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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.

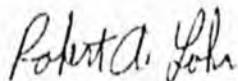
Rather than comment on the pharmacological classification and the method by which substances have been classified and penalties proposed, we want to make some general statements concerning this problem.

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 Fargnoli, Issues Analyst
House Research Agency

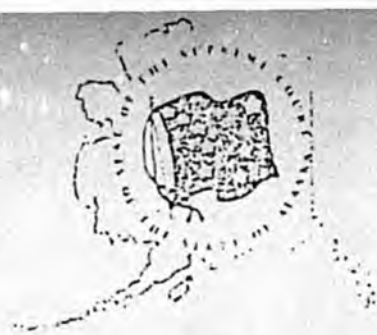
RE: Research Request No. 23
(Drug Possession and Sales: Hawaii)

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 & 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> <i>Gov 0-20</i>	<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. <i>0-20</i> \$25,000 <i>\$5,000</i>	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= <i>Gov</i> 0-15 <i>0-10</i> \$25,000 <i>\$5,000</i> 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. <i>0-10</i> \$15,000 <i>\$5,000</i>	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. ⁰⁻⁵ \$10,000 ^{\$10,000}	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. ⁰⁻⁵ \$5000 ^{\$50,000}	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. ⁰⁻⁵ \$5,000 ^{\$50,000}	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> ^{Gov}	<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. ⁰⁻⁵ \$5000 ^{\$50,000} (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
	100 or more caps; or 1/2 oz. or more = 0-10 yrs. \$50,000		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
	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.
	100 or more caps; or 1/2 oz. or more = 0-5 yrs. \$50,000		50 or more caps; or 1/8 of oz. or more = 0-10 yrs. \$10,000.
	If less than the above specified amounts = 0-1 yr. \$5000		If less than the above specified amounts = 0-1 yr. \$1000

	<u>Parr Draft</u>	<u>Fed. Law</u>	^{Gov}	<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 -----

<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.

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)

Table with 7 columns (FY 80-FY 85) and 7 rows (PERSONAL SERVICES, TRAVEL, CONTRACTUAL, COMMODITIES, EQUIPMENT, LAND & STRUCTURES, GRANTS, CLAIMS, ETC., TOTAL). All values are -0-.

FUNDING (Thousands of Dollars)

Table with 7 columns (FY 80-FY 85) and 3 rows (GENERAL FUND, FEDERAL FUNDS, OTHER (Specify Fund Source)). All values are -0-.

POSITIONS

Table with 7 columns (FY 80-FY 85) and 3 rows (FULL TIME, PART TIME, TEMPORARY). All values are -0-.

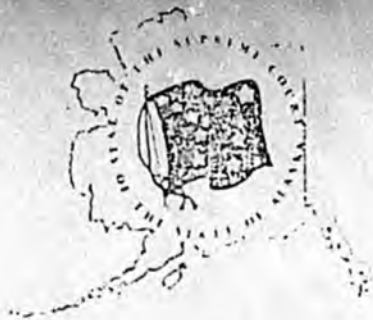
III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

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.

Handwritten signature of Charles Campbell, Director

Charles Campbell, Director
Division of Corrections 465-3376
Prepared by: Robert Cole Date: 1/21/80
Office: Alco. & Drug Abuse PH: 586-6201
Department of Health & Social Services

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



Alaska Judicial Council

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CHAIRMAN EX OFFICIO
JAY 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 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 Record	12.8%	14.0%	49.6%	
Misdem. Only	37.6%	52.0%	30.7%	
One Prior Felony	25.2%	21.1%	13.7%	significant at .001 (missing cases=232)
Two/more Felonies	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 & 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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ORIGINAL.

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 consistent 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	0-110/\$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 pro- nuptive sentence up to the statutory maximum for an ord- inary 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	0-110/\$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 pro- nuptive sentence up to the statutory maximum for an ord- inary 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	0-110/\$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 pro- nuptive sentence up to the statutory maximum for an ord- inary sale.	0-110/\$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"> (1) Use of marijuana in public places (2) possession of one ounce or more in public places (3) possession of any amount while oper- ating motor vehi- cle or airplane (4) while under 10 possess any mari- juana - include monies - \$1,000. <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

EVELLE J. YOUNGER
Attorney General

ENFORCEMENT AND INVESTIGATION BRANCH
Headquarters Office
3301 C St. (P.O. Box 13397)
Sacramento, California 95813

Act includes Amendments through 1977

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 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 15 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 licensed to practice in this state, 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