there is not the element of seduction so often found in cases where the distributor and recipient are far apart in age."

Sec. 17.17.210. This section creates a criminal offense and provides penalties for manufacturing a controlled substance. Although the penalties vary depending upon the schedule classification of the particular controlled substance manufactured, all violations of this section would constitute a felony. The definition of "manufacture" (Sec. 17.17.900(14))

includes propagation of certain of the substances, such as marijuana. In order to comply with the Alaska Constitution as interpreted in Ravin, and in order to justify the stiffer penalties for this offense, the definition of "manufacture" excludes manufacturing for personal use. A person manufacturing controlled substances for his personal use would be subject to prosecution under possession offenses.

Sec. 17.17.220 - Sec. 17.17.270. These sections create a criminal offense and provide penalties for distributing a controlled substance. Separate sections are provided for each schedule classification. Penalties vary depending upon the schedule classification and the amount involved. Despite penalty variations, distribution of any amount of a Schedule I, II, III, or IV substance would constitute a felony offense. Distributions of small amounts of a Schedule V or a Schedule VI substance would constitute a Class A misdemeanor. Furthermore, a "non-remuneration defense" is provided for the distribution of an ounce or less of a Schedule VI substance (marijuana). If the distributor is successful in providing that such a distribution was made for no remuneration to a person 18 years of age or older, the penalty is reduced from a Class A misdemeanor to a Class B misdemeanor. This provision is compatible with Federal law which provides that a person who distributes a small amount of marijuana for no remuneration is guilty of a misdemeanor rather than a felony. (21 USCA 841) Furthermore under Federal law (21 USCA 844), if such a person has never been previously convicted of a drug offense, the court may place the person on probation and subsequently dismiss the criminal charge against the person if he does not violate his parole. Under this Federal provision, the person would not acquire a criminal record.

Sec. 17.17.280 - Sec. 17.17.330. These sections create a criminal offense and provide penalties for possessing a controlled substance. Separate sections are provided for each schedule classification. Penalties vary depending upon the schedule classification and the amount involved. Possession of small amounts of any substance would constitute a Class A misdemeanor. This provision is compatible with Federal law which establishes misdemeanor penalties for simple possession of any controlled substance. Unlike the Federal law, however, HB 479 would establish felony offenses for the possession of large amounts of any controlled substance. This scheme was adopted in HB 479, in order to facilitate the capture of drug dealers who are not caught in the act of distribution. Traditionally, these individuals have been prosecuted under a "possession with intent to sell" offense. But due to the difficulties in prosecuting "intent to sell"

offenses, HB 479 eliminates that type of offense and looks strictly to the amount possessed in determining appropriate penalties.

In order to comply with the Alaska Constitution as interpreted in Raven, possession of less than a pound of marijuana by an adult would not constitute a criminal offense.

Sec. 17.17.340. This section makes it a Class B misdemeanor to possess any amount of marijuana in your immediate control while operating a motor vehicle, vessel, or aircraft. Under existing law, the maximum punishment for this type of offense is a \$1,000 fine. Under HB 479 an offender is subject to a 90 day jail sentence, or a \$1,000 fine, or both.

Sec. 17.17.350. This section makes it a violation (a fine of up to \$300) to display or use any amount of marijuana in a public place.

Sec. 17.17.360. This section makes it unlawful for a minor to possess any amount of marijuana. A minor who violates this section is guilty of a violation.

Sec. 17.17.370. This section is directed at the legitimate drug industry. It makes it a Class B misdemeanor for a person to refuse or fail to make or keep all records required by this Act.

Sec. 17.17.380. This section also is directed at the legitimate drug industry. It makes it a Class C felony to do any of the following: (1) to keep or maintain any structure for storing or selling controlled substances in violation of this Act; (2) to use a registration number that is fictitious, revoked or suspended; (3) to obtain a controlled substance by fraud, forgery or deception; (4) to make, distribute, or possess a die to print a trademark upon a drug or container so as to render a drug a counterfeit substance; and (5) to furnish false or fraudulent information on any record required to be made and kept by this Act.

Sec. 17.17.390. This section provides for the creation of a three-year felony offense for certain possession and distribution offenses. In order to graduate the penalties in relation to type of offense, substance classification and quantities, an additional felony offense to those established in the new criminal code was required.

Sec. 17.17.400. This section provides that in those offenses which require the consideration of an amount for determining

appropriate penalties, it is no defense to a prosecution that the amount was in fact larger than that required for the offense charged.

Sec. 17.17.410. This section provides that a penalty imposed under this law is in addition to other civil or administrative penalties imposed by law.

Sec. 17.17.420. This section prohibits the prosecution of an individual under this law, if the individual's act constituted an offense under Federal law or the law of another state and the individual was convicted or acquitted under those laws.

### III. REGULATION OF MANUFACTURE, DISTRIBUTION AND DISPENSING OF CONTROLLED SUBSTANCES

Sec. 17.17.550. This section empowers the Commissioner of Health and Social Services to adopt regulations under the Administrative Procedure Act and to establish reasonable fees relating to the regulation of the legitimate drug industry.

Sec. 17.17.560. This section requires any person who manufactures, distributes, or dispenses controlled substances in this State to register annually with the Commissioner of Health and Social Services. Certain individuals, such as employees of registered dispensers or common carriers, need not register. Furthermore, the commissioner may inspect the establishment of a registrant or applicant.

Sec. 17.17.570. This section establishes the standards whereby the Commissioner of Health and Social Services may grant or deny registration. A person is entitled to registration if he complies with Federal registration requirements.

Sec. 17.17.580. This section establishes the standards whereby the Commissioner of Health and Social Services may revoke or suspend a registration to manufacture, distribute, or dispense a controlled substance.

Sec. 17.17.590. This section provides for the due process rights of an individual whose registration is the subject of a denial, suspension, or revocation. Prior to taking action, the Commissioner of Health and Social Services must serve the individual with a factual statement on which the proposed action is based. The individual is entitled to an adjudication under the Administrative Procedure Act. The commissioner may suspend the registration during the administrative proceedings only if he finds there is an imminent danger to the public.

Sec. 17.17.600. This section requires a registrant to keep and maintain records in conformance with the requirements of Federal law and with the additional requirements the commissioner may adopt.

Sec. 17.17.610. This section provides that the distribution of controlled substances must conform to Federal requirements regarding order forms and prescriptions.

#### IV. ENFORCEMENT AND ADMINISTRATION.

Sec. 17.17.750. This section requires the Commissioner of Public Safety, the Attorney General, and all law enforcement officers of the State to cooperate with drug enforcement agencies of the United States and other states.

Sec. 17.17.760. This section provides for the forfeiture of various items of property utilized in violation of this Act. Aircraft, motor vehicles and vessels are not subject to forfeiture if their use was committed by a person other than the owner or secured party unless such owner or secured party was privy to the violation.

Such property may be forfeited to the state upon a criminal conviction of the defendant or upon a judgment of a court in a civil proceeding against the property.

The property may be seized by the Commissioner of Public Safety upon an order issued by a court finding that probable cause exists that the property is subject to forfeiture. Seizure without a court order may be made if: (1) it is incident to a valid arrest or valid search warrant; (2) it has been the subject of a prior judgment in favor of the State in either a criminal or civil proceeding; or (3) there is probable cause that the property was or is being used in a drug violation and the property is easily movable. Property seized under this last provision, may not be held over 48 hours or until an order may be applied for and issued by a court, whichever is earlier.

Property forfeited under this section shall be disposed of according to court order.

Sec. 17.17.770. This section provides that the burden of proof is on the State to prove by clear and convincing evidence that the property in question is subject to forfeiture. Liability is not imposed upon a State or local officer engaged in the lawful performance of his duties.

Sec. 17.17.780. This section requires the Commissioner of Health and Social Services to provide educational programs designed to prevent and deter abuse of controlled substances. Additionally, the commissioner shall encourage research on controlled substances.

#### V. GENERAL PROVISIONS.

Sec. 17.17.900. This section provides the definitions of various terms used in this Act.

Sec. 17.17.990. This section provides that the Act may be cited as the Controlled Substances Act.

\*Section 2 and \*Section 3.

These sections amend existing statutes that refer to current drug titles that would be repealed by this Act.

\*Section 4.

This section amends AS 12.55.155(c) to provide additional aggravating sentencing factors to be utilized in drug offenses. These additional factors are: (1) smuggling a controlled substance into the State; (2) the commission of an offense involving large quantities of controlled substances; and (3) the commission of an offense involving the distribution of a controlled substance adulterated with a toxic substance.

\*Section 5.

This section amends AS 12.55.155(d) to provide additional mitigating sentencing factors to be employed in drug offenses. Those additional factors are: (1) the commission of an offense involving small quantities of controlled substances; (2) the commission of an offense involving the distribution of a controlled substance for no remuneration to a personal acquaintance 19 years of age or older; and (3) the commission of an offense involving the possession of a controlled substance for personal use in the defendant's home.

\*Section 6.

This section amends existing law regarding the duties of the Department of Health and Social Services.

Section 7.

This section provides for the continuation of various proceedings commenced prior to the effective date of this Act.

\*Section 8.

This section provides for the continuation of orders and regulations not in conflict with this Act until modified, superseded, or repealed.

\*Section 9.

This section provides for the repeal of existing drug statutes.

MWB:vc

Button manville folder - Reg By chart of Calif Law

- # 1 Sec. analysis - Peggy Berch
- # 2 ~~letter~~ memo to Rep Pan from H. Research re: purity of controlled ~~substance~~ substance.
- # 3. DATA <sup>(Drug Tables)</sup> Requested by This Committee from AK Judicial Council (Drug Tables.)
- #4. Comparison of HB 479 w/ FOA reqs. by D. Verner Stillner.
5. letter from Kenai Police chief
6. letter from exec. direct. of Rural exp
7. letter from ~~exec~~ program direct. Akela House
8. letter from ~~exec~~ program direct Phillips alcoholism treatment center.
9. Copy of teleconference testimony Mr. Joe Strausville as requested by committee.
10. copy of testimony from Mr. Ric Adams FHS.
11. folder

STATE OF ALASKA  
THE LEGISLATURE

POUCH Y - STATE CAPITOL  
JUNEAU, ALASKA 99811  
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

March 19, 1980

SUBJECT: CS for HB 479

TO: Representative Thelma Buchholdt, Chairman  
House Health, Education and Social Services  
Committee  
Attn: Shannon Garrett, A.A.

FROM: Thomas A. Sofo  
Legislative Counsel *AS*

The attached committee substitute for House Bill 479 contains the additions which you requested from the governor's bill (HB 628). There are several problems which remain in this most recent version of the bill. First, it should be noted that the "advisory" committee which we have created seems to possess some powers in excess of those typically held by a committee whose function is merely advisory. The committee substitute allows the advisory committee to adopt regulations at least so far as they pertain to the addition of controlled substances to the various schedules in this Act. This quasi-lawmaking authority probably serves to take the committee out of the advisory category.

Secondly, the membership of the committee includes a legislator. Although that legislator is a non-voting member, there are several potential problems raised by his presence on the committee. There is the practical problem of having the governor appoint a legislator to such a committee. There is possibly a more serious problem of constitutional dimensions in having a legislator serve on a committee which exercises executive functions. Even though he may not be drawing a salary or allowed to vote on committee business, the presence of a legislator on such a committee is open to attack on the grounds that his mere presence alone will in some way affect the decisions which the committee reaches. If this were not so, we would not have placed such an individual on the committee. There is also a possible additional argument regarding the constitutional provision against dual office holding by legislators. The latter concern may be satisfied by reference to the fact that the legislator will not be drawing any salary for his service on the committee.

Representative Thelma Buchholdt  
Page 2  
March 19, 1980

I would suggest that the committee consider changing the title of this advisory committee by deleting the adjective "advisory". The bill would also be stronger if we could eliminate the legislative member on the committee. I would be happy to discuss the above points with you at your convenience.

TAS:ljb

Enclosure

STATE OF ALASKA  
THE LEGISLATURE

POUCH Y - STATE CAPITOL  
JUNEAU, ALASKA 99811  
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LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 19, 1980

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TO: Representative Thelma Buchholdt, Chairman  
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Committee  
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FROM: Thomas A. Sofo  
Legislative Counsel *TS*

*Amended*

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TAS:ljb

Enclosure

wo 6432  
Sofa

Original sponsor: Parr

1 IN THE HOUSE

BY THE HEALTH, EDUCATION AND  
SOCIAL SERVICES COMMITTEE

2

CS FOR HOUSE BILL NO. 479

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

ELEVENTH LEGISLATURE - SECOND SESSION

5

A BILL

6

For an Act entitled: "An Act revising the drug laws of the state."

7

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

8

\* Section 1. AS 17 is amended by adding a new chapter to read:

9

CHAPTER 17. CONTROLLED SUBSTANCES ACT.

10

ARTICLE 1. STANDARDS AND PROCEDURES. *OK*

11

Sec. 17.17.010. CONTROLLED SUBSTANCES ADVISORY COMMITTEE. (a)

12

There is created within the Department of Law the Controlled Substances  
Advisory Committee, composed of

14

(1) the attorney general or his designee;

15

(2) the commissioner of health and social services or his

16

designee;

17

(3) the commissioner of public safety or his designee;

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(4) a pharmacist appointed by the governor;

19

(5) an attorney appointed by the governor;

20

(6) a physician appointed by the governor;

21

(7) a psychiatrist appointed by the governor;

22

(8) a member of the legislature appointed by the governor;

23

(9) a member of the general public appointed by the governor.

24

(b) The attorney general, the commissioner of health and social  
services, *and* the commissioner of public safety, and the legislator serve ex  
officio and are nonvoting members of the committee. The members  
appointed by the governor serve terms of four years and until their  
successors are appointed and qualify, except that the attorney initially  
appointed under (a)(5) of this section serves a term of three years and

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until his successor is appointed and qualifies.

(c) The members receive no compensation for their service on the committee but are entitled to travel expenses and per diem under AS 39.20.180.

(d) The committee shall meet at the call of the attorney general. Three <sup>meeting</sup> members constitute a quorum. The committee may adopt bylaws for its proceedings.

Sec. 17.17.020. AUTHORITY TO SCHEDULE CONTROLLED SUBSTANCES. (a)

The committee may <sup>reccomend to the legis</sup> by regulation adopted under the Administrative Procedure Act (AS 44.62) <sup>the addition and deletion of</sup> add substances to the schedules in AS 17.17.-

040 - 17.17.090. <sup>reccomendation</sup> [The committee may not delete substances from those schedules or reclassify substances from one schedule to another] <sup>or deletion</sup> In making a <sup>reccomendation</sup> determination regarding the addition <sup>or deletion</sup> of a substance, the committee shall assess the danger or probable danger of the substance by considering the following:

- (1) the actual or probable abuse of the substance, including
  - (A) its history and current pattern of abuse;
  - (B) the scope, duration, and significance of abuse; and
  - (C) the degree of actual or probable detriment which may result from abuse of the substance;
  - (D) the probable physical and social impact of widespread abuse of the substance;
- (2) the biomedical hazard of the substance, including
  - (A) its pharmacology: the effects and modifiers of effects of the substance;
  - (B) its toxicology: the acute and chronic toxicity, interaction with other substances whether controlled or not, and liability to psychological or physiological dependence;
  - (C) its risk to public health and the particular suscepti

1 bility of segments of the population;

2 (3) whether the substance is an immediate precursor of a  
3 substance already controlled under this chapter;

4 (4) the current state of scientific knowledge regarding the  
5 substance;

6 (5) the relationship between the use of the substance and  
7 other criminal activity including

8 (A) whether persons engaged in illicit trafficking of  
9 the substance are also engaged in other criminal activity;

10 (B) whether the nature and relative profitability of the  
11 substance encourage illicit trafficking in the substance;

12 (C) whether the commission of other crime is one of the  
13 effects of the use of the substance;

14 (D) whether addiction to the substance relates to the  
15 commission of crimes to support the continued use of the substance.

16 (b) If, after considering the factors set out in (a) of this sec-  
17 tion, the committee finds that a substance should be added <sup>or deleted from</sup> to a schedule  
18 the committee shall <sup>request the A.G. and Gov to prepare legislation</sup> adopt a regulation in accordance with its findings.

19 (c) The committee shall advise the governor and the legislature as  
20 <sup>add</sup> to the need to delete or reschedule substances in the schedules in  
21 AS 17.17.040 -17.17.090. In making recommendations regarding a sub-  
22 stance, the committee shall assess the danger or probable danger of the  
23 substance by considering the factors set out in (a) of this section.

24 (d) If the committee designates a substance as an immediate pre-  
25 cursor of a controlled substance, substances which are precursors of the  
26 controlled precursor are not subject to control solely because they are  
27 precursors of the controlled precursor.

28 (e) By the 30th day of each legislative session, the committee  
29 shall prepare and present to the governor and the legislature a report

1 discussing the actions of the committee during the preceding year. <sup>recommented</sup> If  
2 the committee has ~~adopted~~ a regulation adding a controlled substance,  
3 the report shall include the committee's findings of fact and other  
4 supporting information it considers appropriate.

5 (f) The committee has no authority over tobacco or over intoxica-  
6 ting liquor as defined in AS 04.20.010.

7 Sec. 17.17.030. NOMENCLATURE. The controlled substances listed in  
8 the schedules in AS 17.17.040 - 17.17.090 <sup>or</sup> in the regulations adopted  
9 under this chapter are included by whatever official, common, usual,  
10 chemical, or trade name designated. In some instances, slang terms are  
11 listed after a controlled substance. In a prosecution or other proceed-  
12 ing under this chapter, it is not a defense and it is immaterial that a  
13 slang term is listed after more than one controlled substance, that a  
14 slang term listed after a controlled substance is inaccurately applied  
15 to that controlled substance, that no slang term is listed after a  
16 controlled substance, or that slang terms other than those listed apply  
17 in fact to a controlled substance.

18 Sec. 17.17.040. SCHEDULE I. (a) A substance shall be placed in  
19 Schedule I if it is found under AS 17.17.020 to have the highest degree  
20 of danger or probable danger.

21 (b) Unless specifically excepted or unless listed in another  
22 schedule, Schedule I controlled substances include any material compound  
23 which contains any quantity of a substance listed in this subsection,  
24 including its salts, its isomers, (whether optical, position, or geo-  
25 metric), and the salts of its isomers whenever the existence of those  
26 salts, isomers, or salts of isomers is possible within the specific  
27 chemical designation, regardless of whether the listed substance is  
28 produced directly or indirectly by extraction from substances of vege-  
29 table origin or independently by means of chemical synthesis or by a

1 combination of extraction and chemical synthesis:

2 (1) opium and opiate, and any salt, compound, derivative, or  
3 preparation of opium or opiate, excluding apomorphine, dextrorphan,  
4 nalbuphine, naloxone, and naltrexone, and their respective salts, but  
5 including the following:

6 (A) raw opium (slang terms: op, pen yan, hop, tar,  
7 black stuff);

8 (B) opium extracts;

9 (C) opium fluid extracts;

10 (D) powdered opium;

11 (E) granulated opium;

12 (F) tincture of opium;

13 (G) codeine (slang term: school boy);

14 (H) ethylmorphine;

15 (I) etorphine hydrochloride;

16 (J) hydrocodone;

17 (K) hydromorphone;

18 (L) metopon;

19 (M) morphine (slang terms: cube, first line, hocus,  
20 Miss Emma, morph, morpho, morphy, mud, white stuff, hard stuff, M,  
21 unkie);

22 (N) oxycodone;

23 (O) oxymorphone;

24 (P) thebaine;

25 (2) any salt, compound, derivative, or preparation of these  
26 which is chemically equivalent or identical with any of the substances  
27 referred to in (1) of this subsection, except that these substances do  
28 not include the isoquinoline alkaloids of opium;

29 (3) opium poppy and poppy straw;

- 1 (4) concentrate of poppy straw (the crude extract of poppy  
2 straw in liquid, solid, or powder form which contains the phenanthrene  
3 alkaloids of the opium poppy);
- 4 (5) acetylmethadol;  
5 (6) allylprodine;  
6 (7) alphacetylmethadol;  
7 (8) alphameprodine;  
8 (9) alphamethadol;  
9 (10) enileridine;  
10 (11) alphaprodine;  
11 (12) benzethidine;  
12 (13) betacetylmethadol;  
13 (14) betameprodine;  
14 (15) betamethadol;  
15 (16) betaprodine;  
16 (17) clonitazene;  
17 (18) dextromoramide;  
18 (19) dianpromide;  
19 (20) diethylthiambutene;  
20 (21) difenoxin;  
21 (22) dimenoxadol;  
22 (23) dimepheptanol;  
23 (24) dimethylthiambutene;  
24 (25) dioxaphetyl butyrate;  
25 (26) dipipanone;  
26 (27) ethylmethylthiambutene;  
27 (28) etonitazene;  
28 (29) etoxeridine;  
29 (30) furethidine;

- 1 (31) hydroxypethidine;
- 2 (32) ketobemidone;
- 3 (33) levomoramide;
- 4 (34) levophenacymorphan;
- 5 (35) morpheridine;
- 6 (36) noracymethadol;
- 7 (37) norlevorphanol;
- 8 (38) normethadone;
- 9 (39) norpipanone;
- 10 (40) phenadoxone;
- 11 (41) phenampromide;
- 12 (42) phenomorphan;
- 13 (43) phenoperidine;
- 14 (44) piritramide;
- 15 (45) proheptazine;
- 16 (46) properidine;
- 17 (47) propiram;
- 18 (48) racemoramide;
- 19 (49) trimeperidine;
- 20 (50) acetorphine;
- 21 (51) acetyldihydrocodeine;
- 22 (52) benzylmorphine;
- 23 (53) codeine methylbromide;
- 24 (54) codeine-N-oxide;
- 25 (55) cyprenorphine;
- 26 (56) desomorphine;
- 27 (57) dihydromorphine;
- 28 (58) drotebanol;
- 29 (59) etorphine;

1 (60) heroin (s'ang terms: big H, boy, brown, brown sugar,  
2 caballo, Chinese red, chiva, crap, doojee, H, Harry, horse, junk,  
3 Mexican mud, powder, scag, smack, stuff, thing, joy powder, white stuff,  
4 sugar, hairy, skag, schmeck);

5 (61) hydromorphinol;

6 (62) methyldesorphine;

7 (63) methyldihydromorphine;

8 (64) morphine methylbromide;

9 (65) morphine methylsulfonate;

10 (66) morphine-N-oxide;

11 (67) myrophine;

12 (68) nicocodeine;

13 (69) nicomorphine;

14 (70) normorphine;

15 (71) pholcodine;

16 (72) thebacon;

17 (73) alphaprodine;

18 (74) anileridine;

19 (75) bezitramide;

20 (76) dihydrocodeine;

21 (77) diphenoxylate;

22 (78) fentanyl;

23 (79) isomethadone;

24 (80) levomethorphan;

25 (81) levorphanol;

26 (82) metazocine;

27 (83) methadone;

28 (84) methadone-intermediate, 4-cyano-2-dimethylamino-4,

29 4-diphenyl butane;

- 1 (85) moramide-intermediate, 2-methyl-3-morpholino-1,  
2 1-diphenylpropane-carboxylic acid;  
3 (86) pethidine (meperidine);  
4 (87) pethidine-intermediate-A, 4-cyano-1-methyl-4-phenylpiperi-  
5 dine;  
6 (88) pethidine-intermediate-B, ethyl-4-phenylpiperidine-4-  
7 carboxylate;  
8 (89) pethidine-intermediate-C, 1-methyl-4-phenylpiperidine-4-  
9 carboxylic acid;  
10 (90) phenazocine;  
11 (91) piminodine;  
12 (92) racemethorphan;  
13 (93) racemorphan.

14 Sec. 17.17.050. SCHEDULE II. (a) A substance shall be placed in  
15 Schedule II if it is found under AS 17.17.020 to have a degree of danger  
16 or probable danger lower than Schedule I controlled substances but  
17 higher than Schedule III controlled substances.

18 (b) Unless specifically excepted or unless listed in another  
19 schedule, Schedule II controlled substances include any material com-  
20 pound which contains any quantity of a substance listed in this subsec-  
21 tion, including its salts, its isomers (whether optical, position, or  
22 geometric), and the salts of its isomers whenever the existence of those  
23 salts, isomers, or salts of isomers is possible within the specific  
24 chemical designation, regardless of whether the listed substance is  
25 produced directly or indirectly by extraction from substances of vege-  
26 table origin or independently by means of chemical synthesis or by a  
27 combination of extraction and chemical synthesis:

28 (1) cocaine and any compound, derivative, or preparation of  
29 coca leaves produced directly or indirectly by extraction from coca

1 leaves, or independently by means of chemical synthesis, or by a  
2 combination of extraction and chemical synthesis, including the isomers,  
3 salts, and salts of isomers of cocaine and other derivatives of coca  
4 leaves whenever the existence of such isomers and salts is possible, but  
5 does not include decocainized coca leaves or extractions of coca leaves  
6 which do not contain cocaine or ecgonine (slang terms: Bernice,  
7 bernies, big C, blow, C, coke, dream, flake, girl, gold dust, heaven  
8 dust, nose candy, paradise, rock, white, happy dust, speedballs, snow  
9 birds, Cecil, stardust, Corine, Carrie, dust, Burese);

10 (2) 4-bromo-2,5-dimethoxy-amphetamine, also known as bromo-2,  
11 5-dimethoxy-a-methylphenethylamine and 4-bromo-2,5-DMA;

12 (3) 2,5-dimethoxyamphetamine, also known as 2,5-dimethoxy-a-  
13 methylphenethylamine and 2,5-DMA;

14 (4) 4-methoxyamphetamine, also known as 4-methoxy-a-  
15 methylphenethylamine and paramethoxyamphetamine, PMA;

16 (5) 5-methoxy-3,4-methylenedioxy-amphetamine;

17 (6) 4-methyl-2,5-dimethoxy-amphetamine, also known as 4-  
18 methyl-2,5-dimethoxy-a-methylphenethylamine (slang terms: DOM, MDA,  
19 STP, serenity, tranquility, and peace, cone drug);

20 (7) 3,4-methylenedioxy amphetamine;

21 (8) 3,4,5-trimethoxy amphetamine;

22 (9) bufotenine, also known as 3-(b-dimethylaminoethyl)-5-  
23 hydroxyindole and 3-(2-dimethylaminoethyl)-5-indolol and N,N-  
24 dimethylserotonin and 5-hydroxy-N,N-dimethyltryptamine and mappine;

25 (10) diethyltryptamine, also known as N,N-diethyltryptamine  
26 and DET;

27 (11) dimethyltryptamine, also known as DMT (slang terms:  
28 businessman's special, lunch-hour trip);

29 (12) ibogaine, also known as 7-ethyl-6,6,8,7,8,9,10,12,13-

1 octahydro-2-methoxy-6,9-methano-5H-pyrido [1', 2':1,2] azepino [5,4-b]  
2 indole and Tabernanthe iboga;

3 (13) lysergic acid diethylamide (slang terms: Alice D, acid,  
4 beast, big D, blue cheer, blue heaven, blue mist, brown dots, California  
5 sunshine, chocolate chips, coffee, contact lens, cupcakes, haze, mellow  
6 yellows, microdots, orange mushrooms, orange wedges, Owsley, paper acid,  
7 royal blue, strawberry fields, sugar, sunshine, the hawk, wedges, white  
8 lightning, window pane, yellows, cubes, 25, Lucy in the sky with dia-  
9 monds);

10 (14) mescaline (slang terms: mesc, mescal, moon);

11 (15) peyote, meaning all parts of the plant presently classi-  
12 fied botanically as *Lophophora williamsii* Lemaire, whether growing or  
13 not, the seeds of the plant, any extract from any part of the plant, and  
14 every compound, manufacture, salts, derivative, mixture, or preparation  
15 of the plant, its seeds, or extracts (slang terms: buttons, cactus,  
16 mescal buttons, mesc, mescal, plants);

17 (16) N-ethyl-3-piperidyl benzilate;

18 (17) N-methyl-3-piperidyl benzilate (slang term: LBJ);

19 (18) psilocybin (slang terms: magic mushroom, mushroom);

20 (19) psilocyn (slang terms: magic mushroom, mushroom);

21 (20) chemically synthesized tetrahydrocannabinols, also known  
22 as THC;

23 (21) thiophene analog of phencyclidine, also known as:  
24 1-[1-(2-thienyl) cyclohexyl] piperidine and 2-thienyl analog of  
25 phencyclidine and TPCP;

26 (22) phencyclidine, also known as PCP (slang terms: angel  
27 dust, DOA (Dead On Arrival), hog, killer weed (when combined with mari-  
28 juana or other plant material), peace pill);

29 (23) mecloqualone;

1 (24) amphetamine, its salts, optical isomers, and salts of its  
2 optical isomers (slang terms: beans, bennies, black beauties, black-  
3 birds, black Mollies, bumblebees, cartweels, chalk, chicken powder,  
4 copilots, crank, crossroads, crystal, dexies, double cross, eye openers,  
5 hearts, jelly beans, lightning, meth, minibennies, nuggets, oranges, pep  
6 pills, speed, roses, thrusters, truck drivers, turnabouts, uppers, ups,  
7 wake-ups, peaches, whites, browns, greenies, bombido, jugs, bottles, lid  
8 proppers, football, coast-to-coast, L.A. turnabouts);

9 (25) methamphetamine, its salts, isomers, and salts of its  
10 isomers (slang terms: bombido, crystal, meth, speed, splash);

11 (26) phenmetrazine and its salts;

12 (27) methylphenidate;

13 (28) methaqualone (slang terms: ludes, quads, quads, soapers,  
14 sopes);

15 (29) amobarbital (slang terms: barbs, block busters, Christ-  
16 mas trees, downers, green dragons, peanuts, sleeping pills, stumblers,  
17 goofballs, goofs, tuinal, tuies, rainbow, double trouble, red and  
18 blues);

19 (30) secobarbital (slang terms: barbs, block busters, Christ-  
20 mas trees, downers, green dragons, peanuts, sleeping pills, stumblers,  
21 goofballs, goofs, tuinal, tuies, rainbow, double trouble, red and blues,  
22 reds, red birds, red devils, seccy, pink, seggy, pink.ladies, marsh-  
23 mallow reds, Mexican reds);

24 (31) pentobarbital (slang terms: barbs, block busters,  
25 Christmas trees, downers, green dragons, peanuts, sleeping pills,  
26 stumblers, goofballs, goofs, yellow jackets, yellows, nimby's, nimbies,  
27 nobbies).

28 Sec. 17.17.000. SCHEDULE III. (a) A substance shall be placed in  
29 Schedule III if it is found under AS 17.17.020 to have a degree of

1 danger or probable danger lower than Schedule II controlled substances  
2 but higher than Schedule IV controlled substances.

3 (b) Unless specifically excepted or unless listed in another  
4 schedule, Schedule III controlled substances include any material com-  
5 pound which contains any quantity of a substance listed in this subsec-  
6 tion, including its salts, its isomers (whether optical, position, or  
7 geometric), and the salts of its isomers whenever the existence of those  
8 salts, isomers, or salts of isomers is possible within the specific  
9 chemical designation, regardless of whether the listed substance is  
10 produced directly or indirectly by extraction from substances of vege-  
11 table origin or independently by means of chemical synthesis or by a  
12 combination of extraction and chemical synthesis:

13 (1) benzphetamine;

14 (2) chlorphentermine;

15 (3) clortermine;

16 (4) mazindol;

17 (5) phendimetrazine;

18 (6) any compound, mixture, or preparation containing amobar-  
19 bital, secobarbital, or pentobarbital or any salt of any of these sub-  
20 stances combined with one or more other active medicinal ingredients  
21 which are not listed in any classification in this section;

22 (7) any suppository dosage form containing amobarbital,  
23 secobarbital, or pentobarbital or any salt of any of these substances  
24 which are approved by the federal Food and Drug Administration for  
25 marketing only as a suppository;

26 (8) any substance, having a depressant effect on the central  
27 nervous system, which contains any quantity or derivative of barbituric  
28 acid or any salt of these;

29 (9) chlorhexadol;

- 1 (10) glutethimide (slang terms: C.D., cibas);  
2 (11) lysergic acid;  
3 (12) lysergic acid amide;  
4 (13) methyprylon;  
5 (14) sulfondiethylmethane;  
6 (15) sulfonethylmethane;  
7 (16) sulfonmethane;  
8 (17) nalorphine;

9 (18) any material, compound, mixture, or preparation contain-  
10 ing limited quantities of any of the following substances or any of  
11 their salts:

12 (A) not more than 1.8 grams of codeine per 100 milli-  
13 liters or not more than 90 milligrams per dosage unit, with an  
14 equal or greater quantity of an isoquinoline alkaloid of opium;

15 (B) not more than 1.8 grams of codeine per 100 milli-  
16 liters or not more than 90 milligrams per dosage unit, with one or  
17 more active, nonnarcotic ingredients in recognized therapeutic  
18 amounts;

19 (C) not more than 300 milligrams of dihydrocodeinone per  
20 100 milliliters or not more than 15 milligrams per dosage unit,  
21 with a fourfold or greater quantity of an isoquinoline alkaloid of  
22 opium;

23 (D) not more than 300 milligrams of dihydrocodeinone per  
24 100 milliliters or not more than 15 milligrams per dosage unit,  
25 with one or more active nonnarcotic ingredients in recognized  
26 therapeutic amounts;

27 (E) not more than 1.8 grams of dihydrocodeine per 100  
28 milliliters or not more than 90 milligrams per dosage unit, with  
29 one or more active nonnarcotic ingredients in recognized thera-

1           peutic amounts;

2                   (F) not more than 300 milligrams of ethylmorphine per  
3           100 milliliters or not more than 15 milligrams per dosage unit,  
4           with one or more active, nonnarcotic ingredients in recognized  
5           therapeutic amounts;

6                   (G) not more than 500 milligrams of opium per 100 milli-  
7           liters or per 100 grams or not more than 25 milligrams per dosage  
8           unit, with one or more active, nonnarcotic ingredients in recog-  
9           nized therapeutic amounts;

10                   (H) not more than 50 milligrams of morphine per 100  
11           milliliters or per 100 grams, with one or more active, nonnarcotic  
12           ingredients in recognized therapeutic amounts.

13           Sec. 17.17.070. SCHEDULE IV. (a) A substance shall be placed in  
14           Schedule IV if it is found under AS 17.17.020 to have a degree of danger  
15           or probable danger lower than Schedule III controlled substances but  
16           higher than Schedule V controlled substances.

17                   (b) Unless specifically excepted or unless listed in another  
18           schedule, Schedule IV controlled substances include any material com-  
19           pound which contains any quantity of a substance listed in this subsec-  
20           tion, including its salts, its isomers (whether optical, position, or  
21           geometric), and the salts of its isomers whenever the existence of those  
22           salts, isomers, or salts of isomers is possible within the specific  
23           chemical designation, regardless of whether the listed substance is  
24           produced directly or indirectly by extraction from substances of vege-  
25           table origin or independently by means of chemical synthesis or by a  
26           combination of extraction and chemical synthesis:

27                   (1) barbital;

28                   (2) chloral betaine;

29                   (3) chloral hydrate (slang terms: knockout drops, Mickey

- 1 Finn, Mickey, Peter);
- 2 (4) chlordiazepoxide;
- 3 (5) clonazepam;
- 4 (6) clorazepate;
- 5 (7) diazepam;
- 6 (8) ethchlorvynol;
- 7 (9) ethinamate;
- 8 (10) flurazepam;
- 9 (11) lorazepam;
- 10 (12) mebutamate;
- 11 (13) meprobamate;
- 12 (14) methohexital;
- 13 (15) methylphenobarbital (mephobarbital);
- 14 (16) oxazepam;
- 15 (17) paraldehyde;
- 16 (18) petrichloral;
- 17 (19) phenobarbital;
- 18 (20) prazepam;
- 19 (21) pentazocine;
- 20 (22) fenfluramine;
- 21 (23) diethylpropion;
- 22 (24) phentermine;
- 23 (25) pemoline, including organometallic complexes and chelates
- 24 thereof;
- 25 (26) dextropropoxyphene (alpha-(+)-4-dimethylamino-1,2-
- 26 diphenyl-3-methyl-2-propionoxybutane);
- 27 (27) hashish and hashish oil (slang terms: black Russian,
- 28 hash, kif, quarter moon, soles).

29 Sec. 17.17.08C SCHEDULE V. (a) A substance shall be placed in

1 Schedule V if it is found under AS 17.17.020 to have a degree of danger  
2 or probable danger lower than Schedule IV controlled substances but  
3 higher than Schedule VI controlled substances.

4 (b) Unless specifically excepted or unless listed in another  
5 schedule, Schedule V controlled substances include loperamide and any  
6 material compound which contains any quantity of a substance listed in  
7 this subsection, including its salts, its isomers (whether optical,  
8 position, or geometric), and the salts of its isomers whenever the  
9 existence of those salts, isomers, or salts of isomers is possible  
10 within the specific chemical designation, regardless of whether the  
11 listed substance is produced directly or indirectly by extraction from  
12 substances of vegetable origin or independently by means of chemical  
13 synthesis or by a combination of extraction and chemical synthesis.  
14 Schedule V controlled substances include the following controlled sub-  
15 stances, otherwise listed in AS 17.17.040(b), when they are combined in  
16 the following portions with one or more nonnarcotic active medicinal  
17 ingredients in sufficient portion to confer upon the compound mixture  
18 preparation valuable medicinal qualities other than those possessed by  
19 the Schedule I controlled substance:

20 (1) not more than 200 milligrams of codeine per 100 milli-  
21 liters or per 100 grams;

22 (2) not more than 100 milligrams of dihydrocodeine per 100  
23 milliliters or per 100 grams;

24 (3) not more than 100 milligrams of ethylmorphine per 100  
25 milliliters or per 100 grams;

26 (4) not more than 2.5 milligrams of diphenoxylate and not  
27 less than 25 micrograms of atropine sulfate per dosage unit;

28 (5) not more than 100 milligrams of opium per 100 milliliters  
29 or per 100 grams.

1           Sec. 17.17.090. SCHEDULE VI. (a) A substance shall be placed in  
2 Schedule VI if it is found under AS 17.17.020 to have the lowest degree  
3 of danger or probable danger.

4           (b) Schedule VI controlled substances include marijuana (slang  
5 terms: Acapulco gold, broccoli, bush, dry high, gage, ganga, grass,  
6 griffo, hay, hemp, herb, J, Jay, Jane, Mary Jane, mota, mutah, Panama  
7 red, pod, pot, reefer, sativa, smoke, stick, tea, weed, stuff, rope,  
8 joints, Texas tea, goof butt, jive, sweet lunch, stinkweed, lozoweed,  
9 mezz, Mary Waner, Indian hay, fu, bobo bush).

10                           ARTICLE 2. OFFENSES AND PENALTIES.

11           Sec. 17.17.200. DISTRIBUTING A CONTROLLED SUBSTANCE TO A MINOR.

12           (a) Except as authorized in this chapter, it is unlawful for a person  
13 knowingly to distribute a controlled substance to a minor who is three  
14 or more years younger than the person.

15           (b) A person who violates this section with respect to

16                           (1) a Schedule I controlled substance is guilty of an un-  
17 classified felony;

18                           (2) a Schedule II controlled substance is guilty of a class A  
19 felony;

20                           (3) a Schedule III controlled substance is guilty of a class  
21 A felony;

22                           (4) a Schedule IV controlled substance is guilty of a class B  
23 felony;

24                           (5) a Schedule V controlled substance is guilty of a class B  
25 felony;

26                           (6) a Schedule VI controlled substance is guilty of a class B  
27 felony.

28           Sec. 17.17.210. MANUFACTURING. <sup>a controlled substance</sup> (a) Except as authorized in this  
29 chapter, it is unlawful for a person knowingly to manufacture a con-

1 trolled substance.

2 (b) A person who violates this section with respect to

3 (1) a Schedule I controlled substance is guilty of a class A  
4 felony;

5 (2) a Schedule II controlled substance is guilty of a class A  
6 felony;

7 (3) a Schedule III controlled substance is guilty of a class  
8 B felony;

9 (4) a Schedule IV controlled substance is guilty of a class B  
10 felony;

11 (5) a Schedule V controlled substance is guilty of a class C  
12 felony;

13 (6) a Schedule VI controlled substance is guilty of a class C  
14 felony.

15 Sec. 17.17.220. DISTRIBUTING A CONTROLLED SUBSTANCE. (a) Except  
16 as authorized in this chapter, it is unlawful for a person knowingly to  
17 distribute a controlled substance.

18 (b) A person is guilty of

19 (1) a class A felony if he knowingly distributes a Schedule I  
20 controlled substance;

21 (2) a class A felony if he knowingly distributes a Schedule  
22 II controlled substance;

23 (3) a class B felony if he knowingly distributes a Schedule  
24 III controlled substance;

25 (4) a class C felony if he knowingly distributes a Schedule  
26 IV controlled substance;

27 (5) a class C felony if he knowingly distributes a Schedule V  
28 controlled substance.

29 Sec. 17.17.230. DISTRIBUTING A SCHEDULE VI CONTROLLED SUBSTANCE.

1 (a) Except as authorized in this chapter, it is unlawful for a person  
2 knowingly to distribute a Schedule VI controlled substance.

3 (b) A person is guilty of a class C felony if he violates this  
4 section by knowingly distributing one or more preparations, compounds,  
5 mixtures, or substances of an aggregate weight of two ounces or more  
6 containing a Schedule VI controlled substance.

7 (c) A person is guilty of a class A misdemeanor if he violates  
8 this section by knowingly distributing one or more preparations, com-  
9 pounds, mixtures, or substances of an aggregate weight of less than two  
10 ounces containing a Schedule VI controlled substance. However, in a  
11 prosecution under this subsection, it is a defense which reduces the  
12 crime to a class B misdemeanor that the preparations, compounds,  
13 mixtures, or substances containing a Schedule VI controlled substance  
14 were of an aggregate weight of one ounce or less and that the distribu-  
15 tion was made for no remuneration to a person 18 years of age or older.  
16 As used in this subsection, "defense" has the meaning ascribed to it in  
17 AS 11.81.900(b).

18 Sec. 17.17.240. POSSESSION OF CONTROLLED SUBSTANCES. (a) Except  
19 as authorized in this chapter, it is unlawful for a person knowingly to  
20 possess a Schedule I controlled substance. A person is guilty of

21 (1) a class A felony if he knowingly possesses

22 (A) 100 or more capsules, tablets, ampules, or syrettes  
23 containing a Schedule I controlled substance; or

24 (B) one or more preparations, compounds, mixtures, or  
25 substances of an aggregate weight of

26 (i) one ounce or more containing heroin or morphine  
27 or any of their respective alkaloids or salts; or

28 (ii) two ounces or more containing a Schedule I con-  
29 trolled substance other than heroin or morphine or any of their

1           respective alkaloids or salts;

2           (2) a class B felony if he knowingly possesses

3           (A) 50 or more but fewer than 100 capsules, tablets,  
4           ampules, or syrettes containing a Schedule I controlled substance;

5           or

6           (B) one or more preparations, compounds, mixtures, or  
7           substances of an aggregate weight of

8           (i) one-fourth ounce or more but less than one  
9           ounce containing heroin or morphine or any of their respective  
10          alkaloids or salts; or

11          (ii) one-half ounce or more but less than two ounces  
12          containing a Schedule I controlled substance other than heroin or  
13          morphine or any of their respective alkaloids or salts;

14          (3) a class C felony if he knowingly possesses

15          (A) 25 or more but fewer than 50 capsules, tablets,  
16          ampules, or syrettes containing a Schedule I controlled substance;

17          or

18          (B) one or more preparations, compounds, mixtures, or  
19          substances of an aggregate weight of

20          (i) one-eighth ounce or more but less than one-  
21          fourth ounce containing heroin or morphine or any of their respec-  
22          tive alkaloids or salts; or

23          (ii) one-fourth ounce or more but less than one-half  
24          ounce containing a Schedule I controlled substance other than  
25          heroin or morphine or any of their respective alkaloids or salts;

26          (4) a class A misdemeanor if he knowingly possesses a  
27          Schedule I controlled substance in a smaller amount than the ranges  
28          specified in (3) of this subsection.

29          (b) Except as authorized in this chapter, it is unlawful for a

1 person knowingly to possess a Schedule II controlled substance. A  
2 person is guilty of

3 (1) a class A felony if he knowingly possesses

4 (A) 200 or more capsules, tablets, ampules, or syrettes  
5 containing a Schedule II controlled substance; or

6 (B) one or more preparations, compounds, mixtures, or  
7 substances of an aggregate weight of two ounces or more containing  
8 a Schedule II controlled substance;

9 (2) a class B felony if he knowingly possesses

10 (A) 100 or more but fewer than 200 capsules, tablets,  
11 ampules, or syrettes containing a Schedule II controlled substance;  
12 or

13 (B) one or more preparations, compounds, mixtures, or  
14 substances of an aggregate weight of one-half ounce or more but  
15 less than two ounces containing a Schedule II controlled substance;

16 (3) a class C felony if he knowingly possesses

17 (A) 50 or more but fewer than 100 capsules, tablets,  
18 ampules, or syrettes containing a Schedule II controlled substance;  
19 or

20 (B) one or more preparations, compounds, mixtures, or  
21 substances of an aggregate weight of one-fourth ounce or more but  
22 less than one-half ounce containing a Schedule II controlled  
23 substance;

24 (4) a class A misdemeanor if he knowingly possesses a  
25 Schedule II controlled substance in a smaller amount than the ranges  
26 specified in (3) of this subsection.

27 (c) Except as authorized in this chapter, it is unlawful for a  
28 person knowingly to possess a Schedule III controlled substance. A  
29 person is guilty of

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(1) a class B felony if he knowingly possesses

(A) 400 or more capsules, tablets, ampules, or syrettes containing a Schedule III controlled substance; or

(B) one or more preparations, compounds, mixtures, or substances of an aggregate weight of two ounces or more containing a Schedule III controlled substance;

(2) a class C felony if he knowingly possesses

(A) 100 or more but fewer than 400 capsules, tablets, ampules, or syrettes containing a Schedule III controlled substance; or

(B) one or more preparations, compounds, mixtures, or substances of an aggregate weight of one-half ounce or more but less than two ounces containing a Schedule III controlled substance;

(3) a class A misdemeanor if he knowingly possesses a Schedule III controlled substance in a smaller amount than the ranges specified in (2) of this subsection.

(d) Except as authorized in this chapter, it is unlawful for a person knowingly to possess a Schedule IV controlled substance. A person is guilty of

(1) a class C felony if he knowingly possesses

(A) 100 or more capsules, tablets, ampules, or syrettes containing a Schedule IV controlled substance; or

(B) one or more preparations, compounds, mixtures, or substances of an aggregate weight of two ounces or more containing a Schedule IV controlled substance;

(2) a class C felony if he knowingly possesses

(A) 100 or more but fewer than 400 capsules, tablets, ampules, or syrettes containing a Schedule IV controlled substance;

1 or

2 (B) one or more preparations, compounds, mixtures, or  
3 substances of an aggregate weight of one-half ounce or more but  
4 less than two ounces containing a Schedule IV controlled substance;

5 (3) a class A misdemeanor if he knowingly possesses a  
6 Schedule IV controlled substance in a smaller amount than the ranges  
7 specified in (c) of this section.

8 (e) Except as authorized in this chapter, it is unlawful for a  
9 person knowingly to possess a Schedule V controlled substance. A person  
10 is guilty of

11 (1) a class C felony if he knowingly possesses

12 (A) 400 or more capsules or tablets containing a  
13 Schedule V controlled substance; or

14 (B) one or more preparations, compounds, mixtures, or  
15 substances of an aggregate weight of one ounce or more containing a  
16 Schedule V controlled substance;

17 (2) a class A misdemeanor if he knowingly possesses a  
18 Schedule V controlled substance in a smaller amount than the ranges  
19 specified in (1) of this subsection.

20 Sec. 17.17.250. POSSESSION OF A SCHEDULE VI CONTROLLED SUBSTANCE.

21 (a) Except as authorized in this chapter, it is unlawful for a person  
22 knowingly to possess a Schedule VI controlled substance.

23 (b) A person who knowingly (1) uses a Schedule VI controlled  
24 substance in a public place, (2) possesses more than an ounce of a  
25 Schedule VI controlled substance in a public place, (3) possesses any  
26 amount of a Schedule VI controlled substance while operating a motor  
27 vehicle or airplane, or (4) while under the age of 18 possesses or uses  
28 any amount of a Schedule VI controlled substance, is, upon conviction,  
29 guilty of a misdemeanor punishable by a fine of not more than \$1,000.

1 (c) A person 18 years of age or older who violates this chapter by  
2 possession of any amount of marijuana in other than a public place, when  
3 his possession is for his own use, or by possession of one ounce or less  
4 of marijuana in a public place, is punishable by a civil fine of not  
5 more than \$100. Punishment under this subsection shall be initiated  
6 only by civil complaint or citation. The court may establish procedures  
7 for payment of fines by mail.

8 (d) In this section, "public place" means a place which is either  
9 in public ownership or a place available to public access including  
10 public streets, sidewalks, carriers and business establishments.

11 Sec. 17.17.260. FAILURE TO MAKE, KEEP, OR FURNISH REQUIRED INFOR-  
12 MATION. (a) Except as authorized in this chapter, it is unlawful for a  
13 person knowingly to refuse or fail to make, keep, or furnish a record,  
14 notification, order form, statement, invoice, or information required  
15 under this chapter.

16 (b) A person who violates this section is guilty of a class B  
17 misdemeanor.

18 Sec. 17.17.270. MISCELLANEOUS OFFENSES. (a) Except as authorized  
19 in this chapter, it is unlawful for a person

20 (1) knowingly to keep or maintain in a store, shop, warehouse,  
21 dwelling, building, vehicle, vessel, aircraft, or other structure or  
22 place which is used for keeping or selling controlled substances in  
23 violation of this chapter;

24 (2) to use in the course of the manufacture or distribution  
25 of a controlled substance a registration number which is fictitious,  
26 revoked, suspended, or issued to another person;

27 (3) to obtain possession of a controlled substance by mis-  
28 representation, fraud, forgery, or other deception;

29 (4) to make, distribute, or possess a punch, die, plate,

1 stone, or other thing designed to print, imprint, or reproduce the  
2 trademark, trade name, or other identifying mark, imprint, or device of  
3 another or any likeness of any of the foregoing upon a drug or container  
4 or labeling so as to render a drug a counterfeit substance;

5 (5) to furnish false or fraudulent material information in,  
6 or omit material information from, an application, report, record, or  
7 other document required to be kept or filed under this chapter.

8 (b) A person who violates this section is guilty of a class C  
9 felony.

10 Sec. 17.17.280. OFFENSES DEFINED BY AMOUNTS. Whenever a provision  
11 of this chapter defining an offense requires a determination of an  
12 amount, it is not a defense to the lowest class of offense established  
13 by the evidence that the amount in question was larger than the amount  
14 which would make the offense a higher class of offense, and a person may  
15 be charged and convicted accordingly.

16 Sec. 17.17.290. PENALTIES UNDER OTHER LAWS. A penalty imposed for  
17 a violation of this chapter is in addition to, and not in place of, a  
18 civil or administrative penalty or sanction otherwise authorized by law.

19 ARTICLE 3. REGULATION OF MANUFACTURE, DISTRIBUTION,  
20 AND DISPENSING OF CONTROLLED SUBSTANCES.

21 Sec. 17.17.550. REGULATIONS. The commissioner shall adopt regu-  
22 lations under the Administrative Procedure Act (AS 44.62) which are  
23 necessary for the administration of AS 17.17.550 - 17.17.610 and may  
24 charge reasonable fees relating to the registration and control of the  
25 manufacture, distribution, and dispensing of controlled substances in  
26 this state.

27 Sec. 17.17.560. REGISTRATION REQUIREMENTS. (a) A person who  
28 manufactures, distributes, or dispenses a controlled substance in this  
29 state or who proposes to engage in the manufacture, distribution, or

1 dispensing of a controlled substance in this state, shall annually  
2 register with the commissioner in accordance with regulations adopted  
3 under AS 17.17.550.

4 (b) A person registered by the commissioner under AS 17.17.550 -  
5 17.17.610 to manufacture, distribute, or dispense controlled substances,  
6 including any such activity in the conduct of research, may possess,  
7 manufacture, distribute, or dispense those substances to the extent  
8 authorized by his registration and in conformity with the other pro-  
9 visions of AS 17.17.550 - 17.17.610.

10 (c) The following persons need not register and may lawfully  
11 possess controlled substances under this chapter:

12 (1) an agent or employee of a registered manufacturer, dis-  
13 tributor, or dispenser of a controlled substance if the possession is  
14 incidental to the agent's or employee's acting in the usual course of  
15 business or employment;

16 (2) a common or contract carrier or warehouseman, or his  
17 employee, whose possession of a controlled substance is in the usual  
18 course of business or employment;

19 (3) a person in possession of a controlled substance under an  
20 order of a registered practitioner.

21 (d) The commissioner may, by regulation, waive the requirement for  
22 registration of certain manufacturers, distributors, or dispensers if he  
23 finds it consistent with the public health and safety.

24 (e) A separate registration is required for each principal place  
25 of business or professional practice where the applicant manufactures,  
26 distributes, or dispenses controlled substances.

27 (f) The commissioner may inspect the establishment of a registrant  
28 or applicant for registration in accordance with his regulations.

29 Sec. 17.17.570. REGISTRATION. (a) The commissioner shall

1 register an applicant to manufacture, distribute, or dispense controlled  
2 substances included in the schedules in AS 17.17.040 - 17.17.090 unless  
3 he finds that the registration would be inconsistent with the public  
4 interest. In determining the public interest, the commissioner shall  
5 consider

6 (1) maintenance of effective controls against diversion of  
7 controlled substances into other than legitimate medical, scientific, or  
8 industrial channels;

9 (2) compliance with applicable state and local law;

10 (3) any conviction of the applicant under federal or state  
11 laws relating to controlled substances;

12 (4) past experience in the manufacture or distribution of  
13 controlled substances, and the existence in the applicant's establish-  
14 ment of effective controls against diversion;

15 (5) furnishing by the applicant of false information in an  
16 application filed under this chapter;

17 (6) suspension or revocation of the applicant's federal  
18 registration to manufacture, distribute, or dispense controlled sub-  
19 stances as authorized by federal law; and

20 (7) any other factors relevant to the public health and  
21 safety.

22 (b) A practitioner registered under federal law to manufacture,  
23 distribute, or dispense controlled substances is exempt from regis-  
24 tration under this section.

25 Sec. 17.17.580. REVOCATION AND SUSPENSION OF REGISTRATION. (a) A  
26 registration under AS 17.17.570 to manufacture, distribute, or dispense  
27 a controlled substance may be suspended or revoked by the commissioner  
28 upon a finding that the registrant

29 (1) has furnished false or fraudulent material information in

1 an application filed under this chapter,

2 (2) has been convicted of a felony under state or federal law  
3 relating to a controlled substance; or

4 (3) has had his federal registration to manufacture, dis-  
5 tribute, or dispense controlled substances suspended or revoked.

6 (b) The commissioner may limit the revocation or suspension of a  
7 registration to the particular controlled substance with respect to  
8 which grounds for revocation or suspension exist.

9 (c) If the commissioner suspends or revokes a registration, all  
10 controlled substances owned or possessed by the registrant at the time  
11 of suspension or the effective date of the revocation order may be  
12 placed under seal. A disposition may not be made of substances under  
13 seal until the time for taking an appeal has elapsed or until all  
14 appeals have been concluded unless a court, upon application, orders the  
15 sale of perishable substances and the deposit of the proceeds of the  
16 sale with the court. Upon a revocation order becoming final, all  
17 controlled substances are forfeited to the state.

18 (d) The commissioner shall promptly notify the Drug Enforcement  
19 Administration of all orders suspending or revoking registration and all  
20 forfeitures of controlled substances.

21 Sec. 17.17.590. ORDER TO SHOW CAUSE. (a) Before denying, sus-  
22 pending or revoking a registration, or refusing a renewal of registra-  
23 tion, the commissioner shall serve upon the applicant or registrant an  
24 order to show cause why registration should not be denied, revoked, or  
25 suspended, or why the renewal should not be refused. The order to show  
26 cause shall contain a statement of the basis for it and shall call upon  
27 the applicant or registrant to appear before the commissioner at a time  
28 and place not less than 30 days after the date of the service of the  
29 order, but in the case of a refusal of renewal of registration the show

1 cause order shall be served not later than 30 days before the expiration  
2 of the registration. These proceedings shall be conducted under the  
3 administrative adjudication provisions of the Administrative Procedure  
4 Act (AS 44.62.330 - 44.62.630) without regard to criminal prosecution or  
5 other proceeding. Proceedings to refuse renewal of registration do not  
6 abate the existing registration, which remains in effect pending the  
7 outcome of the administrative hearing.

8 (b) The commissioner may, without an order to show cause, suspend  
9 a registration simultaneously with the institution of proceedings under  
10 AS 17.17.580 if he finds that there is an imminent danger to the public  
11 health or safety which warrants this action. The suspension shall  
12 continue in effect until the conclusion of the proceedings, including  
13 judicial review of the proceedings, unless sooner withdrawn by the  
14 commissioner or dissolved by a court of competent jurisdiction.

15 Sec. 17.17.600. RECORDS OF REGISTRANTS. A person registered to  
16 manufacture, distribute, or dispense controlled substances under this  
17 chapter shall keep records and maintain inventories in conformance with  
18 the record-keeping and inventory requirements of federal law and with  
19 additional regulations the commissioner may adopt.

20 Sec. 17.17.610. ORDER FORMS; PRESCRIPTIONS. (a) A controlled  
21 substance may be distributed by one registrant to another registrant  
22 only if the distribution is in accordance with federal requirements for  
23 order forms.

24 (b) A controlled substance may not be dispensed by a practitioner  
25 except in accordance with federal requirements regarding prescriptions  
26 for controlled substances; however, a controlled substance may be dis-  
27 pensed directly by a practitioner, other than a pharmacist, to an ulti-  
28 mate user without a prescription.

29 ARTICLE 4. ENFORCEMENT AND ADMINISTRATION.

1           Sec. 17.17.750. ENFORCEMENT COOPERATION. It is the duty of the  
2 commissioner of public safety, officers of the division of state  
3 troopers, officers appointed to enforce criminal law in this state or  
4 another state, local government law enforcement officers, the attorney  
5 general, and all prosecuting attorneys to enforce all provisions of this  
6 chapter and to cooperate with agencies charged with enforcement of the  
7 laws relating to controlled substances of the United States, of this  
8 state, and of all other states.

9           Sec. 17.17.760. FORFEITURES. (a) The following are subject to  
10 forfeiture:

11           (1) a controlled substance which has been manufactured,  
12 distributed, acquired, or possessed in violation of this chapter;

13           (2) raw materials, products, and equipment which are used in  
14 manufacturing or distributing a controlled substance in violation of  
15 this chapter;

16           (3) property which is used as a container for property des-  
17 cribed in (1) or (2) of this subsection;

18           (4) conveyances, including aircraft, vehicles, or vessels  
19 which are used to transport or in any manner to facilitate transporta-  
20 tion of property described in (1) or (2) of this subsection for the  
21 purpose of sale or receipt, except

22           (A) a conveyance is not subject to forfeiture under this  
23 section if its use in violation of this chapter was committed by a  
24 person other than the owner of the conveyance and the owner was not  
25 privy to the violation;

26           (B) a forfeiture of a conveyance encumbered by a bona  
27 fide security interest at the time of seizure is subject to the  
28 interest of the secured party if its use in violation of this  
29 chapter was committed by a person other than the secured party and

1 the secured party was not privy to the violation;

2 (5) all books, records, and research products and materials,  
3 including formulas, microfilm, tapes, and data which are used in viola-  
4 tion of this chapter.

5 (b) Property listed in (a) of this section may be forfeited to the  
6 state upon conviction of the defendant of a violation of this chapter or  
7 upon judgment of a court of competent jurisdiction in a civil proceeding  
8 in rem that an item is subject to forfeiture.

9 (c) Property subject to forfeiture under this section may be  
10 seized by the commissioner of public safety upon an order issued by the  
11 court having jurisdiction over the property upon a showing of probable  
12 cause that the property is subject to forfeiture. Seizure without a  
13 court order may be made if

14 (1) the seizure is incident to a valid arrest or a search  
15 under a valid search warrant;

16 (2) the property subject to seizure has been the subject of a  
17 prior judgment in favor of the state in a criminal proceeding or a civil  
18 proceeding in rem based upon this chapter;

19 (3) there is probable cause that the property was or is being  
20 used in violation of this chapter and the property is easily movable.

21 (d) Property seized under (c)(3) of this section may not be held  
22 over 48 hours or until an order may be applied for and issued by a  
23 court, whichever is earlier.

24 (e) Property seized or detained under this section is in the  
25 custody of the Department of Public Safety subject only to the orders  
26 and decrees of the court having jurisdiction over the forfeiture pro-  
27 ceedings. If property is seized under this section, the Department of  
28 Public Safety may

29 (1) place the property under seal;

1 (2) remove the property to a place designated by the court;  
2 or

3 (3) take custody of the property and remove it to an appro-  
4 priate location for disposition in accordance with law.

5 (f) Property forfeited under this section shall be disposed of  
6 according to court order. The court may order the Department of Public  
7 Safety to

8 (1) destroy property harmful to the public;

9 (2) sell the property and use the proceeds for payment of all  
10 proper expenses of the proceedings for forfeiture and sale, including  
11 expenses of seizure and custody and court costs;

12 (3) take custody of the property and use it in the enforce-  
13 ment of this chapter or transfer it to another agency of the state for a  
14 use designated by the court in furtherance of the administration of  
15 justice;

16 (4) take custody of the property and remove it for disposi-  
17 tion in accordance with law; or

18 (5) forward it to the Drug Enforcement Administration for  
19 disposition.

20 (g) For purposes of this section, an attempt under AS 11.31.100 or  
21 a solicitation under AS 11.31.110 to commit a crime defined by this  
22 chapter is considered a violation of this chapter.

23 Sec. 17.17.770. BURDEN OF PROOF; LIABILITIES. (a) It is not  
24 necessary for the state to negate an exemption or exception in this  
25 chapter in a complaint, information, indictment, or other pleading under  
26 this chapter. However, once a person asserts an exemption or exception  
27 under this chapter, the burden is upon the state to disprove the exis-  
28 tence of the exemption or exception by clear and convincing evidence.

29 (b) In a civil proceeding in rem under AS 17.17.760, the burden is

1 upon the state to prove by clear and convincing evidence that the item  
2 in question is subject to forfeiture.

3 (c) Liability is not imposed by this chapter upon an authorized  
4 state or local officer engaged in the lawful performance of his duties.

5 Sec. 17.17.780. EDUCATION AND RESEARCH. (a) The commissioner  
6 shall carry out educational programs designed to prevent and deter abuse  
7 of controlled substances. In connection with these programs, the com-  
8 missioner may

9 (1) promote better recognition of the problems of abuse of  
10 controlled substances within the regulated industry and among interested  
11 groups and organizations;

12 (2) assist the regulated industry and interested groups and  
13 organizations in contributing to the reduction of abuse of controlled  
14 substances;

15 (3) consult with interested groups and organizations to aid  
16 them in solving administrative and organizational problems;

17 (4) evaluate procedures, projects, and techniques conducted  
18 or proposed as part of educational programs on abuse of controlled  
19 substances;

20 (5) disseminate the results of research on abuse of con-  
21 trolled substances to promote a better public understanding of the  
22 problems which exist and their solutions; and

23 (6) assist in the education and training of state and local  
24 law enforcement officials in their efforts to prevent abuse of con-  
25 trolled substances.

26 (b) The commissioner shall encourage research on controlled sub-  
27 stances and may

28 (1) establish methods to assess the effects of controlled  
29 substances and identify and characterize those with potential for abuse;

- 1 (2) undertake research to  
2 (A) develop new or improved approaches, techniques,  
3 systems, equipment, and devices to strengthen the enforcement of  
4 this chapter;  
5 (B) determine patterns of abuse of controlled substances  
6 and their social effects;  
7 (C) improve methods for preventing, predicting, and  
8 understanding the abuse of controlled substances;  
9 (3) enter into contracts with public agencies, institutions  
10 of higher education, and organizations or individuals for conducting  
11 research on abuse of controlled substances and for performing related  
12 educational activities.

13 ARTICLE 5. GENERAL PROVISIONS.

14 Sec. 17.17.900. DEFINITIONS. As used in this chapter, unless the  
15 context requires otherwise,

16 (1) "administer" means the direct application of a controlled  
17 substance, whether by injection, inhalation, ingestion, or any other  
18 means, to the body of a patient or research subject by

19 (A) a practitioner or, in his presence, by his autho-  
20 rized agent, or

21 (B) the patient or research subject at the direction and  
22 in the presence of a practitioner;

23 (2) "agent" means an authorized person who acts on behalf of  
24 or at the direction of a manufacturer, distributor, or dispenser;  
25 "agent" does not include a common or contract carrier, public warehouse-  
26 man, or employee of the carrier or warehouseman;

27 (3) "commissioner" means the commissioner of health and  
28 social services;

29 (4) "committee" means the Controlled Substances Advisory

1 Committee;

2 (5) "controlled substance" means a drug, substance, or  
3 immediate precursor included within any of the schedules in AS 17.17.-  
4 040 - 17.17.090;

5 (6) "counterfeit substance" means a controlled substance  
6 which, or the container or labeling of which, without authorization,  
7 bears the trademark, trade name, or other identifying mark, imprint,  
8 number, or device, or any likeness to it, of a manufacturer, distribu-  
9 tor, or dispenser other than the person who in fact manufactured, dis-  
10 tributed, or dispensed the substance;

11 (7) "deliver" or "delivery" means the actual, constructive,  
12 or attempted transfer from one person to another of a controlled sub-  
13 stance, whether or not there is an agency relationship;

14 (8) "dentist" means a person authorized by law to practice  
15 dentistry in this state;

16 (9) "dispense" means to deliver a controlled substance to an  
17 ultimate user or research subject by a practitioner, including the  
18 prescribing, administering, packaging, labeling, or compounding neces-  
19 sary to prepare the substance for that delivery;

20 (10) "distribute" means to deliver, other than by administer-  
21 ing or dispensing, a controlled substance;

22 (11) "drug"

23 (A) means

24 (i) substances recognized as drugs in the official  
25 United States Pharmacopoeia, official Homeopathic Pharma-  
26 copoeia of the United States, or official National Formulary,  
27 or any supplement to any of them;

28 (ii) substances intended for use in the diagnosis,  
29 cure, mitigation, treatment, or prevention of disease in

1 humans or animals;

2 (iii) substances, other than food, intended to affect  
3 the structure or any function of the body of humans or  
4 animals; and

5 (iv) substances intended for use as a component of  
6 any article specified in (i), (ii), or (iii) of this subpara-  
7 graph;

8 (B) does not include devices or their components, parts,  
9 or accessories;

10 (12) "hashish" means the resin produced by the plant (genus)  
11 Cannabis;

12 (13) "hashish oil" means the viscous liquid concentrate of  
13 tetrahydrocannabinols extracted from hashish;

14 (14) "immediate precursor" means a substance which the Con-  
15 trolled Substances Advisory Committee has found to be and is by regula-  
16 tion designated as the principal compound commonly used or produced  
17 primarily for use, and which is an immediate chemical intermediary used  
18 or likely to be used, in the manufacture of a controlled substance, the  
19 control of which is necessary to prevent, curtail, or limit manufacture;

20 (15) "manufacture" means the production, preparation, pro-  
21 pagation, compounding, conversion, or processing of a controlled sub-  
22 stance, either directly or indirectly by extraction from substances of  
23 natural origin or independently by means of chemical synthesis, or by a  
24 combination of extraction and chemical synthesis, and includes any  
25 packaging or repackaging of the substance or labeling or relabeling of  
26 its container, except that this term does not include the preparation or  
27 compounding of a controlled substance by an individual for his own use  
28 or the preparation, compounding, packaging, or labeling of a controlled  
29 substance

1 (A) by a practitioner as an incident to his administer-  
2 ing or dispensing a controlled substance in the course of his  
3 professional practice, or

4 (B) by a practitioner, or by his authorized agent under  
5 his supervision, for the purpose of, or as an incident to,  
6 research, teaching, or chemical analysis and not for sale;

7 (16) "marijuana" means the leaves, stems, flowers, and seeds  
8 of the plant (genus) Cannabis, whether growing or not, but does not  
9 include the resin or oil extracted from any part of the plant, or any  
10 compound, manufacture, salt, derivative, mixture, or preparation from  
11 the resin or oil, including hashish and natural or synthetic tetrahydro-  
12 cannabinol; it does not include the mature stalks of the plant, fiber  
13 produced from the stalks, oil or cake made from the seeds of the plant,  
14 any other compound, manufacture, salt, derivative, mixture, or prepara-  
15 tion of the mature stalks, fiber, oil or cake, or the sterilized seed of  
16 the plant which is incapable of germination;

17 (17) "minor" means a person who is under 18 years of age;

18 (18) "opiate" means a substance having an addiction-forming or  
19 addiction-sustaining liability similar to morphine or being capable of  
20 conversion into a drug having addiction-forming or addiction-sustaining  
21 liability; it does not include, unless specifically designated as con-  
22 trolled under AS 17.17.020, the dextrorotatory isomer of 3-methoxy-n-  
23 methylmorphinan and its salts (dextromethorphan); it does include its  
24 racemic and levorotatory forms;

25 (19) "opium poppy" means the plant of the species Papaver  
26 somniferum L., except its seeds;

27 (20) "poppy straw" means all parts, except the seeds, of the  
28 opium poppy, after mowing;

29 (21) "practitioner" means

1 (A) a physician, dentist, veterinarian, scientific  
2 investigator, or other person licensed, registered, or otherwise  
3 permitted to distribute, dispense, conduct research with respect  
4 to, or administer a controlled substance in the course of pro-  
5 fessional practice or research in this state;

6 (B) a pharmacy, hospital, or other institution licensed,  
7 registered, or otherwise permitted to distribute, dispense, conduct  
8 research with respect to, or administer a controlled substance in  
9 the course of professional practice or research in this state;

10 (22) "production" includes the manufacture, planting, cultiva-  
11 tion, growing, or harvesting of a controlled substance;

12 (23) "ultimate user" means a person who lawfully possesses a  
13 controlled substance for his own use, for the use of a member of his  
14 household, or for administering to an animal owned by him or a member of  
15 his household.

16 Sec. 17.17.990. SHORT TITLE. This chapter may be cited as the  
17 Controlled Substances Act.

18 \* Sec. 2. AS 08.64.380(3)(B) is amended to read:

19 (B) habitual overuse of alcoholic beverages or con-  
20 trolled substances as defined in AS 17.17 [DEPRESSANT, HALLUCINO-  
21 GENIC OR STIMULANT DRUGS, AS DEFINED IN AS 17.12.150(3), OR ADDIC-  
22 TION TO THE USE OF NARCOTIC DRUGS AS DEFINED IN AS 17.10.230(13)];

23 \* Sec. 3. AS 08.80.470 is amended to read:

24 Sec. 08.80.470. CONSTRUCTION. Nothing in this chapter amends,  
25 modifies, repeals or otherwise changes any provision of the Controlled  
26 Substances Act (AS 17.17) [UNIFORM NARCOTIC DRUG ACT (AS 17.10)] or the  
27 Alaska Food, Drug and Cosmetic Act (AS 17.20).

28 \* Sec. 4. AS 12.30.040(b) is amended to read:

29 (b) Notwithstanding the provisions of (a) of this section, if the

1 offense a person has been convicted of is murder in the first degree  
2 (as defined in AS 11.41.100), kidnapping (as defined in AS 11.41.300),  
3 sexual assault in the first degree (as defined in AS 11.41.410(a)(1)  
4 and (2)), robbery in the first degree (as defined in AS 11.41.500), or  
5 distributing a Schedule I controlled substance to a minor (as defined  
6 in AS 17.17.200(b)(1)), or an offense that involves the manufacture,  
7 distribution, or possession with intent to manufacture or distribute  
8 a Schedule I or II controlled substance in violation of AS 17.17.-  
9 210.(b)(1) and (2) or 17.17.220(b)(1) and (2) under circumstances mani-  
10 festing an intent to distribute the substance as part of a commercial  
11 enterprise [FIRST DEGREE MURDER, ARMED ROBBERY, KIDNAPPING, OR RAPE (AS  
12 DEFINED IN AS 11.15.130)], he may not be released on bail either before  
13 sentencing or pending appeal.

14 \* Sec. 5. AS 12.45 is amended by adding a new section to read:

15 Sec. 12.45.155. LABORATORY REPORT OF CONTROLLED SUBSTANCE. (a)  
16 In a prosecution under AS 17.17.200 - 17.17.250, a complete copy of an  
17 official laboratory report from the Department of Public Safety or a  
18 laboratory operated by another law enforcement agency is prima facie  
19 evidence of the content, identity, and weight of the substance. The  
20 report must be signed by the person performing the analysis and must  
21 state that the substance which is the basis of the alleged offense has  
22 been weighed and analyzed. It must also state with specificity findings  
23 as to the content, weight, and identity of the substance.

24 (b) A notarized statement executed by the signer of the report  
25 provided for in (a) of this section must be attached to the report. The  
26 statement must set out the identity of the signer and include a state-  
27 ment that he is an employee of the laboratory issuing the report and  
28 that performing the analysis is a part of his regular duties. The  
29 statement must also include an outline of his education, training, and

1 experience for performing an analysis. The signer shall attest that  
2 scientifically accepted tests were performed with due caution, and that  
3 the evidence was handled in accordance with established and accepted  
4 procedures while in the custody of the laboratory.

5 (c) The prosecuting attorney shall serve a copy of the report on  
6 the attorney of record for the accused, or on the defendant if he has no  
7 attorney, no later than 10 days before a proceeding in which the report  
8 is to be used against the accused. However, at a preliminary hearing or  
9 grand jury proceeding the report may be used without having been pre-  
10 viously served upon the accused.

11 (d) The accused or his attorney may demand the testimony of the  
12 person signing the report, by serving a written demand showing cause,  
13 upon the prosecuting attorney within seven days from receipt of the  
14 report.

15 (e) A report issued for use under this section must contain notice  
16 of the right of the accused to demand the testimony of the person  
17 signing the report.

18 \* Sec. 6. AS 12.55.035(b)(1) is amended to read:

19 (1) \$75,000 for murder in the first or second degree, [OR]  
20 kidnapping, or distributing a Schedule I controlled substance to a minor  
21 as defined in AS 17.17.200(b)(1);

22 \* Sec. 7. AS 12.55.125(b) is amended to read:

23 (b) A defendant convicted of murder in the second degree, [OR]  
24 kidnapping, or distributing a Schedule I controlled substance to a  
25 minor as defined in AS 17.17.200(b)(1) shall be sentenced to a definite  
26 term of imprisonment of at least five years but not more than 99 years.

27 \* Sec. 8. AS 12.55.155(c) is amended by adding new paragraphs to read:

28 (15) the defendant is convicted of an offense specified in  
29 AS 17.17 and the offense involved the delivery of a controlled substance

1 under circumstances manifesting an intent to distribute the substance as  
2 part of a commercial enterprise;

3 (16) the defendant is convicted of an offense specified in  
4 AS 17.17 and the offense involved the smuggling of a controlled sub-  
5 stance into the state;

6 (17) the defendant is convicted of an offense specified in  
7 AS 17.17 and the offense involved the distribution of a controlled  
8 substance that had been adulterated with a toxic substance.

9 \* Sec. 9. AS 12.55.155(d) is amended by adding new paragraphs to read:

10 (13) the defendant is convicted of an offense specified in  
11 AS 17.17 and the offense involved small quantities of a controlled  
12 substance;

13 (14) the defendant is convicted of an offense specified in  
14 AS 17.17 and the offense involved the distribution of a controlled  
15 substance, other than a Schedule I controlled substance, to a personal  
16 acquaintance who is 18 years of age or older for no profit;

17 (15) the defendant is convicted of an offense specified in  
18 AS 17.17 and the offense involved the possession of a small amount of a  
19 controlled substance for personal use in the defendant's home.

20 \* Sec. 10. AS 44.29.020 is amended to read:

21 Sec. 44.29.020. DUTIES OF DEPARTMENT. The Department of Health  
22 and Social Services shall administer the state programs of public health  
23 and social services, including: (1) maternal and child health services;  
24 (2) preventive medical services; (3) public health nursing services; (4)  
25 sanitation and engineering services; (5) nutrition services; (6) health  
26 education; (7) laboratories; (8) mental health treatment and diagnosis;  
27 (9) management of state institutions; (10) medical facilities; (11) old  
28 age assistance; (12) aid to dependent children; (13) aid to the blind;  
29 (14) child welfare services; (15) general relief; (16) licensing and

1 supervision of child care facilities; [AND] (17) probation and parole  
2 supervision; and (18) control of drug abuse in accordance with AS 17.17.

3 \* Sec. 11. (a) Prosecution for a violation of law occurring before the  
4 effective date of this Act is not affected or abated by this Act. If the  
5 offense being prosecuted is similar to one defined in AS 17.17, then the  
6 penalties under AS 17.17 apply if they are less than those under the prior  
7 law.

8 (b) Civil seizures or forfeitures and injunctive proceedings begun  
9 before the effective date of this Act are not affected by this Act.

10 (c) Administrative proceedings pending under laws which are superseded  
11 by this Act shall be continued and brought to a final determination in ac-  
12 cordance with the laws in effect before the effective date of this Act.

13 (d) The commissioner of health and social services shall permit a  
14 person who owns or operates an establishment engaged in the manufacture,  
15 distribution, or dispensing of a controlled substance on or before the effec-  
16 tive date of this Act and who is registered or licensed by the state to  
17 register under AS 17.17.

18 (e) This Act applies to violations of law, seizures and forfeitures,  
19 injunctive proceedings, administrative proceedings, and investigations which  
20 occur on or after the effective date of this Act.

21 \* Sec. 12. Orders issued and regulations adopted under a law affected by  
22 this Act and in effect on the effective date of this Act and not in conflict  
23 with this Act continue in effect until modified, superseded, or repealed.

24 \* Sec. 13. AS 17.10; AS 17.12; and AS 17.15 are repealed.  
25  
26  
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29

AS MR HICKEY SAID, HE HAS BEEN WORKING WITH THE SECRETARY AND PRESIDENT OF THE BOARD OF PHARMACY OVER THE WEEKEND, AND SINCE I ASSUME THAT THE RESULTS ARE INCORPORATED IN THE MATERIAL HE HAS JUST HANDED OUT, MY TESTIMONY WILL BE BRIEF.

WE FEEL THAT THE CRIMINAL PORTIONS OF THE BILL SHOULD BE MOVED TO CHAPTER 11, AND THE MEDICAL PORTIONS SHOULD REMAIN IN CHAPTER 17.

WE RECOMMEND THAT ~~EXIST~~ ARTICLE 3 BE CHANGED TO READ: THE STATE BOARD OF PHARMACY SHALL ADMINISTER THIS CHAPTER AND CONTROLLED SUBSTANCES SCHEDULES FOR LEGITIMATE MEDICAL PROFESSIONALS WHO QUALIFY UNDER FEDERAL REGISTRATION REQUIREMENTS SHALL BE THE FEDERAL UNIFORM CONTROLLED SUBSTANCE ACT OF 1970 WITH AMENDMENTS. IF ANY SUBSTANCE IS DESIGNATED, RESCHEDULED OR DELETED AS A CONTROLLED SUBSTANCE UNDER FEDERAL LAW AND NOTICE THEREOF IS GIVEN TO THE BOARD, THE SUBSTANCE SHALL BE SIMILARLY CONTROLLED UNDER THIS CHAPTER AFTER EXPIRATION OF 30 DAYS FROM PUBLICATION IN THE FEDERAL REGISTER OF A FINAL ORDER DESIGNATING A SUBSTANCE AS A CONTROLLED SUBSTANCE OR RESCHEDULING OR DELETING A SUBSTANCE.

THIS DOES NOT EXTEND TO DISTILLED SPIRITS OR TOBACCO.

EXCEPTION: PROVIDED THAT A PROFESSIONAL PRACTITIONER LICENSED IN ALASKA UNDER THE PROFESSIONAL LICENSING ACTS SHALL NOT BE REQUIRED TO BE REGISTERED UNDER THIS CHAPTER ALSO UNLESS SPECIFIC EXEMPTION IS DENIED UNDER ADMINISTRATIVE PROCEDURES ACT FOR VIOLATION OF ANY PROVISIONS OF THIS CHAPTER.

Introduced: 4/26/79  
Referred: Health, Education &  
Social Services and Judiciary

1 IN THE HOUSE

BY PARR

2 HOUSE BILL NO. 479

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 ELEVENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act revising the drug laws of the state." *for prosecution*

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

8 \* Section 1. AS ~~17~~<sup>11</sup> is amended by adding a new chapter to read:

9 CHAPTER ~~17~~<sup>11 Alaska</sup> CONTROLLED SUBSTANCES ACT.

10 ARTICLE 1. STANDARDS AND PROCEDURES.

11 Sec. ~~17.17~~<sup>11</sup>.010. CONTROLLED SUBSTANCES ADVISORY COMMITTEE. (a)

12 There is created within the Department of Law the Controlled Substances  
13 Advisory Committee, composed of

- 14 (1) the attorney general or his designee;
- 15 (2) the commissioner of health and social services or his  
16 designee;
- 17 (3) the commissioner of public safety or his designee;
- 18 (4) a pharmacist appointed by the governor;
- 19 (5) an attorney experienced in criminal defense appointed by  
20 the governor.

21 (b) The attorney general, the commissioner of health and social  
22 services, and the commissioner of public safety serve ex officio. The  
23 members appointed by the governor serve terms of four years and until  
24 their successors are appointed and qualify, except that the attorney  
25 initially appointed under (a)(5) of this section serves a term of three  
26 years and until his successor is appointed and qualifies.

27 (c) The members receive no compensation for their service on the  
28 committee but are entitled to travel expenses and per diem under AS 39.-  
29 20.180.

1 (d) The committee shall meet at the call of the attorney general.  
2 Three members constitute a quorum. The committee may adopt bylaws for  
3 its proceedings.

4 Sec. <sup>11</sup>~~17.17.020~~. AUTHORITY TO SCHEDULE CONTROLLED SUBSTANCES. (a)  
5 The Controlled Substances Advisory Committee may adopt regulations under  
6 the Administrative Procedure Act (AS 44.62) which add, delete, or re-  
7 schedule substances in the <sup>Alaska</sup> schedules in AS <sup>11</sup>~~17.17.040 - 17.17.090~~. The  
8 committee shall prescribe the effective date of a regulation adopted  
9 under this section. This date may not be sooner than the 56th day of  
10 the next regular session of the legislature following adoption of the  
11 regulation. Within 10 days after the convening of a regular session of  
12 the legislature, the committee shall submit to the legislature the  
13 regulations adopted under this section which have not taken effect and  
14 shall submit findings of fact and other information which it considers  
15 appropriate. Notwithstanding AS 44.62.320, a regulation adopted under  
16 this section may not be annulled by resolution. A regulation adopted  
17 under this section which is annulled by statute may not be readopted  
18 within three years after its annulment.

19 (b) If a substance is added, deleted, or rescheduled as a con-  
20 trolled substance under federal law and notice of the designation is  
21 given to the Department of Law, the committee shall give notice under  
22 AS 44.62.190 of proposed adoption of a regulation making a corresponding  
23 change in Alaska law and shall hold a hearing under AS 44.62.210. If  
24 the committee decides not to adopt the regulation, it shall file a  
25 notice of that decision and findings of fact with the lieutenant gover-  
26 nor.

27 (c) In making a determination regarding the addition, deletion, or  
28 rescheduling of a substance under this section, the committee shall  
29 assess the danger or probable danger of the substance after considering

1 (1) the actual or probable abuse of the substance, including  
2 (A) its history and current pattern of abuse;  
3 (B) the scope, duration, and significance of abuse; and  
4 (C) the degree of actual or probable detriment which may  
5 result from the abuse of the substance;

6 (2) the biomedical hazard of the substance, including  
7 (A) its pharmacology: the effects and modifiers of  
8 effects of the substance;

9 (B) its toxicology: the acute and chronic toxicity,  
10 interaction with other substances, whether controlled or not, and  
11 liability to form or sustain psychological or physiological depen-  
12 dence;

13 (C) the risk to public health and particular susceptibil-  
14 ity of segments of the population; and

15 (D) the existence of therapeutic alternatives for sub-  
16 stances which are or may be used for medical purposes;

17 (3) the probable physical and social impact of widespread  
18 abuse of the substance;

19 (4) whether the substance is an immediate precursor of a  
20 substance already controlled under this chapter;

21 (5) the current state of scientific knowledge regarding the  
22 substance.

23 (d) If the committee designates a substance as an immediate pre-  
24 cursor, substances which are precursors of the controlled precursor are  
25 not subject to control solely because they are precursors of the con-  
26 trolled precursor.

27 (e) The committee has no authority over tobacco or over intoxica-  
28 ting liquor as defined in AS 04.20.010.

29 Sec. ~~17.17.030~~<sup>//</sup> NOMENCLATURE. The controlled substances listed

11  
1 in the schedules in AS ~~17.17.040~~ 17.17.090 or the regulations adopted  
2 under this chapter are included by whatever official, common, usual,  
3 chemical, or trade name designated. In some instances, slang terms are  
4 listed after a controlled substance. In a prosecution or other proceed-  
5 ing under this chapter, it is not a defense and it is immaterial that a  
6 slang term is listed after more than one controlled substance, that a  
7 slang term listed after a controlled substance is inaccurately applied  
8 to that controlled substance, that no slang term is listed after a  
9 controlled substance, or that slang terms other than those listed apply  
10 in fact to a controlled substance.

11 Sec. ~~17.17.040~~. SCHEDULE ~~A~~ (a) A substance shall be placed in  
12 Schedule I if it is found under AS ~~17.17.020~~ to have the highest degree  
13 of danger or probable danger.

14 (b) Unless specifically excepted or unless listed in another  
15 schedule, Schedule I controlled substances include any material compound  
16 which contains any quantity of a substance listed in this subsection,  
17 including its salts, its isomers, (whether optical, position, or geo-  
18 metric), and the salts of its isomers whenever the existence of those  
19 salts, isomers, or salts of isomers is possible within the specific  
20 chemical designation, regardless of whether the listed substance is  
21 produced directly or indirectly by extraction from substances of vege-  
22 table origin or independently by means of chemical synthesis or by a  
23 combination of extraction and chemical synthesis:

24 (1) opium and opiate, and any salt, compound, derivative, or  
25 preparation of opium or opiate, excluding apomorphine, dextrorphan,  
26 nalbuphine, naloxone, and naltrexone, and their respective salts, but  
27 including the following:

28 (A) raw opium (slang terms: op, pen yan, hop, tar,  
29 black stuff);

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- (B) opium extracts;
  - (C) opium fluid extracts;
  - (D) powdered opium;
  - (E) granulated opium;
  - (F) tincture of opium;
  - (G) codeine (slang term: school boy);
  - (H) ethylmorphine;
  - (I) etorphine hydrochloride;
  - (J) hydrocodone;
  - (K) hydromorphone;
  - (L) metopon;
  - (M) morphine (slang terms: cube, first line, hocus, Miss Emma, morph, morpho, morphy, mud, white stuff, hard stuff, M, unkle);
  - (N) oxycodone;
  - (O) oxymorphone;
  - (P) thebaine;
- (2) any salt, compound, derivative, or preparation of these which is chemically equivalent or identical with any of the substances referred to in (1) of this subsection, except that these substances do not include the isoquinoline alkaloids of opium;
- (3) opium poppy and poppy straw;
  - (4) concentrate of poppy straw (the crude extract of poppy straw in liquid, solid, or powder form which contains the phenanthrine alkaloids of the opium poppy);
  - (5) acetylmethadol;
  - (6) allylprodine;
  - (7) alphacetylmethadol;
  - (8) alphameprodine;

- 1 (9) alphamethadol;
- 2 (10) benzethidine;
- 3 (11) betacetylmethadol;
- 4 (12) betameprodine;
- 5 (13) betamethadol;
- 6 (14) betaprodine;
- 7 (15) clonitazene;
- 8 (16) dextromoramide;
- 9 (17) diampromide;
- 10 (18) diethylthiambutene;
- 11 (19) difenoxin;
- 12 (20) dimenoxadol;
- 13 (21) dimepheptanol;
- 14 (22) dimethylthiambutene;
- 15 (23) dioxaphetyl butyrate;
- 16 (24) dipipanone;
- 17 (25) ethylmethylthiambutene;
- 18 (26) etonitazene;
- 19 (27) etoxeridine;
- 20 (28) furethidine;
- 21 (29) hydroxpethidine;
- 22 (30) ketobemidone;
- 23 (31) levomoramide;
- 24 (32) levophenacymorphan;
- 25 (33) morpheridine;
- 26 (34) noracymethadol;
- 27 (35) norlevorphanol;
- 28 (36) normethadone;
- 29 (37) norpipanone;

- 1 (38) phenadoxone;  
2 (39) phenampromide;  
3 (40) phenomorphan;  
4 (41) phenoperidine;  
5 (42) piritramide;  
6 (43) proheptazine;  
7 (44) properidine;  
8 (45) propiram;  
9 (46) racemoramide;  
10 (47) trimeperidine;  
11 (48) acetorphine;  
12 (49) acetyldihydrocodeine;  
13 (50) benzylmorphine;  
14 (51) codeine methylbromide;  
15 (52) codeine-N-oxide;  
16 (53) cyprenorphine;  
17 (54) desomorphine;  
18 (55) dihydromorphine;  
19 (56) drotebanol;  
20 (57) etorphine;  
21 (58) heroin (slang terms: big H, boy, brown, brown sugar,  
22 caballo, Chinese red, chiva, crap, doojee, H, Harry, horse, junk,  
23 Mexican mud, powder, scag, smack, stuff, thing, joy powder, white stuff,  
24 sugar, hairy, skag, schmeck);  
25 (59) hydromorphinol;  
26 (60) methyldesorphine;  
27 (61) methyldihydromorphine;  
28 (62) morphine methylbromide;  
29 (63) morphine methylsulfonate;

- 1 (64) morphine-N-oxide;  
2 (65) myrophine;  
3 (66) nicocodeine;  
4 (67) nicomorphine;  
5 (68) normorphine;  
6 (69) pholcodine;  
7 (70) thebacon;  
8 (71) alphaprodine;  
9 (72) anileridine;  
10 (73) bezitramide;  
11 (74) dihydrocodeine;  
12 (75) diphenoxylate;  
13 (76) fentanyl;  
14 (77) isomethadone;  
15 (78) levomethorphan;  
16 (79) levorphanol;  
17 (80) metazocine;  
18 (81) methadone;  
19 (82) methadone-intermediate, 4-cyano-2-dimethylamino-4, 4-  
20 diphenyl butane;  
21 (83) moramide-intermediate, 2-methyl-3-morpholino-1,  
22 1-diphenylpropane-carboxylic acid;  
23 (84) pethidine (meperidine);  
24 (85) pethidine-intermediate-A, 4-cyano-1-methyl-4-phenylpiperi-  
25 dine;  
26 (86) pethidine-intermediate-B, ethyl-4-phenylpiperidine-4-  
27 carboxylate;  
28 (87) pethidine-intermediate-C, 1-methyl-4-phenylpiperidine-4-  
29 carboxylic acid;

- 1 (88) phenazocine;  
2 (89) piminodine;  
3 (90) racemethorphan;  
4 (91) racemorphan.

5 Sec. ~~17.17.050.~~ <sup>B</sup> SCHEDULE II. (a) A substance shall be placed in  
6 schedule II if it is found under AS 17.17.020 to have a degree of danger  
7 or probable danger lower than Schedule I controlled substances but  
8 higher than Schedule ~~III~~ <sup>C</sup> controlled substances.

9 (b) Unless specifically excepted or unless listed in another  
10 schedule, Schedule ~~II~~ <sup>B</sup> controlled substances include any material com-  
11 pound which contains any quantity of a substance listed in this subsec-  
12 tion, including its salts, its isomers (whether optical, position, or  
13 geometric), and the salts of its isomers whenever the existence of those  
14 salts, isomers, or salts of isomers is possible within the specific  
15 chemical designation, regardless of whether the listed substance is  
16 produced directly or indirectly by extraction from substances of vege-  
17 table origin or independently by means of chemical synthesis or by a  
18 combination of extraction and chemical synthesis:

19 (1) coca leaves and any salt, compound, derivative, or pre-  
20 paration of coca leaves, and any salt, compound, derivative, or prepara-  
21 tion of these which is chemically equivalent or identical with any of  
22 these substances, except that the substances do not include decocainized  
23 coca leaves or extractions of coca leaves, which extractions do not con-  
24 tain cocaine or ecgonine (slang terms: Bernice, bernies, big C, blow,  
25 C, coke, dream, flake, girl, gold dust, heaven dust, nose candy, para-  
26 dise, rock, white, happy dust, speedballs, snow birds, Cecil, stardust,  
27 Corine, Carrie, dust, Burese);

28 (2) 4-bromo-2,5-dimethoxy-amphetamine, also known as bromo-2,  
29 5-dimethoxy-a-methylphenethylamine and 4-bromo-2,5-DMA;

1 (3) 2,5-dimethoxyamphetamine, also known as 2,5-dimethoxy-a-  
2 methylphenethylamine and 2,5-DMA;

3 (4) 4-methoxyamphetamine, also known as 4-methoxy-a-  
4 methylphenethylamine and paramethoxyamphetamine, PMA;

5 (5) 5-methoxy-3,4-methylenedioxy-amphetamine;

6 (6) 4-methyl-2,5-dimethoxy-amphetamine, also known as 4-  
7 methyl-2,5-dimethoxy-a-methylphenethylamine (slang terms: DOM, MDA,  
8 STP, serenity, tranquility, and peace, cone drug);

9 (7) 3,4-methylenedioxy amphetamine;

10 (8) 3,4,5-trimethoxy amphetamine;

11 (9) bufotenine, also known as 3-(b-dimethylaminoethyl)-5-  
12 hydroxyindole and 3-(2-dimethylaminoethyl)-5-indolol and N,N-  
13 dimethylserotonin and 5-hydroxy-N,N-dimethyltryptamine and mappine;

14 (10) diethyltryptamine, also known as N,N-diethyltryptamine  
15 and DET;

16 (11) dimethyltryptamine, also known as DMT (slang terms:  
17 businessman's special, lunch-hour trip);

18 (12) ibogaine, also known as 7-ethyl-6,6,8,7,8,9,10,12,13-  
19 octahydro-2-methoxy-6,9-methano-5H-pyrido [1', 2':1,2] azepino [5,4-b]  
20 indole and Tabernanthe iboga;

21 (13) lysergic acid diethylamide (slang terms: Alice D, acid,  
22 beast, big D, blue cheer, blue heaven, blue mist, brown dots, California  
23 sunshine, chocolate chips, coffee, contact lens, cupcakes, haze, mellow  
24 yellows, microdots, orange mushrooms, orange wedges, Owsley, paper acid,  
25 royal blue, strawberry fields, sugar, sunshine, the hawk, wedges, white  
26 lightning, window pane, yellows, cubes, 25, Lucy in the sky with dia-  
27 monds);

28 (14) mescaline (slang terms: mesc, mescal, moon);

29 (15) peyote, meaning all parts of the plant presently classi-

1       fied botanically as *Lophophora williamsii* Lemaire, whether growing or  
2       not, the seeds of the plant, any extract from any part of the plant, and  
3       every compound, manufacture, salts, derivative, mixture, or preparation  
4       of the plant, its seeds, or extracts (slang terms: buttons, cactus,  
5       mescal buttons, mesc, mescal, plants);

6               (16) N-ethyl-3-piperidyl benzilate;

7               (17) N-methyl-3-piperidyl benzilate (slang term: LBJ);

8               (18) psilocybin (slang terms: magic mushroom, mushroom);

9               (19) psilocyn (slang terms: magic mushroom, mushroom);

10              (20) chemically synthesized tetrahydrocannabinols, also known  
11      as THC;

12              (21) thiophene analog of phencyclidine, also known as: 1-  
13      [1-(2-thienyl) cyclohexyl] piperidine and 2-thienyl analog of phencycli-  
14      dine and TPCP;

15              (22) phencyclidine, also known as PCP (slang terms: angel  
16      dust, DOA (Dead On Arrival), hog, killer weed (when combined with mari-  
17      juana or other plant material), peace pill);

18              (23) mecloqualone;

19              (24) amphetamine, its salts, optical isomers, and salts of its  
20      optical isomers (slang terms: beans, bennies, black beauties, black-  
21      birds, black Mollies, bumblebees, cartweels, chalk, chicken powder,  
22      copilots, crank, crossroads, crystal, dexies, double cross, eye openers,  
23      hearts, jelly beans, lightning, meth, minibennies, nuggets, oranges, pep  
24      pills, speed, roses, thrusters, truck drivers, turnabouts, uppers, ups,  
25      wake-ups, peaches, whites, browns, greenies, bombido, jugs, bottles, lid  
26      proppers, football, coast-to-coast, L.A. turnabouts);

27              (25) methamphetamine, its salts, isomers, and salts of its  
28      isomers (slang terms: bombido, crystal, meth, speed, splash);

29              (26) phenmetrazine and its salts;

1 (27) methylphenidate;

2 (28) methaqualone (slang terms: ludes, quas, quads, soapers,  
3 sopes);

4 (29) amobarbital (slang terms: barbs, block busters, Christ-  
5 mas trees, downers, green dragons, peanuts, sleeping pills, stumblers,  
6 goofballs, goofs, tuinal, tuies, rainbow, double trouble, red and  
7 blues);

8 (30) secobarbital (slang terms: barbs, block busters, Christ-  
9 mas trees, downers, green dragons, peanuts, sleeping pills, stumblers,  
10 goofballs, goofs, tuinal, tuies, rainbow, double trouble, red and blues,  
11 reds, red birds, red devils, seccy, pink, seggy, pink ladies, marsh-  
12 mallow reds, Mexican reds);

13 (31) pentobarbital (slang terms: barbs, block busters,  
14 Christmas trees, downers, green dragons, peanuts, sleeping pills,  
15 stumblers, goofballs, goofs, yellow jackets, yellows, nimbys, nimbies,  
16 nobbies).

17 Sec. ~~17.17.060~~<sup>11</sup>. SCHEDULE ~~III~~<sup>C</sup> (a) A substance shall be placed in  
18 Schedule ~~III~~<sup>S</sup> if it is found under AS ~~17.17.020~~<sup>11</sup> to have a degree of  
19 danger or probable danger lower than Schedule II controlled substances  
20 but higher than Schedule ~~IV~~<sup>D</sup> controlled substances.

21 (b) Unless specifically excepted or unless listed in another  
22 schedule, Schedule ~~III~~<sup>D</sup> controlled substances include any material com-  
23 pound which contains any quantity of a substance listed in this subsec-  
24 tion, including its salts, its isomers (whether optical, position, or  
25 geometric), and the salts of its isomers whenever the existence of those  
26 salts, isomers, or salts of isomers is possible within the specific  
27 chemical designation, regardless of whether the listed substance is  
28 produced directly or indirectly by extraction from substances of vege-  
29 table origin or independently by means of chemical synthesis or by a

1 combination of extraction and chemical synthesis:

2 (1) benzphetamine;

3 (2) chlorphentermine;

4 (3) clortermine;

5 (4) mazindol;

6 (5) phendimetrazine;

7 (6) any compound, mixture, or preparation containing amobar-  
8 bital, secobarbital, or pentobarbital or any salt of any of these sub-  
9 stances combined with one or more other active medicinal ingredients  
10 which are not listed in any classification in this section;

11 (7) any suppository dosage form containing amobarbital,  
12 secobarbital, or pentobarbital or any salt of any of these substances  
13 which are approved by the federal Food and Drug Administration for  
14 marketing only as a suppository;

15 (8) any substance, having a depressant effect on the central  
16 nervous system, which contains any quantity or derivative of barbituric  
17 acid or any salt of these;

18 (9) chlorhexadol;

19 (10) glutethimide (slang terms: C.D., cibas);

20 (11) lysergic acid;

21 (12) lysergic acid amide;

22 (13) methyprylon;

23 (14) sulfondiethylmethane;

24 (15) sulfonethylmethane;

25 (16) sulfonmethane;

26 (17) nalorphine;

27 (18) any material, compound, mixture, or preparation contain-  
28 ing limited quantities of any of the following substances or any of  
29 their salts;

1 (A) not more than 1.8 grams of codeine per 100 milli-  
2 liters or not more than 90 milligrams per dosage unit, with an  
3 equal or greater quantity of an isoquinoline alkaloid of opium;

4 (B) not more than 1.8 grams of codeine per 100 milli-  
5 liters or not more than 90 milligrams per dosage unit, with one or  
6 more active, nonnarcotic ingredients in recognized therapeutic  
7 amounts;

8 (C) not more than 300 milligrams of dihydrocodeinone per  
9 100 milliliters or not more than 15 milligrams per dosage unit,  
10 with a fourfold or greater quantity of an isoquinoline alkaloid of  
11 opium;

12 (D) not more than 300 milligrams of dihydrocodeinone per  
13 100 milliliters or not more than 15 milligrams per dosage unit,  
14 with one or more active nonnarcotic ingredients in recognized  
15 therapeutic amounts;

16 (E) not more than 1.8 grams of dihydrocodeine per 100  
17 milliliters or not more than 90 milligrams per dosage unit, with  
18 one or more active nonnarcotic ingredients in recognized thera-  
19 peutic amounts;

20 (F) not more than 300 milligrams of ethylmorphine per  
21 100 milliliters or not more than 15 milligrams per dosage unit,  
22 with one or more active, nonnarcotic ingredients in recognized  
23 therapeutic amounts;

24 (G) not more than 500 milligrams of opium per 100 milli-  
25 liters or per 100 grams or not more than 25 milligrams per dosage  
26 unit, with one or more active, nonnarcotic ingredients in recog-  
27 nized therapeutic amounts;

28 (H) not more than 50 milligrams of morphine per 100  
29 milliliters or per 100 grams, with one or more active, nonnarcotic

1 ingredients in recognized therapeutic amounts.

2 Sec. ~~17.17.070~~<sup>D</sup>. SCHEDULE ~~IV~~<sup>D</sup>. (a) A substance shall be placed in  
3 Schedule ~~IV~~<sup>D</sup> if it is found under AS ~~17.17.020~~<sup>D</sup> to have a degree of danger  
4 or probable danger lower than Schedule ~~III~~<sup>D</sup> controlled substances but  
5 higher than Schedule ~~V~~<sup>E</sup> controlled substances.

6 (b) Unless specifically excepted or unless listed in another  
7 schedule, Schedule IV controlled substances include any material com-  
8 pound which contains any quantity of a substance listed in this subsec-  
9 tion, including its salts, its isomers (whether optical, position, or  
10 geometric), and the salts of its isomers whenever the existence of those  
11 salts, isomers, or salts of isomers is possible within the specific  
12 chemical designation, regardless of whether the listed substance is  
13 produced directly or indirectly by extraction from substances of vege-  
14 table origin or independently by means of chemical synthesis or by a  
15 combination of extraction and chemical synthesis:

- 16 (1) barbital;
- 17 (2) chloral betaine;
- 18 (3) chloral hydrate (slang terms: knockout drops, Mickey  
19 Finn, Mickey, Peter);
- 20 (4) chlordiazepoxide;
- 21 (5) clonazepam;
- 22 (6) clorazepate;
- 23 (7) diazepam;
- 24 (8) ethchlorvynol;
- 25 (9) ethinamate;
- 26 (10) flurazepam;
- 27 (11) lorazepam;
- 28 (12) mebutamate;
- 29 (13) meprobamate;

- 1 (14) methohexital;
- 2 (15) methylphenobarbital (mephobarbital);
- 3 (16) oxazepam;
- 4 (17) paraldehyde;
- 5 (18) petrichloral;
- 6 (19) phenobarbital;
- 7 (20) prazepam;
- 8 (21) pentazocine;
- 9 (22) fenfluramine;
- 10 (23) diethylpropion;
- 11 (24) phentermine;
- 12 (25) pemoline, including organometallic complexes and chelates
- 13 thereof;
- 14 (26) dextropropoxyphene (alpha-(+)-4-dimethylamino-1,2-
- 15 diphenyl-3-methyl-2-propionoxybutane);
- 16 (27) hashish and hashish oil (slang terms: black Russian,
- 17 hash, kif, quarter moon, soles).

18 Sec. ~~17.17.080~~<sup>11</sup> SCHEDULE ~~V~~<sup>IV</sup> (a) A substance shall be placed in

19 Schedule ~~V~~<sup>IV</sup> if it is found under AS 17.17.020 to have a degree of danger

20 or probable danger lower than Schedule ~~IV~~<sup>IV</sup> controlled substances but

21 higher than Schedule ~~IV~~<sup>IV</sup> controlled substances.

22 (b) Unless specifically excepted or unless listed in another

23 schedule, Schedule ~~V~~<sup>IV</sup> controlled substances include loperamide and any

24 material compound which contains any quantity of a substance listed in

25 this subsection, including its salts, its isomers (whether optical,

26 position, or geometric), and the salts of its isomers whenever the

27 existence of those salts, isomers, or salts of isomers is possible

28 within the specific chemical designation, regardless of whether the

29 listed substance is produced directly or indirectly by extraction from

1 substances of vegetable origin or independently by means of chemical  
2 synthesis or by a combination of extraction and chemical synthesis.  
3 Schedule V controlled substances include the following controlled sub-  
4 stances, otherwise listed in AS 17.17.040(b), when they are combined in  
5 the following portions with one or more nonnarcotic active medicinal  
6 ingredients in sufficient portion to confer upon the compound mixture  
7 preparation valuable medicinal qualities other than those possessed by  
8 the Schedule I controlled substance:

9 (1) not more than 200 milligrams of codeine per 100 milli-  
10 liters or per 100 grams;

11 (2) not more than 100 milligrams of dihydrocodeine per 100  
12 milliliters or per 100 grams;

13 (3) not more than 100 milligrams of ethylmorphine per 100  
14 milliliters or per 100 grams;

15 (4) not more than 2.5 milligrams of diphenoxylate and not  
16 less than 25 micrograms of atropine sulfate per dosage unit;

17 (5) not more than 100 milligrams of opium per 100 milliliters  
18 or per 100 grams.

19 Sec. <sup>//</sup>17.17.090. SCHEDULE <sup>F</sup>VI. (a) A substance shall be placed in  
20 Schedule <sup>F</sup>VI if it is found under AS <sup>//</sup>17.17.020 to have the lowest degree  
21 of danger or probable danger.

22 (b) Schedule VI controlled substances include marijuana (slang  
23 terms: Acapulco gold, broccoli, bush, dry high, gage, ganga, grass,  
24 griffo, hay, hemp, herb, J, Jay, Jane, Mary Jane, mota, mutah, Panama  
25 red, pod, pot, reefer, sativa, smoke, stick, tea, weed, stuff, rope,  
26 joints, Texas tea, goof butt, jive, sweet lunch, stinkweed, locoweed,  
27 mezz, Mary Waner, Indian hay, fu, bobo bush).

28 <sup>//</sup> ARTICLE 2. OFFENSES AND PENALTIES.

29 Sec. <sup>//</sup>17.17.200. DISTRIBUTING A CONTROLLED SUBSTANCE TO A MINOR.

1 (a) Except as authorized in this chapter, it is unlawful for a person  
2 knowingly to distribute a controlled substance to a minor who is at  
3 least three years his junior.

4 (b) A person who violates this section with respect to

5 (1) a Schedule I controlled substance is guilty of a class ..  
6 felony;

7 (2) a Schedule II controlled substance is guilty of a class A  
8 felony;

9 (3) a Schedule III controlled substance is guilty of a class  
10 A felony;

11 (4) a Schedule IV controlled substance is guilty of a class B  
12 felony;

13 (5) a Schedule V controlled substance is guilty of a class C  
14 felony;

15 (6) a Schedule VI controlled substance is guilty of a class C  
16 felony.

17 Sec. 17.17.210. MANUFACTURING. (a) Except as authorized in this  
18 chapter, it is unlawful for a person knowingly to manufacture a con-  
19 trolled substance.

20 (b) A person who violates this section with respect to

21 (1) a Schedule ~~A~~ controlled substance is guilty of a class A  
22 felony;

23 (2) a Schedule ~~B~~ controlled substance is guilty of a class A  
24 felony;

25 (3) a Schedule ~~II~~ controlled substance is guilty of a class  
26 B felony;

27 (4) a Schedule ~~IV~~ controlled substance is guilty of a class B  
28 felony;

29 (5) a Schedule ~~V~~ controlled substance is guilty of a class C  
30

1 felony;

2 (6) a Schedule ~~F~~ controlled substance is guilty of a class C  
3 felony.

4 Sec. ~~17.17.220~~<sup>11</sup>. DISTRIBUTING A SCHEDULE ~~I~~<sup>4</sup> CONTROLLED SUBSTANCE.

5 (a) Except as authorized in this chapter, it is unlawful for a person  
6 knowingly to distribute a Schedule I controlled substance.

7 (b) A person is guilty of a class A felony if he violates this  
8 section by knowingly distributing

9 (1) 50 or more capsules, tablets, ampules, or syrettes con-  
10 taining a Schedule I controlled substance; or

11 (2) one or more preparations, compounds, mixtures, or sub-  
12 stances of an aggregate weight of

13 (A) one-eighth ounce or more containing heroin or mor-  
14 phine or any of their respective alkaloids or salts; or

15 (B) one-half ounce or more containing a Schedule I  
16 controlled substance other than heroin or morphine or any of their  
17 respective alkaloids or salts.

18 (c) A person is guilty of a class B felony if he violates this  
19 section by knowingly distributing a Schedule I controlled substance in a  
20 smaller amount than the ranges specified in (b) of this section.

21 Sec. ~~17.17.230~~<sup>11</sup>. DISTRIBUTING A SCHEDULE ~~I~~<sup>B</sup> CONTROLLED SUBSTANCE.

22 (a) Except as authorized in this chapter, it is unlawful for a person  
23 knowingly to distribute a Schedule ~~I~~<sup>B</sup> controlled substance.

24 (b) A person is guilty of a class A felony if he violates this  
25 section by knowingly distributing

26 (1) 50 or more capsules, tablets, ampules, or syrettes con-  
27 taining a Schedule ~~I~~<sup>B</sup> controlled substance; or

28 (2) one or more preparations, compounds, mixtures, or sub-  
29 stances of an aggregate weight or one-half ounce or more containing a

1 Schedule <sup>b</sup>~~II~~ controlled substance.

2 (c) A person is guilty of a class B felony if he violates this  
3 section by knowingly distributing a Schedule <sup>b</sup>~~II~~ controlled substance in  
4 a smaller amount than the ranges specified in (b) of this section.

5 Sec. <sup>11</sup>~~17.17~~.240. DISTRIBUTING A SCHEDULE <sup>c</sup>~~III~~ CONTROLLED SUBSTANCE.

6 (a) Except as authorized in this chapter, it is unlawful for a person  
7 knowingly to distribute a Schedule ~~III~~ controlled substance.

8 (b) A person is guilty of a class B felony if he violates this  
9 section by knowingly distributing

10 (1) 50 or more capsules, tablets, ampules, or syrettes con-  
11 taining a Schedule ~~III~~ controlled substance; or

12 (2) one or more preparations, compounds, mixtures, or sub-  
13 stances of an aggregate weight of one-half ounce or more containing a  
14 Schedule III controlled substance.

15 (c) A person is guilty of a class C felony if he violates this  
16 section by knowingly distributing a Schedule ~~III~~ controlled substance in  
17 a smaller amount than the ranges specified in (b) of this section.

18 Sec. <sup>11</sup>~~17.17~~.250. DISTRIBUTING A SCHEDULE IV CONTROLLED SUBSTANCE.

19 (a) Except as authorized in this chapter, it is unlawful for a person  
20 knowingly to distribute a Schedule <sup>b</sup>~~IV~~ controlled substance.

21 (b) A person is guilty of a class C felony if he violates this  
22 section by knowingly distributing

23 (1) 50 or more capsules, tablets, ampules, or syrettes con-  
24 taining a Schedule IV controlled substance; or

25 (2) one or more preparations, compounds, mixtures, or sub-  
26 stances of an aggregate weight of one-half ounce or more containing a  
27 Schedule IV controlled substance.

28 (c) A person who violates this section by knowingly distributing a  
29 Schedule IV controlled substance in a smaller amount than the ranges

1 specified in (b) of this section is guilty of a class C felony and is  
2 punishable as provided in AS 12.55 except that a term of imprisonment,  
3 if imposed, may not exceed three years and a fine, if imposed, may not  
4 exceed \$10,000.

5 Sec. ~~17.17~~<sup>11</sup>.260. DISTRIBUTING A SCHEDULE ~~V~~<sup>E</sup> CONTROLLED SUBSTANCE.

6 (a) Except as authorized in this chapter, it is unlawful for a person  
7 knowingly to distribute a Schedule V controlled substance.

8 (b) A person who violates this section by knowingly distributing  
9 (1) 50 or more capsules or tablets containing a Schedule ~~V~~<sup>E</sup> controlled  
10 substance or (2) one or more preparations, compounds, mixtures, or  
11 substances of an aggregate weight of one-half ounce or more containing a  
12 Schedule ~~V~~<sup>E</sup> controlled substance is guilty of a class C felony and is  
13 punishable as provided in AS 12.55 except that a term of imprisonment,  
14 if imposed, may not exceed three years and a fine, if imposed, may not  
15 exceed \$10,000.

16 (c) A person who violates this section by knowingly distributing a  
17 Schedule ~~V~~<sup>E</sup> controlled substance in a smaller amount than the ranges  
18 specified in (b) of this section is guilty of a class A misdemeanor.

19 Sec. ~~17.17~~<sup>11</sup>.270. DISTRIBUTING A SCHEDULE ~~VI~~<sup>F</sup> CONTROLLED SUBSTANCE.

20 (a) Except as authorized in this chapter, it is unlawful for a person  
21 knowingly to distribute a Schedule ~~VI~~<sup>F</sup> controlled substance.

22 (b) A person is guilty of a class C felony if he violates this  
23 section by knowingly distributing one or more preparations, compounds,  
24 mixtures, or substances of an aggregate weight of 2.2 pounds or more  
25 containing a Schedule ~~VI~~<sup>F</sup> controlled substance.

26 (c) A person who violates this section by knowingly distributing  
27 one or more preparations, compounds, mixtures, or substances of an  
28 aggregate weight of one-half pound or more but less than 2.2 pounds  
29 containing a Schedule ~~VI~~<sup>F</sup> controlled substance is guilty of a class C

1 felony and is punishable as provided in AS 12.55 except that a term of  
2 imprisonment, if imposed, may not exceed three years and a fine, if  
3 imposed, may not exceed \$10,000.

4 (d) A person is guilty of a class A misdemeanor if he violates  
5 this section by knowingly distributing one or more preparations, com-  
6 pounds, mixtures, or substances of an aggregate weight of less than  
7 one-half pound containing a Schedule ~~VI~~<sup>F</sup> controlled substance. However,  
8 in a prosecution under this subsection, it is a defense which reduces  
9 the crime to a class B misdemeanor that the preparations, compounds,  
10 mixtures, or substances containing a Schedule ~~VI~~<sup>F</sup> controlled substance  
11 were of an aggregate weight of one ounce or less and that the distribu-  
12 tion was made for no remuneration to a person 18 years of age or older.  
13 As used in this subsection, "defense" has the meaning ascribed to it in  
14 AS 11.81.900(b).

15 Sec. ~~17.17~~<sup>11</sup>.280. POSSESSION OF A SCHEDULE ~~A~~ CONTROLLED SUBSTANCE.

16 (a) Except as authorized in this chapter, it is unlawful for a person  
17 knowingly to possess a Schedule ~~A~~ controlled substance.

18 (b) A person is guilty of a class A felony if he violates this  
19 section by knowingly possessing

20 (1) 100 or more capsules, tablets, ampules, or syrettes  
21 containing a Schedule I controlled substance; or

22 (2) one or more preparations, compounds, mixtures, or sub-  
23 stances of an aggregate weight of

24 (A) one ounce or more containing heroin or morphine or  
25 any of their respective alkaloids or salts; or

26 (B) two ounces or more containing a Schedule I con-  
27 trolled substance other than heroin or morphine or any of their  
28 respective alkaloids or salts.

29 (c) A person is guilty of a class B felony if he violates this

1 section by knowingly possessing

2 (1) 50 or more but fewer than 100 capsules, tablets, ampules,  
3 or syrettes containing a Schedule ~~A~~ controlled substance; or

4 (2) one or more preparations, compounds, mixtures, or sub-  
5 stances of an aggregate weight of

6 (A) one-fourth ounce or more but less than one ounce  
7 containing heroin or morphine or any of their respective alkaloids  
8 or salts; or

9 (B) one-half ounce or more but less than two ounces  
10 containing a Schedule I controlled substance other than heroin or  
11 morphine or any of their respective alkaloids or salts.

12 (d) A person is guilty of a class C felony if he violates this  
13 section by knowingly possessing

14 (1) 25 or more but fewer than 50 capsules, tablets, ampules,  
15 or syrettes containing a Schedule I controlled substance; or

16 (2) one or more preparations, compounds, mixtures, or sub-  
17 stances of an aggregate weight of

18 (A) one-eighth ounce or more but less than one-fourth  
19 ounce containing herion or morphine or any of their respective  
20 alkaloids or salts; or

21 (B) one-fourth ounce or more but less than one-half  
22 ounce containing a Schedule I controlled substance other than  
23 heroin or morphine or any of their respective alkaloids or salts.

24 (e) A person is guilty of a class A misdemeanor if he violates  
25 this section by knowingly possessing a Schedule I controlled substance  
26 in a smaller amount than the ranges specified in (d) of this section.

27 Sec. <sup>11</sup>~~17~~.17.290. POSSESSION OF A SCHEDULE ~~I~~ CONTROLLED SUBSTANCE.

28 (a) Except as authorized in this chapter, it is unlawful for a person  
29 knowingly to possess a Schedule ~~I~~ controlled substance.

1 (b) A person is guilty of a class A felony if he violates this  
2 section by knowingly possessing

3 (1) 200 or more capsules, tablets, ampules, or syrettes  
4 containing a Schedule ~~IV~~ controlled substance; or

5 (2) one or more preparations, compounds, mixtures, or sub-  
6 stances of an aggregate weight of two ounces or more containing a  
7 Schedule ~~IV~~ controlled substance.

8 (c) A person is guilty of a class B felony if he violates this  
9 section by knowingly possessing

10 (1) 100 or more but fewer than 200 capsules, tablets, ampules,  
11 or syrettes containing a Schedule ~~IV~~ controlled substance; or

12 (2) one or more preparations, compounds, mixtures, or sub-  
13 stances of an aggregate weight of one-half ounce or more but less than  
14 two ounces containing a Schedule ~~IV~~ controlled substance.

15 (d) A person is guilty of a class C felony if he violates this  
16 section by knowingly possessing

17 (1) 50 or more but fewer than 100 capsules, tablets, ampules,  
18 or syrettes containing a Schedule ~~IV~~ controlled substance; or

19 (2) one or more preparations, compounds, mixtures, or sub-  
20 stances of an aggregate weight of one-fourth ounce or more but less than  
21 one-half ounce containing a Schedule ~~IV~~ controlled substance.

22 (e) A person is guilty of a class A misdemeanor if he violates  
23 this section by knowingly possessing a Schedule II controlled substance  
24 in a smaller amount than the ranges specified in (d) of this section.

25 Sec. ~~17.17.300~~. POSSESSION OF A SCHEDULE ~~III~~ CONTROLLED SUBSTANCE.

26 (a) Except as authorized in this chapter, it is unlawful for a person  
27 knowingly to possess a Schedule ~~III~~ controlled substance.

28 (b) A person is guilty of a class B felony if he violates this  
29 section by knowingly possessing

1 (1) 400 or more capsules, tablets, ampules, or syrettes  
2 containing a Schedule ~~III~~<sup>C</sup> controlled substance; or

3 (2) one or more preparations, compounds, mixtures, or sub-  
4 stances of an aggregate weight of two ounces or more containing a  
5 Schedule III controlled substance.

6 (c) A person is guilty of a class C felony if he violates this  
7 section by knowingly possessing

8 (1) 100 or more but fewer than 400 capsules, tablets, ampules,  
9 or syrettes containing a Schedule ~~III~~<sup>C</sup> controlled substance; or

10 (2) one or more preparations, compounds, mixtures, or sub-  
11 stances of an aggregate weight of one-half ounce or more but less than  
12 two ounces containing a Schedule ~~III~~<sup>C</sup> controlled substance.

13 (d) A person is guilty of a class A misdemeanor if he violates  
14 this section by knowingly possessing a Schedule ~~III~~<sup>C</sup> controlled substance  
15 in a smaller amount than the ranges specified in (c) of this section.

16 Sec. ~~17.17.310~~<sup>17.17.310</sup>. POSSESSION OF A SCHEDULE ~~IV~~<sup>D</sup> CONTROLLED SUBSTANCE.

17 (a) Except as authorized in this chapter, it is unlawful for a person  
18 knowingly to possess a Schedule ~~IV~~<sup>D</sup> controlled substance.

19 (b) A person is guilty of a class C felony if he violates this  
20 section by knowingly possessing

21 (1) 400 or more capsules, tablets, ampules, or syrettes  
22 containing a Schedule ~~IV~~<sup>D</sup> controlled substance; or

23 (2) one or more preparations, compounds, mixtures, or sub-  
24 stances of an aggregate weight of two ounces or more containing a  
25 Schedule ~~IV~~<sup>D</sup> controlled substance.

26 (c) A person who violates this section by knowingly possessing (1)  
27 100 or more but fewer than 400 capsules, tablets, ampules, or syrettes  
28 containing a Schedule IV controlled substance or (2) one or more pre-  
29 parations, compounds, mixtures, or substances of an aggregate weight of

1 one-half ounce or more but less than two ounces containing a Schedule ~~IV~~<sup>D</sup>  
2 controlled substance is guilty of a class C felony and is punishable as  
3 provided in AS 12.55 except that a term of imprisonment, if imposed, may  
4 not exceed three years and a fine, if imposed, may not exceed \$10,000.

5 (d) A person is guilty of a class A misdemeanor if he violates  
6 this section by knowingly possessing a Schedule ~~IV~~<sup>D</sup> controlled substance  
7 in a smaller amount than the ranges specified in (c) of this section.

8 Sec. ~~17~~<sup>11</sup>.17.320. POSSESSION OF A SCHEDULE ~~V~~<sup>F</sup> CONTROLLED SUBSTANCE.

9 (a) Except as authorized in this chapter, it is unlawful for a person  
10 knowingly to possess a Schedule ~~V~~<sup>F</sup> controlled substance.

11 (b) A person who violates this section by knowingly possessing (1)  
12 400 or more capsules or tablets containing a Schedule ~~V~~<sup>F</sup> controlled  
13 substance or (2) one or more preparations, compounds, mixtures, or  
14 substances of an aggregate weight of one ounce or more containing a  
15 Schedule ~~V~~<sup>F</sup> controlled substance is guilty of a class C felony and is  
16 punishable as provided in AS 12.55 except that a term of imprisonment,  
17 if imposed, may not exceed three years and a fine, if imposed, may not  
18 exceed \$10,000.

19 (c) A person is guilty of a class A misdemeanor if he violates  
20 this section by knowingly possessing a Schedule ~~IV~~<sup>D</sup> controlled substance  
21 in a smaller amount than the ranges specified in (b) of this section.

22 Sec. ~~17~~<sup>14</sup>.17.330. POSSESSION OF LARGE AMOUNTS OF A SCHEDULE ~~VI~~<sup>F</sup>  
23 CONTROLLED SUBSTANCE. (a) Except as authorized in this chapter, it is  
24 unlawful for a person knowingly to possess one or more preparations,  
25 compounds, mixtures, or substances of an aggregate weight of one pound  
26 or more containing a Schedule ~~VI~~<sup>F</sup> controlled substance.

27 (b) A person who violates this section by knowingly possessing one  
28 or more preparations, compounds, mixtures, or substances of an aggregate  
29 weight of 2.2 pounds or more containing a Schedule ~~VI~~<sup>F</sup> controlled sub-

1           stance is guilty of a class C felony and is punishable as provided in  
2 AS 12.55 except that a term of imprisonment, if imposed, may not exceed  
3 three years and a fine, if imposed, may not exceed \$10,000.

4           (c) A person is guilty of a class A misdemeanor if he violates  
5 this section by knowingly possessing one or more preparations, com-  
6 pounds, mixtures, or substances of an aggregate weight of one pound or  
7 more but less than 2.2 pounds containing a Schedule ~~VI~~<sup>F</sup> controlled sub-  
8 stance.

9           Sec. ~~17.17.340~~<sup>11</sup>. POSSESSION OF A SCHEDULE ~~VI~~<sup>F</sup> CONTROLLED SUBSTANCE  
10 WHILE OPERATING A MOTOR VEHICLE, VESSEL, OR AIRCRAFT. (a) It is unlaw-  
11 ful for a person to operate a motor vehicle, vessel, or aircraft with  
12 any amount of a Schedule ~~VI~~<sup>F</sup> controlled substance in his immediate  
13 control.

14           (b) A person who violates this section is guilty of a class B  
15 misdemeanor.

16           Sec. ~~17.17.350~~<sup>11</sup>. PUBLIC DISPLAY OR USE OF A SCHEDULE ~~VI~~<sup>F</sup> CONTROLLED  
17 SUBSTANCE. (a) It is unlawful for a person to display or use any  
18 amount of a Schedule ~~VI~~<sup>F</sup> controlled substance in a public place. As used  
19 in this subsection, "public place" has the meaning ascribed to it in  
20 AS 11.81.900(b).

21           (b) A person who violates this section is guilty of a violation.

22           Sec. ~~17.17.360~~<sup>11</sup>. POSSESSION OF A SCHEDULE ~~VI~~<sup>F</sup> CONTROLLED SUBSTANCE  
23 BY A MINOR. (a) It is unlawful for a minor knowingly to possess any  
24 amount of a Schedule ~~VI~~<sup>F</sup> controlled substance.

25           (b) A person who violates this section is guilty of a violation.

26           Sec. ~~17.17.370~~<sup>11</sup>. FAILURE TO MAKE, KEEP, OR FURNISH REQUIRED INFOR-  
27 MATION. (a) Except as authorized in this chapter, it is unlawful for a  
28 person knowingly to refuse or fail to make, keep, or furnish a record,  
29 notification, order form, statement, invoice, or information required

*Maybe in both 11/17*

1 under this chapter.

2 (b) A person who violates this section is guilty of a class B  
3 misdemeanor.

4 → Sec. 17.17.380. MISCELLANEOUS OFFENSES. (a) Except as authorized  
5 in this chapter, it is unlawful for a person

6 (1) knowingly to keep or maintain a store, shop, warehouse,  
7 dwelling, building, vehicle, vessel, aircraft, or other structure or  
8 place which is used for keeping or selling controlled substances in  
9 violation of this chapter;

10 (2) to use in the course of the manufacture or distribution  
11 of a controlled substance a registration number which is fictitious,  
12 revoked, suspended, or issued to another person;

13 (3) to obtain possession of a controlled substance by mis-  
14 representation, fraud, forgery, or other deception;

15 (4) to make, distribute, or possess a punch, die, plate,  
16 stone, or other thing designed to print, imprint, or reproduce the  
17 trademark, trade name, or other identifying mark, imprint, or device of  
18 another or any likeness of any of the foregoing upon a drug or container  
19 or labeling so as to render a drug a counterfeit substance;

20 (5) to furnish false or fraudulent material information in,  
21 or omit material information from, an application, report, record, or  
22 other document required to be kept or filed under this chapter.

23 (b) A person who violates this section is guilty of a class C  
24 felony.

25 Sec. ~~17~~<sup>11</sup> 17.390. LIMITATION ON PRESUMPTIVE SENTENCING. If, in a  
26 prosecution under AS 17.17.250(c), 17.17.260(b), 17.17.270(c), 17.17.-  
27 310(c), 17.17.320(b), or 17.17.330(b), a defendant is subject to presump-  
28 tive sentencing under AS 12.55.125(e), the presumptive term to which he  
29 is subject may not be adjusted so as to result in a term of imprisonment

1 of more than three years.

2 Sec. ~~17~~<sup>11</sup>.17.400. OFFENSES DEFINED BY AMOUNTS. Whenever a provision  
3 of this chapter defining an offense requires a determination of an  
4 amount, it is not a defense to the lowest class of offense established  
5 by the evidence that the amount in question was larger than the amount  
6 which would make the offense a higher class of offense, and a person may  
7 be charged and convicted accordingly.

8 Sec. ~~17~~<sup>11</sup>.17.410. PENALTIES UNDER OTHER LAWS. A penalty imposed for  
9 a violation of this chapter is in addition to, and not in place of, a  
10 civil or administrative penalty or sanction otherwise authorized by law.

11 Sec. ~~17~~<sup>11</sup>.17.420. BAR TO PROSECUTION. If a violation of this chapter  
12 is a violation of a federal law or the law of another state, a convic-  
13 tion or acquittal under federal law or the law of another state for the  
14 same conduct is a bar to prosecution in this state.

15 ARTICLE 3. REGULATION OF MANUFACTURE, DISTRIBUTION,  
16 AND DISPENSING OF CONTROLLED SUBSTANCES.

17 Sec. 17.17.550. REGULATIONS. The ~~commissioner~~<sup>Board of Med</sup> shall adopt regu-  
18 lations under the Administrative Procedure Act (AS 44.62) which are  
19 necessary for the administration of AS 17.17.550 - 17.17.610 and may  
20 charge reasonable fees relating to the registration and control of the  
21 manufacture, distribution, and dispensing of controlled substances in  
22 this state.

23 Sec. 17.17.560. REGISTRATION REQUIREMENTS. (a) A person who  
24 manufactures, distributes, or dispenses <sup>any</sup> a controlled substance in this  
25 state or who proposes to engage in the manufacture, distribution, or  
26 dispensing of a controlled substance in this state, shall annually  
27 register with the ~~commissioner~~<sup>Board of Med</sup> in accordance with regulations adopted  
28 under AS 17.17.550.

29 (b) A person registered by the ~~commissioner~~<sup>Board of Med</sup> under AS 17.17.550 .

1 17.17.610 to manufacture, distribute, or dispense controlled substances,  
2 including any such activity in the conduct of research, may possess,  
3 manufacture, distribute, or dispense those substances to the extent  
4 authorized by his registration and in conformity with the other pro-  
5 visions of AS 17.17.550 - 17.17.610.

6 (c) The following persons need not register and may lawfully  
7 possess controlled substances under this chapter:

8 (1) an agent or employee of a registered manufacturer, dis-  
9 tributor, or dispenser of a controlled substance if the possession is  
10 incidental to the agent's or employee's acting in the usual course of  
11 business or employment; *Sampling of e.s.*

12 (2) a common or contract carrier or warehouseman, or his  
13 employee, whose possession of a controlled substance is in the usual  
14 course of business or employment;

15 (3) a person in possession of a controlled substance under an  
16 order of a registered practitioner.

17 (d) The *B.L. Phey* commissioner may, by regulation, waive the requirement for  
18 registration of certain manufacturers, distributors, or dispensers if *the Board*  
19 finds it consistent with the public health and safety,

20 (e) A separate registration is required for each principal place  
21 of business or professional practice where the applicant manufactures,  
22 distributes, or dispenses controlled substances.

23 (f) The *Board* commissioner may inspect the establishment of a registrant  
24 or applicant for registration in accordance with <sup>his</sup> regulations.

25 Sec. 17.17.570. REGISTRATION. (a) The *Board* commissioner shall register  
26 an applicant to manufacture, distribute, or dispense controlled sub-  
27 stances included in the schedules in AS <sup>Fed. Schedules</sup> ~~17.17.040 - 17.17.090~~ unless he  
28 finds that the registration would be inconsistent with the public inter-  
29 est. In determining the public interest, the <sup>Board</sup> commissioner shall consider

1 (1) maintenance of effective controls against diversion of  
2 controlled substances into other than legitimate medical, scientific, or  
3 industrial channels;

4 (2) compliance with applicable state and local law;

5 (3) any conviction of the applicant under federal or state  
6 laws relating to controlled substances;

7 (4) past experience in the manufacture or distribution of  
8 controlled substances, and the existence in the applicant's establish-  
9 ment of effective controls against diversion;

10 (5) furnishing by the applicant of false information in an  
11 application filed under this chapter;

12 (6) suspension or revocation of the applicant's federal  
13 registration to manufacture, distribute, or dispense controlled sub-  
14 stances as authorized by federal law; and

15 (7) any other factors relevant to the public health and  
16 safety.

17 (b) A practitioner registered under federal law to manufacture,  
18 distribute, or dispense controlled substances in the conduct of research  
19 may be issued a registration to manufacture, distribute, or dispense  
20 those substances in the conduct of research in this state upon furnish-

21 ing the <sup>Board</sup> ~~commissioner~~ with evidence of the federal registration. *if*  
*auth to conduct research or dispense in the*

22 (c) Compliance by a manufacturer or distributor with the pro-  
23 visions of the federal law respecting registration, excluding fees,  
24 entitles him to be registered under this chapter.

25 Sec. 17.17.580. REVOCATION AND SUSPENSION OF REGISTRATION. (a) A  
26 registration under AS 17.17.570 to manufacture, distribute, or dispense  
27 a controlled substance may be suspended or revoked by the <sup>Board</sup> ~~commissioner~~  
28 upon a finding that the registrant

29 (1) has furnished false or fraudulent material information in

*OR EXEMPTION FROM REGISTRATION*

1 an application filed under this chapter;

2 (2) has been convicted of a felony under state or federal law  
3 relating to a controlled substance; or

4 (3) has had his federal registration to manufacture, dis-  
5 tribute, or dispense controlled substances suspended or revoked.

6 (b) <sup>Bd</sup> The ~~commissioner~~ may limit the revocation or suspension of a  
7 registration to the particular contro'led substance with respect to  
8 which grounds for revocation or suspension exist.

9 (c) If the <sup>Bd</sup> ~~commissioner~~ suspends or revokes a registration, all  
10 controlled substances owned or possessed by the registrant at the time  
11 of suspension or the effective date of the revocation order may be  
12 placed under seal. A disposition may not be made of substances under  
13 seal until the time for taking an appeal has elapsed or until all appeals  
14 have been concluded unless a court, upon application, orders the sale of  
15 perishable substances and the deposit of the proceeds of the sale with  
16 the court. Upon a revocation order becoming final, all controlled  
17 substances are forfeited to the state.

18 (d) The <sup>Bd</sup> ~~commissioner~~ shall promptly notify the Drug Enforcement  
19 Administration of all orders suspending or revoking registration and all  
20 forfeitures of controlled substances.

21 <sup>Procedure for Denial, Suspension or Revocation of Reg.</sup>  
22 Sec. 17.17.590. ORDER TO SHOW CAUSE. (a) Before denying, sus-  
23 pending or revoking a registration, or refusing a renewal of registra-  
24 tion, the <sup>Bd</sup> ~~commissioner~~ shall serve upon the applicant or registrant an  
25 order to show cause why registration should not be denied, revoked, or  
26 suspended, or why the renewal should not be refused. The order to show  
27 cause shall contain a statement of the basis for it and shall call upon  
28 the applicant or registrant to appear before the <sup>Bd</sup> ~~commissioner~~ at a time  
29 and place not less than 30 days after the date of the service of the  
order, but in the case of a refusal of renewal of registration the show

1 cause order shall be served not later than 30 days before the expiration  
2 of the registration. These proceedings shall be conducted under the  
3 administrative adjudication provisions of the Administrative Procedure  
4 Act (AS 44.62.330 - 44.62.630) without regard to criminal prosecution or  
5 other proceeding. [Proceedings to refuse renewal of registration do not  
6 abate the existing registration, which remains in effect pending the  
7 outcome of the administrative hearing.]

8 (b) The ~~commissioner~~ Bd may, without an order to show cause, suspend  
9 a registration simultaneously with the institution of proceedings under  
10 AS 17.17.580 if ~~he~~ <sup>it</sup> finds that there is an imminent danger to the public  
11 health or safety which warrants this action. The suspension shall  
12 continue in effect until the conclusion of the proceedings, including  
13 judicial review of the proceedings, unless sooner withdrawn by the  
14 ~~commissioner~~ Bd or dissolved by a court of competent jurisdiction.

15 Sec. 17.17.600. RECORDS OF REGISTRANTS. A person registered/<sup>over exempted</sup> to <sup>from Reg</sup>  
16 manufacture, distribute, or dispense/<sup>or administer,</sup> controlled substances under this  
17 chapter shall keep records and maintain inventories in conformance with  
18 the record-keeping and inventory requirements of federal law and with  
19 additional regulations the ~~commissioner~~ Bd may adopt.

20 Sec. 17.17.610. ORDER FORMS; PRESCRIPTIONS. (a) A controlled  
21 substance may be distributed by one registrant to another registrant  
22 only if the distribution is in accordance with federal requirements for  
23 order forms.

24 (b) A controlled substance may not be dispensed by a practitioner  
25 except in accordance with federal requirements regarding prescriptions  
26 for controlled substances; however, a controlled substance may be dis-  
27 pensed directly by a practitioner, other than a pharmacist, to an ulti-  
28 mate user without a prescription, <sup>in conformance with applicable</sup>

29 ARTICLE 4. ENFORCEMENT AND ADMINISTRATION. <sup>Labeling Reg.</sup>

*Different Wording*

1           Sec. 17.17.750. ENFORCEMENT COOPERATION. It is the duty of the  
2 commissioner of public safety, officers of the division of state  
3 troopers, officers appointed to enforce criminal law in this state or  
4 another state, local government law enforcement officers, the attorney,  
5 general, and all prosecuting attorneys to enforce all provisions of this  
6 chapter and to cooperate with agencies charged with enforcement of the  
7 laws relating to controlled substances of the United States, of this  
8 state, and of all other states.

9           Sec. 17.17.760. <sup>SEIZURE</sup> FORFEITURES. (a) The following are subject to  
10 forfeiture:

11           (1) a controlled substance which has been manufactured,  
12 distributed, acquired, or possessed in violation of this chapter;

13           (2) raw materials, products, and equipment which are used in  
14 manufacturing, <sup>by compounding</sup> or distributing a controlled substance in violation of  
15 this chapter;

16           (3) property which is used as a container for property des-  
17 cribed in (1) or (2) of this subsection;

18           (4) conveyances, including aircraft, vehicles, or vessels  
19 which are used to transport or in any manner to facilitate transporta-  
20 tion of property described in (1) or (2) of this subsection for the  
21 purpose of sale or receipt, except

22           (A) a conveyance is not subject to forfeiture under this  
23 section if its use in violation of this chapter was committed by a  
24 person other than the owner of the conveyance and the owner was not  
25 privy to the violation;

26           (B) a forfeiture of a conveyance encumbered by a bona  
27 fide security interest at the time of seizure is subject to the  
28 interest of the secured party if its use in violation of this  
29 chapter was committed by a person other than the secured party and

1 the secured party was not privy to the violation;

2 (5) all books, records, and research products and materials,  
3 including formulas, microfilm, tapes, and data which are used in viola-  
4 tion of this chapter.

5 (b) Property listed in (a) of this section may be forfeited to the  
6 state upon conviction of the defendant of a violation of this chapter or  
7 upon judgment of a court of competent jurisdiction in a civil proceeding  
8 in rem that an item is subject to forfeiture.

9 (c) Property subject to forfeiture under this section may be  
10 seized by the commissioner of public safety upon an order issued by the  
11 court having jurisdiction over the property upon a showing of probable  
12 cause that the property is subject to forfeiture. Seizure without a  
13 court order may be made if

14 (1) the seizure is incident to a valid arrest or a search  
15 under a valid search warrant;

16 (2) the property subject to seizure has been the subject of a  
17 prior judgment in favor of the state in a criminal proceeding or a civil  
18 proceeding in rem based upon this chapter;

19 (3) there is probable cause that the property was or is being  
20 used in violation of this chapter and the property is easily movable.

21 (d) Property seized under (c)(3) of this section may not be held  
22 over 48 hours or until an order may be applied for and issued by a  
23 court, whichever is earlier.

24 (e) Property seized or detained under this section is in the  
25 custody of the Department of Public Safety subject only to the orders  
26 and decrees of the court having jurisdiction over the forfeiture pro-  
27 ceedings. If property is seized under this section, the Department of  
28 Public Safety may

29 (1) place the property under seal;

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1 upon the state to prove by clear and convincing evidence that the item  
2 in question is subject to forfeiture.

3 (c) Liability is not imposed by this chapter upon an authorized  
4 state or local officer engaged in the lawful performance of his duties.

5 Sec. 17.17.780. EDUCATION AND RESEARCH. (a) The <sup>Bel</sup> commissioner  
6 shall carry out educational programs designed to prevent and deter abuse  
7 of controlled substances. In connection with these programs, the commis-  
8 sioner may

9 (1) promote better recognition of the problems of abuse of  
10 controlled substances within the regulated industry and among interested  
11 groups and organizations;

12 (2) assist the regulated industry and interested groups and  
13 organizations in contributing to the reduction of abuse of controlled  
14 substances;

15 (3) consult with interested groups and organizations to aid  
16 them in solving administrative and organizational problems;

17 (4) evaluate procedures, projects, and techniques conducted  
18 or proposed as part of educational programs on abuse of controlled  
19 substances;

20 (5) disseminate the results of research on abuse of con-  
21 trolled substances to promote a better public understanding of the  
22 problems which exist and their solutions; and

23 (6) assist in the education and training of state and local  
24 law enforcement officials in their efforts to prevent abuse of con-  
25 trolled substances.

26 (b) The commissioner shall encourage research on controlled sub-  
27 stances and may

28 (1) establish methods to assess the effects of controlled  
29 substances and identify and characterize those with potential for abuse;

1 (2) undertake research to

2 (A) develop new or improved approaches, techniques,  
3 systems, equipment, and devices to strengthen the enforcement of  
4 this chapter;

5 (B) determine patterns of abuse of controlled substances  
6 and their social effects;

7 (C) improve methods for preventing, predicting, and  
8 understanding the abuse of controlled substances;

9 (3) enter into contracts with public agencies, institutions  
10 of higher education, and organizations or individuals for conducting  
11 research on abuse of controlled substances and for performing related  
12 educational activities.

13 ARTICLE 5. GENERAL PROVISIONS.

14 Sec. 17.17.900. DEFINITIONS. As used in this chapter, unless the  
15 context requires otherwise,

16 (1) "administer" means the direct application of a controlled  
17 substance, whether by injection, inhalation, ingestion, or any other  
18 means, to the body of a patient or research subject by

19 (A) a practitioner or, in his presence, by his autho-  
20 rized agent, or PA

21 (B) the patient or research subject at the direction and  
22 in the presence of a practitioner;

23 (2) "agent" means an authorized person who acts on behalf of  
24 or at the direction of a manufacturer, distributor, or dispenser; "agent"  
25 does not include a common or contract carrier, public warehouseman, or  
26 employee of the carrier or warehouseman;

27 (3) "~~commissioner~~ B. J. Pham" means the commissioner of health and  
28 social services;

29 (4) "controlled substance" means a drug, substance, or

1 immediate precursor included within any of the <sup>Fedl</sup>schedules in AS 17.17.-

2 ~~040 - 17.17.( )~~;

3 (5) "counterfeit substance" means a controlled substance  
4 which, or the container or labeling of which, without authorization,  
5 bears the trademark, trade name, or other identifying mark, imprint,  
6 number, or device, or any likeness to it, of a manufacturer, distribu-  
7 tor, or dispenser other than the person who in fact manufactured, dis-  
8 tributed, or dispensed the substance;

9 (6) "deliver" or "delivery" means the actual, constructive,  
10 or attempted transfer from one person to another of a controlled sub-  
11 stance, whether or not there is an agency relationship;

12 (7) "dentist" means a person authorized by law to practice  
13 dentistry [in this state;]

14 (8) "dispense" means to deliver a controlled substance to an  
15 ultimate user or research subject by a practitioner, including the  
16 prescribing, administering, packaging, labeling, or compounding neces-  
17 sary to prepare the substance for that delivery;

18 (9) "distribute" means to deliver, other than by administer-  
19 ing or dispensing, a controlled substance;

20 (10) "drug"

21 (A) means

22 (i) substances recognized as drugs in the official  
23 United States Pharmacopoeia, official Homeopathic Pharma-  
24 copoeia of the United States, or official National Formulary,  
25 or any supplement to any of them;

26 (ii) substances intended for use in the diagnosis,  
27 cure, mitigation, treatment, or prevention of disease in  
28 humans or animals;

29 (iii) substances, other than food, intended to affect

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1 the structure or any function of the body of humans or  
2 animals; and

3 (iv) substances intended for use as a component of  
4 any article specified in (i), (ii), or (iii) of this subpara-  
5 graph;

6 (B) does not include devices or their components, parts,  
7 or accessories;

8 (11) "hashish" means the resin produced by the plant (genus)  
9 Cannabis;

10 (12) "hashish oil" means the viscous liquid concentrate of  
11 tetrahydrocannabinols extracted from hashish;

12 (13) "immediate precursor" means a substance which the Con-  
13 trolled Substances Advisory Committee has found to be and is by regula-  
14 tion designated as the principal compound commonly used or produced  
15 primarily for use, and which is an immediate chemical intermediary used  
16 or likely to be used, in the manufacture of a controlled substance, the  
17 control of which is necessary to prevent, curtail, or limit manufacture;

18 17 (14) "manufacture" means the production, preparation, pro-  
19 pagation, compounding, conversion, or processing of a controlled sub-  
20 stance, either directly or indirectly by extraction from substances of  
21 natural origin or independently by means of chemical synthesis, or by a  
22 combination of extraction and chemical synthesis, and includes any  
23 packaging or repackaging of the substance or labeling or relabeling of  
24 its container, except that this term does not include the preparation or  
25 compounding of a controlled substance by an individual for his own use  
26 or the preparation, compounding, packaging, or labeling of a controlled  
27 substance

28 (A) by a practitioner as an incident to his administer-  
29 ing or dispensing a controlled substance in the course of his

1 professional practice, or

2 (B) by a practitioner, or by his authorized agent under  
3 his supervision, for the purpose of, or as an incident to, research,  
4 teaching, or chemical analysis and not for sale;

5 - A ? (15) "marijuana" means the leaves, stems, flowers, and seeds  
6 of the plant (genus) Cannabis, whether growing or not, but does not  
7 include the resin or oil extracted from any part of the plant, or any  
8 compound, manufacture, salt, derivative, mixture, or preparation from  
9 the resin or oil, including hashish and natural or synthetic tetrahydro-  
10 cannabinal; it does not include the mature stalks of the plant, fiber  
11 produced from the stalks, oil or cake made from the seeds of the plant,  
12 any other compound, manufacture, salt, derivative, mixture, or prepara-  
13 tion of the mature stalks, fiber, oil or cake, or the sterilized seed of  
14 the plant which is incapable of germination;

15 (16) "minor" means a person who is under 18 years of age;

16 (17) "opiate" means a substance having an addiction-forming or  
17 addiction-sustaining liability similar to morphine or being capable of  
18 conversion into a drug having addiction-forming or addiction-sustaining  
19 liability; it does not include, unless specifically designated as con-  
20 trolled under AS 17.17.020, the dextrorotatory isomer of 3-methoxy-n-  
21 methylmorphinan and its salts (dextromethorphan); it does include its  
22 racemic and levorotatory forms;

23 (18) "opium poppy" means the plant of the species Papaver  
24 somniferum L., except its seeds;

25 (19) "poppy straw" means all parts, except the seeds, of the  
26 opium poppy, after mowing;

27 (20) "practitioner" means

28 (A) a physician, dentist, veterinarian, scientific  
29 investigator, or other person licensed, registered, or otherwise

1 permitted to distribute, dispense, conduct research with respect  
2 to, or administer a controlled substance in the course of pro-  
3 fessional practice or research in this state;

4 (B) a pharmacy, hospital, or other institution licensed,  
5 registered, or otherwise permitted to distribute, dispense, conduct  
6 research with respect to, or administer a controlled substance in  
7 the course of professional practice or research in this state;

8 (21) "production" includes the manufacture, planting, cultiva-  
9 tion, growing, or harvesting of a controlled substance;

10 (22) "ultimate user" means a person who lawfully possesses a  
11 controlled substance for his own use, for the use of a member of his  
12 household, or for administering to an animal owned by him or a member of  
13 his household.

14 Sec. 17.17.990. SHORT TITLE. This chapter may be cited as the  
15 Controlled Substances Act.

16 \* Sec. 2. AS 08.64.380(3)(B) is amended to read:

17 (B) habitual overuse of alcoholic beverages or con-  
18 trolled substances as defined in AS 17.17 [DEPRESSANT, HALLUCINO-  
19 GENIC OR STIMULANT DRUGS, AS DEFINED IN AS 17.12.150(3), OR ADDIC-  
20 TION TO THE USE OF NARCOTIC DRUGS AS DEFINED IN AS 17.10.230(13)];

21 \* Sec. 3. AS 08.80.470 is amended to read:

22 Sec. 08.80.470. CONSTRUCTION. Nothing in this chapter amends,  
23 modifies, repeals or otherwise changes any provision of the Controlled  
24 Substances Act (AS 17.17) [UNIFORM NARCOTIC DRUG ACT (AS 17.10)] or the  
25 Alaska Food, Drug and Cosmetic Act (AS 17.20).

26 \* Sec. 4. AS 12.55.155(c) is amended by adding new paragraphs to read:

27 (15) the offense is defined in AS 17.17, and the commission  
28 of the offense involved smuggling controlled substance into this  
29 state;

11  
1 (16) the offense is defined in AS ~~17~~.17, and the commission of  
2 the offense involved large quantities of a controlled substance;

3 (17) the offense is defined in AS 17.17, and the commission of  
4 the offense involved the distributor of a controlled substance adulter-  
5 ated with a toxic substance.

6 \* Sec. 5. AS 12.55.155(d) is amended by adding new paragraphs to read:

7 (13) the offense is defined in AS ~~17~~.17, and the commission of  
8 the offense involved small quantities of a controlled substance;

9 (14) the offense is defined in AS ~~17~~.17, and the commission of  
10 the offense involved the distribution of a controlled substance for no  
11 remuneration to a personal acquaintance 19 years of age or older;

12 (15) the offense is defined in AS ~~17~~.17, and the commission of  
13 the offense involved the possession of a controlled substance for per-  
14 sonal use in the defendant's home.

15 \* Sec. 6. AS 44.29.020 is amended to read:

16 Sec. 44.29.020. DUTIES OF DEPARTMENT. The Department of Health  
17 and Social Services shall administer the state programs of public health  
18 and social services, including: (1) maternal and child health ser-  
19 vices; (2) preventive medical services; (3) public health nursing ser-  
20 vices; (4) sanitation and engineering services; (5) nutrition services;  
21 (6) health education; (7) laboratories; (8) mental health treatment and  
22 diagnosis; (9) management of state institutions; (10) medical facili-  
23 ties; (11) old age assistance; (12) aid to dependent children; (13) aid  
24 to the blind; (14) child welfare services; (15) general relief; (16)  
25 licensing and supervision of child care facilities; [AND] (17) probation  
26 and parole supervision; and (18) control of drug abuse in accordance with  
27 AS ~~17~~.17.

28 \* Sec. 7. (a) Prosecution for a violation of law occurring before the  
29 effective date of this Act is not affected or abated by this Act. If the

1 offense being prosecuted is similar to one defined in AS 17.17, then the  
2 penalties under AS 17.17 apply if they are less than those under prior law.

3 (b) Civil seizures or forfeitures and injunctive proceedings commenced  
4 before the effective date of this Act are not affected by this Act.

5 (c) All administrative proceedings pending under prior laws which are  
6 superseded by this Act shall be continued and brought to a final determina-  
7 tion in accord with the laws and rules in effect before the effective date of  
8 this Act.

9 *BD of Phcy*  
10 (d) The commissioner of health and social services shall initially  
11 permit persons to register under AS 17.17 who own or operate an establishment  
12 engaged in the manufacture, distribution, or dispensing of a controlled  
13 substance before the effective date of this Act and who are registered or  
14 licensed by this state.

15 (e) This Act applies to violations of law, seizures and forfeitures,  
16 injunctive proceedings, administrative proceedings, and investigations which  
17 occur on or after the effective date of this Act.

18 \* Sec. 8. Orders issued and regulations adopted under a law affected by  
19 this Act and in effect on the effective date of this Act and not in conflict  
20 with this Act continue in effect until modified, superseded, or repealed.

21 \* Sec. 9. AS 17.10; AS 17.12; and AS 17.15 are repealed.

22 *Maybe some others.*

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