Chapter 45

AN ACT

Revising the drug laws and making amendments to the criminal laws of the state; and providing for an effective date.

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* Section 1. DECLARATION OF LEGISLATIVE PURPOSE. (a) The purposes of this Act are to consolidate and revise Alaska's drug laws so that they are patterned after the Uniform Controlled Substances Act and the Federal Controlled Substances Act of 1970 and to enact uniform penalty provisions in conformity with the 1978 revision of Alaska's criminal code to effectively combat illicit trafficking in controlled substances.

(b) Two distinct, but interrelated, concerns are addressed in this Act. The first concern is the detrimental effect on public safety created through illicit trafficking in and use of drugs. A second, equally important, concern is the effect on public health created by the use and abuse of drugs. It is the intent of the legislature that, in addressing public safety concerns, uniform classification and penalty provisions be enacted that adopt an approach reflecting law enforcement problems unique to Alaska. It is also the intent of the legislature that, in addressing public health concerns, a statutory scheme be enacted that is patterned after federal law and that the legitimate manufacture, distribution, prescription, and dispensing of controlled substances be subject to a regulatory scheme regarding registration, record keeping, order forms, and prescription requirements that is identical to that provided under federal law.

(c) The legislature recognizes the right of the people to privacy. The

purposes of this Act do not include infringement of this constitutional right to privacy.

(d) The legislature finds that marijuana poses a serious threat to the public health. The legislature declares that possession or use of marijuana that is not proscribed by law under this Act should not be construed as condoning or encouraging the use of marijuana by any person.

* Sec. 2. AS 11 is amended by adding a new chapter to read:

CHAPTER 71. CONTROLLED SUBSTANCES.

ARTICLE 1. OFFENSES RELATING TO CONTROLLED SUBSTANCES.

Sec. 11.71.010. MISCONDUCT INVOLVING A CONTROLLED SUBSTANCE IN THE FIRST DEGREE. (a) Except as authorized in AS 17.30, a person commits the crime of misconduct involving a controlled substance in the first degree if the person

(1) delivers any amount of a schedule IA controlled substance to a person under 19 years of age who is at least three years younger than the person delivering the substance; or

(2) delivers any amount of a schedule IIA or IIIA controlled substance to a person under 19 years of age who is at least three years younger than the person delivering the substance; or

(3) engages in a continuing criminal enterprise.

(b) For purposes of this section, a person is engaged in a "continuing criminal enterprise" if

(1) the person commits a violation of this chapter which is punishable as a felony; and

(2) that violation is a part of a continuing series of five or more violations of this chapter

(A) which the person undertakes in concert with at least five other persons organized, supervised, or otherwise managed by the person; and

(B) from which the person obtains substantial income or resources.

(c) Misconduct involving a controlled substance in the first degree is an unclassified felony and is punishable as provided in AS 12.55.

Sec. 11.71.020. MISCONDUCT INVOLVING A CONTROLLED SUBSTANCE IN THE SECOND DEGREE. (a) Except as authorized in AS 17.30, a person commits the crime of misconduct involving a controlled substance in the second degree if the person manufactures or delivers any amount of a schedule IA controlled substance or possesses any amount of a schedule IA controlled substance with intent to manufacture or deliver.

(b) Misconduct involving a controlled substance in the second degree is a class A felony.

Sec. 11.71.030. MISCONDUCT INVOLVING A CONTROLLED SUBSTANCE IN THE THIRD DEGREE. (a) Except as authorized in AS 17.30 or AS 17.35, a person commits the crime of misconduct involving a controlled substance in the third degree if the person

(1) manufactures or delivers any amount of a schedule IIA or IIIA controlled substance or possesses any amount of a schedule IIA or IIIA controlled substance with intent to manufacture or deliver;

(2) delivers any amount of a schedule IVA, VA or VIA controlled substance to a person under 19 years of age who is at least three years younger than the person delivering the substance; or

(3) being 18 years of age or older, possesses any amount of a schedule IA or IIA controlled substance within the grounds of or on a parking lot immediately adjacent to a public or private preschool, elementary, junior high, or secondary school.

(b) It is an affirmative defense to a prosecution under (a)(3) of this section that at the time of the possession the school was closed to

any organized activity involving persons under 18 years of age. Nothing in this subsection precludes a prosecution under any other provision of this section or any other section of this chapter.

(c) Misconduct involving a controlled substance in the third degree is a class B felony.

Sec. 11.71.040. MISCONDUCT INVOLVING A CONTROLLED SUBSTANCE IN THE FOURTH DEGREE. (a) Except as authorized in AS 17.30 or AS 17.35, a person commits the crime of misconduct involving a controlled substance in the fourth degree if the person

(1) manufactures or delivers any amount of a schedule IVA or VA controlled substance or possesses any amount of a schedule IVA or VA controlled substance with intent to manufacture or deliver;

(2) manufactures or delivers, or possesses with the intent to manufacture or deliver, one or more preparations, compounds, mixtures, or substances of an aggregate weight of one ounce or more containing a schedule VIA controlled substance;

(3) possesses

(A) any amount of a schedule IA or IIA controlled substance;

(B) 25 or more tablets, ampules, or syrettes containing a schedule IIIA or IVA controlled substance;

(C) one or more preparations, compounds, mixtures, or substances of an aggregate weight of three grams or more containing a schedule IIIA or IVA controlled substance;

(D) 50 or more tablets, ampules, or syrettes containing a schedule VA controlled substance;

(E) one or more preparations, compounds, mixtures, or substances of an aggregate weight of six grams or more containing a schedule VA controlled substance; or

(F) one or more preparations, compounds, mixtures, or substances of an aggregate weight of one pound or more containing a schedule VIA controlled substance;

(4) being 18 years of age or older, possesses a schedule IIIA, IVA, VA, or VIA controlled substance within the grounds of or on a parking lot immediately adjacent to a public or private preschool, elementary, junior high, or secondary school;

(5) knowingly keeps or maintains any store, shop, warehouse, dwelling, building, vehicle, boat, aircraft, or other structure or place which is used for keeping or distributing controlled substances in violation of a felony offense under this chapter or AS 17.30;

(6) makes, delivers, or possesses a punch, die, plate, stone, or other thing which prints, imprints, or reproduces a trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any of these upon a drug, drug container, or labeling so as to render the drug a counterfeit substance;

(7) knowingly uses in the course of the manufacture or distribution of a controlled substance a registration number which is fictitious, revoked, suspended, or issued to another person;

(8) knowingly furnishes false or fraudulent information in or omits material information from any application, report, record, or other document required to be kept or filed under AS 17.30;

(9) obtains possession of a controlled substance by misrepresentation, fraud, forgery, deception or subterfuge; or

(10) affixes a false or forged label to a package or other container containing any controlled substance.

(b) It is an affirmative defense to a prosecution under (a)(4) of this section that at the time of the possession the school was closed to any organized activity involving persons under 18 years of age. Nothing

in this subsection precludes a prosecution under any other provision of this section or any other section of this chapter.

(c) Nothing in (a)(5) or (6) of this section precludes a prosecution or civil proceeding brought under any other provision of this section or any other section of this chapter or under AS 17.

(d) Misconduct involving a controlled substance in the fourth degree is a class C felony.

Sec. 11.71.050. MISCONDUCT INVOLVING A CONTROLLED SUBSTANCE IN THE FIFTH DEGREE. (a) Except as authorized in AS 17.30 or AS 17.35, a person commits the crime of misconduct involving a controlled substance in the fifth degree if the person

(1) manufactures or delivers, or possesses with the intent to manufacture or deliver, one or more preparations, compounds, mixtures, or substances of an aggregate weight of one-half ounce or more containing a schedule VIA controlled substance;

(2) manufactures or delivers, or possesses with the intent to manufacture or deliver, one or more preparations, compounds, mixtures, or substances of an aggregate weight of less than one-half ounce containing a schedule VIA controlled substance, for remuneration;

(3) possesses

(A) less than 25 tablets, ampules, or syrettes containing a schedule IIIA or IVA controlled substance;

(B) one or more preparations, compounds, mixtures, or substances of an aggregate weight of less than three grams containing a schedule IIIA or IVA controlled substance;

(C) less than 50 tablets, ampules, or syrettes containing a schedule VA controlled substance;

(D) one or more preparations, compounds, mixtures, or substances of an aggregate weight of less than six grams containing

a schedule VA controlled substance; or

(L) one or more preparations, compounds, mixtures, or substances of an aggregate weight of one-half pound or more containing a schedule VIA controlled substance; or

(4) fails to make, keep, or furnish any record, notification, order form, statement, invoice, or information required under AS 17.30.

(b) Misconduct involving a controlled substance in the fifth degree is a class A misdemeanor.

Sec. 11.71.060. MISCONDUCT INVOLVING A CONTROLLED SUBSTANCE IN THE SIXTH DEGREE. (a) Except as authorized in AS 17.30 or AS 17.35, a person commits the crime of misconduct involving a controlled substance in the sixth degree if the person

(1) uses or displays any amount of a schedule VIA controlled substance or possesses one or more preparations, compounds, mixtures, or substances of an aggregate weight of one ounce or more containing a schedule VIA controlled substance on a public street or sidewalk or on the premises of a public carrier or business establishment or in any other public place;

(2) knowingly possesses any amount of a schedule VIA controlled substance within the immediate control of that person while operating a propelled vehicle;

(3) being under 19 years of age, possesses one or more preparations, compounds, mixtures, or substances of an aggregate weight of less than four ounces containing a schedule VIA controlled substance;

(4) possesses one or more preparations, compounds, mixtures, or substances of an aggregate weight of four ounces or more containing a schedule VIA controlled substance; or

(5) refuses entry into a premises for an inspection authorized under AS 17.30.

(b) Misconduct involving a controlled substance in the sixth degree is a class B misdemeanor.

Sec. 11.71.070. MISCONDUCT INVOLVING A CONTROLLED SUBSTANCE IN THE SEVENTH DEGREE. (a) Except as authorized in AS 17.30 or AS 17.35, a person commits the offense of misconduct involving a controlled substance in the seventh degree if the person

(1) manufactures or delivers, or possesses with the intent to manufacture or deliver, one or more preparations, compounds, mixtures, or substances of an aggregate weight of less than one-half ounce of a schedule VIA controlled substance; or

(2) possesses one or more preparations, compounds, mixtures, or substances of an aggregate weight of less than one ounce containing a schedule VIA controlled substance on a public street or sidewalk or on the premises of a public carrier or business establishment or in any other public place.

(b) Misconduct involving a controlled substance in the seventh degree is a violation and is punishable as authorized in AS 12.55, except that if a fine is imposed it shall not be more than $100.

Sec. 11.71.080. AGGREGATE WEIGHT OF LIVE MARIJUANA PLANTS. For purposes of calculating the aggregate weight of a live marijuana plant, the aggregate weight shall be the weight of the marijuana when reduced to its commonly used form.

ARTICLE 2. STANDARDS AND SCHEDULES.

Sec. 11.71.100. CONTROLLED SUBSTANCES ADVISORY COMMITTEE. (a) The Controlled Substances Advisory Committee is established in the Department of Law. The committee consists of

(1) the attorney general or the attorney general's designee;

(2) the commissioner of health and social services or the commissioner's designee;

(3) the commissioner of public safety or the commissioner's designee;

(4) the president of the Board of Pharmacy or the designee of the president who shall also be a member of the Board of Pharmacy;

(5) a peace officer appointed by the governor after consultation with the Alaska Association of Chiefs of Police;

(6) a physician appointed by the governor;

(7) a psychiatrist appointed by the governor; and

(8) two individuals appointed by the governor.

(b) Members of the committee appointed under (a)(5) - (8) of this section serve terms of four years. A member of the committee receives no salary but is entitled to per diem and travel expenses authorized by law for boards and commissions under AS 39.20.180.

(c) The attorney general is the chairman of the committee.

(d) The committee meets at the call of the attorney general.

(e) The committee may not meet less than twice a year.

(f) Five members of the committee constitute a quorum, except that a smaller number may adjourn a meeting in the absence of a quorum. A quorum being present, a majority vote of the total membership is required to take official action.

Sec. 11.71.110. DUTIES OF COMMITTEE. The committee shall

(1) advise the governor of the need to add, delete or reschedule substances in the schedules in AS 11.71.140 - 11.71.190;

(2) recommend regulations for adoption by the Board of Pharmacy to prevent excessive prescription of controlled substances and the diversion of prescription drugs into illicit channels;

(3) evaluate the effectiveness of programs in the state providing treatment and counseling for persons who abuse controlled substances;

(4) recommend programs to the Alaska Court System to be instituted as alternatives to the prosecution or imprisonment of offenders who have no prior criminal record involving controlled substance offenses and who are charged with crimes involving controlled substances;

(5) review and evaluate enforcement policies and practices of the Department of Public Safety and the Department of Law with regard to crimes involving controlled substances, and recommend modifications of those policies and practices consistent with the committee's assessment of the probable danger of particular controlled substances; and

(6) review budget requests and recommend amounts for appropriations to the governor and the legislature for departments and agencies responsible for

(A) enforcing criminal laws pertaining to controlled substances;

(B) providing treatment and counseling of persons who abuse controlled substances; and

(C) regulating the legitimate handling of controlled substances.

Sec. 11.71.120. AUTHORITY TO SCHEDULE CONTROLLED SUBSTANCES. (a) If, after considering the factors set out in (c) of this section, the committee decides to recommend that a substance should be added to, deleted from, or rescheduled in a schedule of controlled substances under AS 11.71.140 - 11.71.190, the governor shall introduce legislation in accordance with the recommendation of the committee.

(b) If a substance is added as a controlled substance under federal law, the governor shall introduce legislation in accordance with the federal law.

(c) In advising the governor of the need to add, delete, or reschedule a substance, under AS 11.71.110(1), the committee shall

assess the danger or probable danger of the substance after considering the following:

(1) the actual or probable abuse of the substance including

(A) the history and current pattern of abuse both in this state and in other states;

(B) the scope, duration, and significance of abuse;

(C) the degree of actual or probable detriment which may result from abuse of the substance;

(D) the probable physical and social impact of widespread abuse of the substance;

(2) the biomedical hazard of the substance including

(A) its pharmacology, the effects and modifiers of the effects of the substance;

(B) its toxicology, the acute and chronic toxicity, interaction with other substances, whether controlled or not, and the degree to which it may cause psychological or physiological dependence;

(C) the risk to public health and the particular susceptibility of segments of the population;

(3) whether the substance is an immediate precursor of a substance already controlled under this chapter;

(4) the current state of scientific knowledge regarding the substance, including whether there is any acceptable means to safely use the substance under medical supervision;

(5) the relationship between the use of the substance and other criminal activity, including

(A) whether persons engaged in illicit trafficking of the substance are also engaged in other criminal activity;

(B) whether the nature and relative profitability of

manufacturing or delivering the substance encourages illicit trafficking in the substance;

(C) whether the commission of other crimes is one of the effects of abuse of the substance;

(D) whether addiction to the substance relates to the commission of crimes to support the continued use of the substance.

(d) If the committee designates a substance as an immediate precursor of a controlled substance, a precursor of that immediate precursor is not subject to control solely because it is a precursor of the immediate precursor.

(e) The committee has no authority over tobacco or alcoholic beverages as defined in AS 04.21.080.

Sec. 11.71.140. SCHEDULE IA. (a) A substance shall be placed in schedule IA if it is found under AS 11.71.120(c) to have the highest degree of danger or probable danger to a person or the public.

(b) Schedule IA includes, unless specifically excepted or listed in another schedule, any of the following substances whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(1) opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate, excluding apomorphine, dextrorphan, nalbuphine, naloxone, and naltrexone, and their respective salts, but including the following:

(A) raw opium;

(B) opium extracts;

(C) opium fluid extracts;

(D) powdered opium;

(E) granulated opium;

(F) tincture of opium;

(G) codeine;

(H) ethylmorphine;

(I) etorphine hydrochloride;

(J) hydrocodone;

(K) hydromorphone;

(L) metopon;

(M) morphine;

(N) oxycodone;

(O) oxymorphine;

(P) thebaine;

(2) any salt, compound, derivative, or preparation of a substance included in (b)(1) of this section which is chemically equivalent or identical to any of the substances referred to in (b)(1) of this section; however, these substances do not include the isoquinoline alkaloids of opium;

(3) opium poppy and poppy straw;

(4) concentrate of poppy straw which is the crude extract of poppy straw in either liquid, solid, or powder form which contains the phennanthrine alkaloids of the opium poppy.

(c) Schedule IA includes, unless specifically excepted or unless listed in another schedule, any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation, dextrorphan excepted:

(1) acetylmethadol;

(2) allylprodine;

(3) alphacetylmethadol;

(4) alphameprodine;

(5) alphamethadol;

(6) alphaprodine;

(7) anileridine;

(8) benzethidine;

(9) betacetylmethadol;

(10) betameprodine;

(11) betamethadol;

(12) betaprodine;

(13) bezitramide;

(14) clonitazene;

(15) dextromoramide;

(16) diampromide;

(17) diethylthiambutene;

(18) difenoxin;

(19) dihydrocodeine;

(20) dimenoxadol;

(21) dimepheptanol;

(22) dimethylthiambutene;

(23) dioxaphetyl butyrate;

(24) diphenoxylate;

(25) dipipanone;

(26) ethylmethylthiambutene;

(27) etonitazene;

(28) etoxeridine;

(29) fentanyl;

(30) furethidine;

(31) hydroxpethidine;

(32) isomethadone;

(33) ketobemidone;

(34) levomethorphan;

(35) levomoramide;

(36) levorphanol;

(37) levophenacylmorphan;

(38) meperidine, also known as pethidine;

(39) metazocine;

(40) methadone;

(41) methadone-intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane;

(42) moramide-intermediate, 2-methyl-3-morpholino-1, 1-diphenylpropane-carboxylic acid;

(43) morpheridine;

(44) noracymethadol;

(45) norlevorphanol;

(46) normethadone;

(47) norpipanone;

(48) pethidine, also known as meperidine;

(49) pethidine-intermediate-A, 4-cyano-1-methyl-4-phenyl piperidine;

(50) pethidine-intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate;

(51) pethidine-intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid;

(52) phenadoxone;

(53) phenampromide;

(54) phenazocine;

(55) phenomorphan;

(56) phenoperidine;

(57) piminodine;

(58) piritramide;

(59) propheptazine;

(60) properidine;

(61) propiram;

(62) racemethorphan;

(63) racemoramide;

(64) racemorphan;

(65) trimeperidine.

(d) Schedule IA includes, unless specifically excepted or unless listed in another schedule, any of the following opium derivatives, their salts, isomers, and salts of isomers 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) drotebanol;

(10) etorphine, except hydrochloride salt;

(11) heroin;

(12) hydromorphinol;

(13) methyldesorphine;

(14) methyldihydromorphine;

(15) morphine methylbromide;

(16) morphine methylsulfonate;

(17) morphine-n-oxide;

(18) myrophine;

(19) nicocodeine;

(20) nicomorphine;

(21) normorphine;

(22) pholcodine;

(23) thebacon.

Sec. 11.71.150. SCHEDULE IIA. (a) A substance shall be placed in schedule IIA if it is found under AS 11.71.120(c) to have a degree of danger or probable danger to a person or the public which is less than substances listed in schedule IA, but higher than substances listed in schedule IIIA.

(b) Schedule IIA includes, unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following hallucinogenic substances, or which contains any of its salts, isomers, whether optical, position, or geometric, or salts of isomers whenever the existence of these salts, isomers, or salts of isomers is possible within the specific chemical designation:

(1) 4-bromo-2, 5-dimethoxy-amphetamine, also known as 4-bromo-2,5-dimethoxy-a-methylphenethylamine and 4-bromo-2, DMA;

(2) 2,5-dimethoxyamphetamine, also known as 2,5-dimethoxy-a-methylphenethylamine and 2,5-DMA;

(3) 4-methoxyamphetamine, also known as 4-methoxy-a-methyl-phenethylamine and paramethoxyamphetamine, PMA;

(4) 5-methoxy-3,4-methylenedioxy-amphetamine;

(5) 4-methyl-2,5-dimethoxy-amphetamine, also known as 4-methyl-2,5 - dimethoxy-a-methylphenethylamine;

(6) 3,4-methylenedioxy amphetamine;

(7) 3,4,5-trimethoxy amphetamine;

(8) bufotenine, also known as 3-(B-dimethylaminoethyl)-5-hydroxyindole, 3-(2-dimethylaminoethyl)-5-indolol, N, N-dimethylserotonin; 5-hydroxy-N, N-dimethyltryptamine, and mappine;

(9) diethyltryptamine, also known as N, N-diethyltryptamine and DET;

(10) dimethyltryptamine, also known as DMT;

(11) ibogaine, also known as 7-ethyl-6, 6B, 7, 8, 9, 10, 12, 13-octahydro-2-methoxy-6, 9-methano-5H-pyrido [1',2': 1, 2] azepino [5, 4-b] indole and tabernanthe iboga;

(12) lysergic acid diethylamide, also known as LSD;

(13) mescaline;

(14) n-ethyl-3-piperidyl benzilate;

(15) n-methyl-3-piperidyl benzilate;

(16) peyote;

(17) analogs of phencyclidine (PCP), including:

(A) ethylamine analog, also known by some trade or other names as follows: N-ethyl-1-phenylcyclohexylamine (1-phenylcyclohexyl)ethylamine, N-(1-phenylcyclohexyl)ethylamine, cyclohexamine, PCE;

(B) pyrrolidine analog, also known by some trade or other names as follows: 1-(1-phenylcyclohexyl)-pyrrolidine, PCPY, PHP;

(C) thiophene analog, also known as 1-[1-(2-thienyl) cyclohexl] piperidine and 2-thienylanalog of phencyclidine, TPCP, and TCP;

(18) psilocybin;

(19) psilocyn.

(c) Schedule IIA includes cocaine or coca leaves, and any salt, compound, derivative, mixture, isomer, ester, ether, or preparation of cocaine or coca leaves produced directly or indirectly by extraction from coca leaves, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, including the isomers, salts, and salts of isomers of cocaine and other derivatives of coca leaves whenever the existence of these esters, ethers, isomers or salts is possible, but does not include decocainized coca leaves or extractions of coca leaves which do not contain cocaine or ecgonine.

(d) Schedule IIA includes, unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including their salts, isomers, and salts of isomers whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) amobarbital;

(2) mandrix or mandrax;

(3) mecloqualone;

(4) methaqualone;

(5) pentobarbital;

(6) phencyclidine, also known as PCP;

(7) secobarbital.

(e) Schedule IIA includes, unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the nervous system:

(1) amphetamine, its salts, optical isomers, and salts of its optical isomers;

(2) methamphetamine, its salts, isomers, and salts of its isomers;

(3) methlyphenidate;

(4) phenmetrazine and its salts.

(f) Schedule IIA includes, unless specifically excepted or unless listed in another schedule, any material, mixture, or preparation which contains any quantity of the following substances:

(1) immediate precursor to amphetamine and methamphetamine; phenylacetone, also known as phenyl-2-propanone; P2P; benzyl methyl ketone; methyl benzyl ketone;

(2) immediate precursors to phencyclidine, also known as PCP;

(A) 1-phencylclohexylamine;

(B) 1-piperidinocyclohexanecarbonitrile, also known as PCC.

Sec. 11.71.160. SCHEDULE IIIA. (a) A substance shall be placed in schedule IIIA if it is found under AS 11.71.120(c) to have a degree of danger or probable danger to a person or the public less than the substances listed in schedule IIA but higher than substances listed in schedule IVA.

(b) Schedule IIIA includes, unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including their salts, isomers whether optical, position, or geometric, and salts of these isomers whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) benzphetamine;

(2) chlorphentermine;

(3) clortermine;

(4) mazindol;

(5) phendimetrazine;

(6) any compound, mixture, or preparation in dosage unit form containing any stimulant substance listed in schedule IIA, which compound, mixture, or preparation was listed on August 25, 1971, as an excepted compound under 21 C.F.R. sec. 1308.32, and any other drug of the quantitive composition shown in that list for those substances, or which is the same except that it contains a lesser quantity of any controlled substance.

(c) Schedule IIIA includes, unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system:

(1) amobarbital, secobarbital, or pentobarbital or any salt of these substances, combined with one or more other active medicinal ingredients which are not listed in any other schedule;

(2) amobarbital, secobarbital, or pentobarbital or any salt of these substances, approved by the federal Food and Drug Administration for marketing only as a suppository;

(3) any substance which contains any quantity of a derivative of barbituric acid or any salt of barbituric acid;

(4) chlorhexadol;

(5) glutethimide;

(6) lysergic acid;

(7) lysergic acid amide;

(8) methyprylon;

(9) sulfondiethylmethane;

(10) sulfonethylmethane;

(11) sulfonmethane.

(d) Schedule IIIA includes nalorphine.

(e) Schedule IIIA includes, unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any of the following narcotic drugs or their salts calculated as the free anhydrous base or alkaloid, in the following quantities:

(1) not more than 1.8 grams of codeine 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 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 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 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 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 per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic 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 per 100 milli-

liters or per 100 grams, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(f) Schedule IIIA includes

(1) hashish;

(2) hash oil or hashish oil; and

(3) tetrahydrocannabinols.

Sec. 11.71.170. SCHEDULE IVA. (a) A substance shall be placed in schedule IVA if it is found under AS 11.71.120(c) to have a degree of danger or probable danger to a person or the public which is less than the substances listed in schedule IIIA, but higher than the substances listed in schedule VA.

(b) Schedule IVA includes, unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances, including their salts, isomers and salts of isomers whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) barbital;

(2) chloral betaine;

(3) cloral hydrate;

(4) chlordiazepoxide;

(5) clonazepam;

(6) clorazepate;

(7) diazepam;

(8) ethchlorvynol;

(9) ethinamate;

(10) flurazepam;

(11) lorazepan;

(12) mebutamate;

(13) meprobamate;

(14) methohexital;

(15) methylphenobarbital, also known as mephobarbital;

(16) oxazepam;

(17) paraldehyde;

(18) petrichloral;

(19) phenobarbital;

(20) prazepam.

(c) Schedule IVA includes any material, compound, mixture or preparation which contains any quantity of the following substances, including their salts, isomers whether optical, position, or geometric, and salts of these isomers, whenever the existence of these salts, isomers, and salts of isomers is possible: fenfluramine.

(d) Schedule IVA includes, unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including their salts, isomers whether optical, position, or geometric, and salts of these isomers whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) diethylpropion;

(2) phentermine;

(3) pemoline, including organometallic complexes and chelates of this substance.

(e) Schedule IVA includes, unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing not more than 1 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit, or their salts calculated as the free anhydrous base or alkaloid.

(f) Schedule IVA includes, unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances, including their salts:

(1) dextropropoxyphene (alpha-(+)-4-dimethylamino-1,2-diphenyl-3-methyl-2-propionoxybutane);

(2) pentazocine;

(3) propoxyphene.

Sec. 11.71.180. SCHEDULE VA. (a) A substance shall be placed in schedule VA if it is found under AS 11.71.120(c) to have a degree of danger or probable danger to a person or the public which is less than substances listed in schedule IVA, but higher than substances listed in schedule VIA.

(b) Schedule VA includes any compound, mixture, or preparation containing any of the following limited quantities of narcotic drugs or their salts, calculated as the free anhydrous base or alkaloid, in limited quantities as specified in (1) - (6) of this subsection, which includes 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 schedule IA substances alone:

(1) not more than 200 milligrams of codeine per 100 milliliters or per 100 grams;

(2) not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams;

(3) not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams;

(4) not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit;

(5) not more than 100 milligrams of opium per 100 milliliters or per 100 grams;

(6) not more than 0.5 milligrams of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.

(c) Schedule VA includes loperamide.

Sec. 11.71.190. SCHEDULE VIA. (a) A substance shall be placed in schedule VIA if it is found under AS 11.71.120(c) to have the lowest degree of danger or probable danger to a person or the public.

(b) Marijuana is a schedule VIA controlled substance.

Sec. 11.71.195. EXEMPTED DRUGS. A substance the manufacture, distribution, dispensing, or possession of which is explicitly exempt from criminal penalty under federal law is exempt from the application of this chapter and AS 17.30. This exemption includes any substances which may, under the federal Food, Drug, and Cosmetic Act (21 U.S.C. sec. 301 et seq.) be lawfully sold over the counter without a prescription. This exemption also includes those substances listed in 21 C.F.R. sec. 1308.22 on April 1, 1980.

ARTICLE 3. MISCELLANEOUS PROVISIONS.

Sec. 11.71.300. PENALTIES UNDER OTHER LAWS. A penalty imposed for violation of this chapter is in addition to, and not in place of, any other civil or administrative penalty or sanction otherwise authorized by law.

Sec. 11.71.305. REHABILITATION. A person convicted of violating a provision of this chapter may, when the violation relates to that person's own personal use of a controlled substance, be committed to the custody of the Department of Health and Social Services for rehabilitative treatment for not to exceed one year. Such treatment may be imposed in place of a fine or imprisonment, but only where the imprisonment would not have exceeded one year.

Sec. 11.71.310. BAR TO PROSECUTION. If a violation of this chapter is a violation of a federal law or the law of another state, a conviction or acquittal under federal law or the law of another state for the same act is a bar to prosecution in this state.

Sec. 11.71.320. DEFENSES EXEMPTED. (a) In a prosecution for the possession of a schedule IA, IIA, IIIA, IVA, or VA controlled substance under this chapter, it is not a defense that the substance was possessed in less than a usable quantity. It is sufficient to support a conviction that there is a sufficient quantity of the substance to permit proper identification.

(b) In a prosecution for an offense involving a controlled substance under this chapter, it is not a defense that the substance is misclassified under a subsection within a schedule.

Sec. 11.71.330. LIABILITY OF PUBLIC SERVANTS. No liability is imposed by this chapter upon a public servant acting within the scope and authority of the public servant's employment.

Sec. 11.71.340. OFFENSES DEFINED BY AMOUNTS. Whenever a provision of this chapter defining an offense requires a determination of an amount, it is not a defense to the lowest class of offense established by the evidence that the amount in question was equal to or larger than the amount which would make the offense a higher class of offense, and a person may be charged and convicted accordingly.

Sec. 11.71.350. BURDEN OF PROOF. It is not necessary for the state to negate an exemption or exception provided for in this chapter in a complaint, information, indictment, or other pleading or at a trial, hearing, or other proceeding under this chapter or AS 17.30. The defendant has the burden of proving by a preponderance of the evidence any exemption or exception claimed by the defendant.

Sec. 11.71.360. UNPRIVILEGED COMMUNICATIONS. Information commu-

nicated to a physician or other licensed practitioner in an effort to unlawfully procure a controlled substance or to unlawfully procure the administration of a controlled substance is not a privileged communication.

ARTICLE 4. DEFINITIONS.

Sec. 11.71.900. DEFINITIONS. In this chapter, unless the context clearly requires otherwise,

(1) "administer" means the direct application of a controlled substance, whether by injection, inhalation, ingestion, or any other means into the body of a patient or research subject by

(A) a practitioner or, in the practitioner's presence, by the practitioner's authorized agent; or

(B) the patient or research subject at the direction and in the presence of a practitioner;

(2) "agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser, but does not include a common or contract carrier, public warehouseman, or employee of the carrier or warehouseman;

(3) "committee" means the Controlled Substances Advisory Committee established in AS 11.71.100;

(4) "controlled substance" means a drug, substance, or immediate precursor included in the schedules set out in AS 11.71.140 - 11.71.190;

(5) "counterfeit substance" means a controlled substance which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number, or device of a manufacturer, distributor, or dispenser other than the person or persons who in fact manufactured, distributed, or dispensed the substance and which falsely purports or is represented to be the product of, or to have been distri-

buted by, the other manufacturer, distributor, or dispenser;

(6) "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;

(7) "dispense" means to deliver a controlled substance to an ultimate user or research subject by or under the lawful order of a practitioner, including the prescribing, administering, packaging, labeling, or compounding necessary to prepare the substance for that delivery; "dispenser" means a practitioner who dispenses;

(8) "distribute" means to deliver other than by administering or dispensing a controlled substance, whether or not there is any money or other item of value exchanged; it includes sale, gift, or exchange; "distributor" means a person who distributes;

(9) "drug"

(A) means

(i) a substance recognized as a drug in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to these publications;

(ii) a substance intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or animals;

(iii) a substance, other than food, intended to affect the structure or any function of the body of humans or animals; and

(iv) a substance intended for use as a component of any article specified in (i), (ii), or (iii) of this subparagraph;

(B) does not include a device or its components, parts,

or accessories;

(10) "hashish" means the dried, compressed, resinous product of the plant (genus) Cannabis;

(11) "hashish oil" means the viscous liquid concentrate of tetrahydrocannabinols extracted from the plant (genus) Cannabis;

(12) "immediate precursor" means a substance which is by statute or regulation designated as the principal compound commonly used or produced primarily for use, and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail, or limit manufacture of that controlled substance;

(13) "manufacture"

(A) means the production, preparation, propagation, compounding, conversion, growing, or processing of a controlled substance, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis; however, the growing of marijuana for personal use is not manufacturing;

(B) includes the preparation, compounding, packaging, repackaging, labeling, or relabeling of a controlled substance or its container unless done in conformity with applicable federal law

(i) by a practitioner as an incident to the practitioner's administering or dispensing of a controlled substance in the course of the practitioner's professional practice; or

(ii) by a practitioner, or by the practitioner's authorized agent under the practitioner's supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale;

(14) "marijuana" means the seeds, and leaves, buds, and flowers of the plant (genus) Cannabis, whether growing or not; it does not include the resin or oil extracted from any part of the plants, or any compound, manufacture, salt, derivative, mixture, or preparation from the resin or oil, including hashish, hashish oil, and natural or synthetic tetrahydrocannabinol; it does not include the 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 stalks, fiber, oil or cake, or the sterilized seed of the plant which is incapable of germination;

(15) "opiate" means

(A) a substance having an addiction-forming or addiction-sustaining capability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining capability;

(B) includes its racemic and levorotatory forms; and

(C) does not include, unless specifically designated as controlled under AS 11.71.120 the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan);

(16) "opium poppy" means the plant of any species of Papaver containing the phenanthrine alkaloids of opium, except its seeds;

(17) "peyote" means any part of the plant classified botanically as Lophophora Williamsii Lemaire, whether growing or not, the seeds of the plant, any extract from any part of the plant, and a compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or extracts, including mescaline;

(18) "poppy straw" means all parts, except the seeds, of the opium poppy, after mowing;

(19) "practitioner" means

(A) a physician, dentist, veterinarian, scientific investigator, or other person licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to, or to administer or use in teaching or chemical analysis a controlled substance in the course of professional practice or research in the 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 the state;

(20) "sale" means to sell, barter, exchange, give, or dispose of to another, or an exchange for a thing of value;

(21) "schedule IA controlled substance" means a controlled substance included in the schedule in AS 11.71.140;

(22) "schedule IIA controlled substance" means a controlled substance included in the schedule in AS 11.71.150;

(23) "schedule IIIA controlled substance" means a controlled substance included in the schedule in AS 11.71.160;

(24) "schedule IVA controlled substance" means a controlled substance included in the schedule in AS 11.71.170;

(25) "schedule VA controlled substance" means a controlled substance included in the schedule in AS 11.71.180;

(26) "schedule VIA controlled substance" means a controlled substance included in the schedule in AS 11.71.190;

(27) "ultimate user" means a person who lawfully possesses a controlled substance for the person's own use or for the use of a member of the person's household or for administering to an animal owned by the person or by a member of the person's household.

* Sec. 3. AS 12.55.015 is amended by adding a new subsection to read:

(d) A court, in imposing sentence on a defendant convicted of misconduct involving a controlled substance in the first, second, third, fourth, fifth, or sixth degree, may, in addition to any mandatory minimum sentence required by law, order the defendant to participate in a program for treatment of drug abusers if the court determines that the defendant is a drug abuser. Participation in such a program may be imposed as a condition of probation, a condition of suspended execution of sentence, or a condition of suspended imposition of sentence. Nothing in this subsection shall be construed to reduce any mandatory minimum sentence.

* Sec. 4. AS 17 is amended by adding a new chapter to read:

CHAPTER 30. CONTROLLED SUBSTANCES.

ARTICLE 1. REGULATION OF MANUFACTURE, DISTRIBUTION, PRESCRIPTION, AND DISPENSING OF CONTROLLED SUBSTANCES.

Sec. 17.30.010. REGULATIONS. (a) The Board of Pharmacy shall adopt regulations under the Administrative Procedure Act (AS 44.62) which are necessary for the administration of this chapter, and may charge reasonable fees relating to the registration and control of the manufacture, distribution, and dispensing of controlled substances as authorized by federal law in the state.

(b) Regulations adopted under this chapter by the board shall be patterned after federal law so that the legitimate manufacture, distribution, and dispensing of controlled substances is subject to regulations regarding registration, record keeping, order forms and prescription requirements that are identical to those required by federal law or regulations.

Sec. 17.30.020. REGISTRATION REQUIREMENTS. (a) A person who manufactures, distributes, dispenses, or conducts research with a controlled substance in the state or who proposes to manufacture, distri-

bute, or dispense a controlled substance in the state, shall register annually with the board in accordance with regulations adopted under AS 17.30.010.

(b) A person registered under this chapter to manufacture, distribute, dispense, or conduct research with controlled substances may possess, manufacture, distribute, dispense, or conduct research with those substances to the extent authorized by the person's registration and in conformity with the other provisions of this chapter.

(c) The following persons may lawfully possess controlled substances under this chapter without registration:

(1) an agent or employee of a registered manufacturer, distributor, dispenser, or researcher of a controlled substance so long as the possession is incidental to the usual course of the agent's or employee's business or employment;

(2) a common or contract carrier or warehouseman, or the carrier's or warehouseman's employee, whose possession of a controlled substance is in the usual course of the carrier's, warehouseman's, or employee's business or employment;

(3) an ultimate user or a person in possession of a controlled substance under a lawful order of a registered practitioner or in lawful possession of a schedule VA controlled substance.

(d) The board may, by regulation, waive the requirement for registration of certain manufacturers, distributors, or dispensers if it finds it consistent with public health and safety.

(e) A separate registration is required for each principal place of business or professional practice where the applicant manufactures, distributes, or dispenses controlled substances.

(f) The board may inspect the establishment of a registrant or applicant for registration in accordance with regulations adopted by the

board.

Sec. 17.30.030. REGISTRATION. (a) The board shall register an applicant to manufacture, distribute, or dispense controlled substances listed in the schedules established under federal law unless it finds that the registration would be inconsistent with the public interest. In determining the public interest, the board shall consider the following factors:

(1) maintenance of effective controls against diversion of controlled substances into other than legitimate medical, scientific, or industrial channels;

(2) compliance with applicable state and local law;

(3) a conviction of the applicant under federal or state laws relating to controlled substances;

(4) past experience in the manufacture, distribution, or dispensing of controlled substances and the existence in the applicant's establishment of effective controls against diversion of controlled substances into other than legitimate medical, scientific, or industrial channels;

(5) furnishing by the applicant of false information in an application filed under this chapter;

(6) suspension or revocation of the applicant's federal registration to manufacture, distribute, or dispense controlled substances as authorized by federal law; and

(7) any other factors relevant to and consistent with the public health and safety.

(b) A practitioner registered under federal law to conduct research with controlled substances shall be issued a registration to conduct research with these substances in the state if the practitioner furnishes the board with evidence of the federal registration.

(c) A manufacturer, distributor, or dispenser who complies with federal law pertaining to registration requirements other than fees is entitled to be registered under this chapter.

Sec. 17.30.040. DENIAL, REVOCATION, AND SUSPENSION OF REGISTRATION. (a) A registration applied for or issued under AS 17.30.030 to manufacture, distribute, dispense, or conduct research with a controlled substance may be denied, suspended, or revoked by the board upon a finding that

(1) the registrant has furnished false or fraudulent material information in an application filed under this chapter;

(2) the registrant has been convicted of a felony offense under state or federal law; or

(3) the registrant's federal registration to manufacture, distribute, dispense, or conduct research with controlled substances has been denied, suspended, or revoked.

(b) The board may limit the denial, revocation, or suspension of a registration to a particular controlled substance with respect to which grounds for denial, revocation, or suspension exist.

(c) If the board denies, suspends, or revokes a registration, all controlled substances owned or possessed by the registrant at the time of the denial or suspension or the effective date of the revocation order may be placed under seal by the board or the Department of Public Safety and remain in the custody of the department, subject only to the orders and decrees of a court having jurisdiction over the property. A disposition may not be made of substances under seal until the time for taking an appeal has elapsed or until all appeals have been concluded unless a court, upon application, orders the sale of perishable substances and the deposit of the proceeds of the sale with the court. After a revocation order is final, all controlled substances held by the

registrant are forfeited to the state.

(d) The board shall promptly notify the Drug Enforcement Administration of the United States Department of Justice of all orders denying, suspending, or revoking registrations and of all forfeitures of controlled substances.

Sec. 17.30.050. ORDER TO SHOW CAUSE. (a) Before denying, suspending, or revoking a registration, or refusing a renewal of a registration, the board shall serve upon the applicant or registrant an order to show cause why a registration should not be denied, revoked, or suspended, or why a renewal should not be refused. The order to show cause shall contain a statement of the basis for issuance of the order and shall require the applicant or registrant to appear before the board at a time and place not less than 30 days after the date of service of the order. For a refusal of renewal of registration the show cause order must be served not later than 30 days before the expiration of the registration. These proceedings must be conducted in accordance with procedures for administrative adjudication under AS 44.-62.330 - 44.62.630 without regard to criminal prosecution or other proceeding. Proceedings to refuse renewal of registration do not make the existing registration void. The existing registration remains in effect pending the outcome of the administrative hearing.

(b) The board may, without an order to show cause, suspend a registration simultaneously with the institution of proceedings under AS 17.30.040 if it finds that there is an imminent danger to the public health or safety which warrants this action. The suspension continues in effect until the conclusion of the proceedings, including judicial review of the proceedings, unless withdrawn by the board or dissolved by a court of competent jurisdiction.

Sec. 17.30.060. RECORDS OF REGISTRANTS. A person registered to

manufacture, distribute, dispense, or conduct research with controlled substances under this chapter shall keep records and maintain inventories in conformance with the record keeping and inventory requirements of federal law and in conformance with additional regulations adopted by the board.

Sec. 17.30.070. ORDER FORMS; PRESCRIPTIONS. (a) A controlled substance may be distributed by one registrant to another registrant only if the distribution is in accordance with federal requirements for order forms.

(b) A controlled substance may not be dispensed by a practitioner other than in accordance with federal requirements regarding prescriptions for controlled substances.

(c) If the classification of a controlled substance in a schedule set out in AS 11.71.140 - 11.71.190, or by a regulation adopted in accordance with AS 11.71.120(a), is different from its corresponding classification under federal law, the requirements of (a) and (b) of this section are determined by the classification of the substance under federal law.

Sec. 17.30.080. UNLAWFUL ADMINISTRATION, PRESCRIPTION AND DISPENSATION OF CONTROLLED SUBSTANCES. A controlled substance classified under federal law or in a schedule set out in AS 11.71.140 - 11.71.190 or by regulations adopted in accordance with AS 11.71.120(a) may not be administered, prescribed, dispensed, or distributed other than for a medical purpose.

ARTICLE 2. ENFORCEMENT AND ADMINISTRATIVE PROVISIONS.

Sec. 17.30.100. COOPERATIVE ARRANGEMENTS. (a) The commissioner of public safety shall cooperate with other state and federal agencies in the discharge of their responsibilities pertaining to illicit traffic in controlled substances and in suppressing the abuse of controlled

substances. Under this section, the powers of the commissioner of public safety include but are not limited to the following:

(1) arranging for the exchange of information among government officials concerning illicit traffic in and abuse of controlled substances;

(2) coordinating training programs pertaining to controlled substances at both local and state levels; and

(3) cooperating with the Drug Enforcement Administration of the United States Department of Justice by establishing a centralized unit to accept, catalog, file, and collect statistics, including records of persons who have violated the provisions of this chapter or AS 11.71 in the state and making the information available for federal, state, and local law enforcement purposes.

(b) The commissioner of public safety may not furnish the name or identity of a patient or research subject whose identity could not be obtained under AS 17.30.150(b).

Sec. 17.30.110. FORFEITURES. (a) The following may be forfeited to the state:

(1) a controlled substance which has been manufactured, distributed, dispensed, acquired, or possessed in violation of this chapter or AS 11.71;

(2) raw materials, products, and equipment which are used or intended for use in manufacturing, distributing, compounding, processing, delivering, importing, or exporting a controlled substance which is a felony under this chapter or AS 11.71;

(3) property which is used or intended for use as a container for property described in (1) or (2) of this subsection;

(4) a conveyance, including but not limited to aircraft, vehicles or vessels, which has been used or is intended for use in

transporting or in any manner in facilitating the transportation, sale, receipt, possession, or concealment of property described in (1) or (2) of this subsection in violation of a felony offense under this chapter or AS 11.71; however,

(A) a conveyance may not be forfeited under this paragraph if the owner of the conveyance establishes, by a preponderance of the evidence, at a hearing before the court as the trier of fact, that use of the conveyance in violation of this chapter or AS 11.71 was committed by another person and that the owner was not a consenting party nor privy to the violation;

(B) a forfeiture of a conveyance encumbered by a valid security interest at the time of seizure is subject to the interest of the secured party if the secured party establishes, by a preponderance of the evidence, at a hearing before the court as the trier of fact, that use of the conveyance in violation of this chapter or AS 11.71 was committed by another person and that the secured party was not a consenting party nor privy to the violation;

(5) books, records, and research products and materials, including formulas, microfilm, tapes, and data, which are used in violation of this chapter or AS 11.71;

(6) money, securities, negotiable instruments, or other things of value used in financial transactions derived from activity prohibited by this chapter or AS 11.71; and

(7) a firearm which is visible, carried during, or used in furtherance of a violation of this chapter or AS 11.71.

(b) Property listed in (a) of this section may be forfeited to the state either upon conviction of the defendant of a violation of this chapter or AS 11.71, or upon judgment of a court in a separate civil proceeding in rem. The court may order a forfeiture in the in rem

proceeding if it finds that an item specified in (a) of this section was used during or in aid of a violation of this chapter or AS 11.71.

(c) It is not a defense in an in rem proceeding brought under this section that a criminal proceeding has resulted in a conviction or conviction of a lesser offense for a violation of this chapter or AS 11.71.

(d) Property listed in (a) of this section may be seized by a peace officer upon an order issued by a court having jurisdiction over the property upon a showing of probable cause that the property may be forfeited under (a) of this section. Seizure without a court order may be made if

(1) the seizure is incident to a valid arrest or a search under a valid search warrant;

(2) the property subject to seizure has been the subject of an earlier judgment in favor of the state in a criminal proceeding or civil proceeding in rem under this chapter or AS 11.71; or

(3) there is probable cause that the property was used, is being used, or is intended for use, in violation of this chapter or AS 11.71 and the property is easily movable; property seized under this paragraph may not be held for more than 48 hours without a court order obtained to continue its detention.

(e) Property taken or detained under (d) of this section shall be held in the custody of either the commissioner of public safety or a municipal law enforcement agency authorized by the commissioner of public safety to retain custody of property listed in (a) of this section subject only to the orders and decrees of the court having jurisdiction over any forfeiture proceedings. If property is seized under this chapter, the commissioner of public safety or an authorized municipal law enforcement agency may

(1) place the property under seal;

(2) remove the property to a place designated by the court; or

(3) take custody of the property and remove it to an appropriate location for disposition in accordance with law.

(f) Within 10 days after a seizure under this section, the commissioner of public safety shall make an inventory of any property seized, including controlled substances, and shall appraise the value of any items seized other than controlled substances.

(g) Within 20 days after a seizure under this section, the commissioner of public safety shall, by certified mail, notify any person known to have an interest in an item with an appraised value of $500 or more, or who is ascertainable from official registration numbers, licenses, or other state, federal or municipal numbers on the item, of the pending forfeiture action. Additionally, the commissioner of public safety shall publish notice of forfeiture action of an item valued at $500 or more in a newspaper of general circulation in the judicial district in which the seizure was made, or if no newspaper is published in that district, in a newspaper published in the state and distributed in that district. The notice shall be published once each week during four consecutive calendar weeks. The requirements of this subsection do not apply to the forfeiture of controlled substances which have been manufactured, distributed, dispensed, or possessed in violation of this chapter or AS 11.71, regardless of their value.

(h) Upon service or publication of notice of commencement of a forfeiture action under this section, a person claiming interest in the property shall file within 30 days after the service or publication, a notice of claim setting out the nature of the interest, the date it was acquired, the consideration paid, and an answer to the state's allegations. If a claim and answer is not filed within the time specified,

the property described in the state's allegation must be ordered forfeited to the state without further proceedings or showings.

(i) Questions of fact or law raised by a notice of forfeiture action and answer of a claimant in an action commenced under this section must be determined by the court sitting without a jury. This proceeding may be held in abeyance until conclusion of any pending criminal charges against the claimant under this chapter or AS 11.71.

(j) A claimant under (h) of this section may at any time petition for release of a seized item as follows:

(1) to a court in which a warrant for seizure has been issued;

(2) to a court in which a criminal or civil action alleging forfeiture of the item has been filed; or

(3) before an action is filed, or if no seizure warrant was issued, to a court in the judicial district in which the violation took place.

(k) An item may not be released by the court under (j) of this section unless the claimant gives adequate assurance that the item will remain subject to the court's jurisdiction and

(1) the court finds that the release is in the best interests of the state; or

(2) the claimant provides a bond or other valid and equivalent security equal to twice the assessed value of the item.

(l) A claimant may petition the court for sale of an item before final disposition of court proceedings. The court shall grant a petition for sale upon a finding that the sale is in the best interests of the state and the preservation and maintenance of the item seized. Proceeds from the sale plus interest to the date of final disposition of the court proceedings become the subject of the forfeiture action.

(m) Property forfeited under this section other than controlled

substances shall be disposed of by the commissioner of administration in accordance with applicable law. The commissioner of administration may

(1) destroy property harmful to the public;

(2) sell the property and use the proceeds for payment of all proper expenses of the proceedings for forfeiture and sale, including expenses of seizure, custody, and court costs;

(3) take custody of the property and authorize its use in the enforcement of this chapter or AS 11.71, or transfer it to another agency of the state or a political subdivision of the state for a use in furtherance of the administration of justice;

(4) take custody of the property and remove it for disposition in accordance with law; or

(5) forward it to the Drug Enforcement Administration of the United States Department of Justice for disposition.

(n) Upon a showing that a claimant is entitled to remittance in accordance with this section, the court shall order that

(1) if the claimant is entitled to the item, it shall be delivered to the claimant immediately;

(2) if the claimant is entitled to remittance of some value less than the total value of the item, the claimant is entitled, at the claimant's choice, to receive either the value of the claimant's interest or, upon receipt of payment of the difference in value by the claimant, the entire item.

(o) An offender who used an item subject to remission in violation of this chapter or AS 11.71 shall be assessed a fine which may not be less than the cost of any lien payment or remittance made by the state plus the reasonable costs of the seizure.

(p) A controlled substance manufactured, possessed, transferred,

sold, or offered for sale in violation of this chapter or AS 11.71 is contraband and must be seized and summarily forfeited to the state. The commissioner of public safety or the commissioner's designee, including a municipal law enforcement agency authorized under (e) of this section to retain custody of controlled substances, is responsible for the disposal of controlled substances which have been forfeited. The controlled substances shall be disposed of in accordance with procedures and requirements prescribed by the commissioner.

(q) Plants from which controlled substances may be derived and which have been planted or cultivated in violation of this chapter or AS 11.71, or which are grown in the wild, may be seized and summarily forfeited to the state.

Sec. 17.30.130. JUDICIAL REVIEW. A final determination, finding, or conclusion of the board under this chapter or a regulation adopted under it is a final decision of the matter involved. A person aggrieved by a decision may obtain review of the decision in the superior court in accordance with AS 44.62.560 - 44.62.570. However, a person is not entitled to a hearing de novo in the superior court.

Sec. 17.30.140. EDUCATION AND RESEARCH. (a) The commissioner of health and social services shall provide for educational programs designed to prevent and deter the abuse of controlled substances. In connection with these programs, the commissioner may

(1) assist the regulated industry and interested groups and organizations in contributing to the reduction of abuse of controlled substances;

(2) promote better recognition of the problems surrounding abuse of controlled substances within the regulated industry and among interested groups and organizations;

(3) consult with interested groups and organizations to aid

them in solving administrative and organizational problems;

(4) evaluate procedures, projects and techniques conducted or proposed as part of educational programs on abuse of controlled substances;

(5) disseminate the results of research on abuse of controlled substances to promote a better public understanding of the problems which exist and their solutions; and

(6) with the cooperation of the Department of Law, assist in the education and training of state and local law enforcement officials in their efforts to prevent illicit traffic in and abuse of controlled substances.

(b) The commissioner of health and social services shall encourage research on controlled substances and may

(1) establish methods to assess the effects of controlled substances and identify and characterize those with potential for abuse;

(2) make studies and undertake research to

(A) develop new or improved approaches, techniques, systems, equipment, and devices to strengthen the enforcement of this chapter;

(B) determine patterns of abuse of controlled substances and their social effects; and

(C) improve methods for preventing, predicting, and understanding the abuse of controlled substances;

(3) enter into contracts with public agencies, institutions of higher education, and private organizations or individuals for conducting research, demonstrations, or special projects which bear directly on abuse of controlled substances and for related research and educational activities.

Sec. 17.30.150. CONFIDENTIALITY. (a) Results, information, and evidence received from the Drug Enforcement Administration of the United States Department of Justice relating to the regulatory functions of this chapter, including results of inspections conducted by it, may be relied on and acted on by the board in the exercise of its regulatory functions under this chapter.

(b) A practitioner engaged in medical practice or research may not furnish the name or identity of a patient or research subject to the board. The practitioner may not otherwise disclose the name or identity of an individual that the practitioner is required to keep confidential unless ordered by a court to disclose it within the context of a criminal investigation or proceeding.

Sec. 17.30.160. DEFINITIONS. (a) Unless the context clearly requires otherwise, the definitions set out in AS 11.71.900 apply to this chapter.

(b) In this chapter, "board" means the Board of Pharmacy provided for in AS 08.80.010.

* Sec. 5. AS 17 is amended by adding a new chapter to read:

CHAPTER 35. MARIJUANA THERAPEUTIC RESERACH PROGRAM.

Sec. 17.35.010. LEGISLATIVE PURPOSE. The legislature finds that recent research has shown that the use of marijuana may alleviate the nausea and ill effects of cancer chemotherapy and radiology, and, additionally, may alleviate the ill effects of glaucoma. The legislature further finds that there is a need for further research and experimentation regarding the use of marijuana under strictly controlled circumstances.

Sec. 17.35.020. MARIJUANA THERAPEUTIC RESEARCH PROGRAM. (a) A therapeutic research program is established in the Board of Pharmacy. The program shall be administered by the board. The board shall adopt

regulations necessary for the proper administration of this chapter. Before adopting regulations, the board shall consider pertinent regulations adopted by the Drug Enforcement Administration of the United States Department of Justice, the federal Food and Drug Administration, and the National Institute on Drug Abuse.

(b) Except as provided in AS 17.35.030(e), the therapeutic research program is limited to cancer chemotherapy and radiology patients and glaucoma patients, who are certified to the Patient Qualification Review Committee by a practitioner. A patient may not be admitted to the therapeutic research program without full disclosure by the practitioner of the experimental nature of this program and of the possible risks and side effects of the proposed treatment.

(c) The board shall provide by regulation for a program of registration of therapeutic research projects.

Sec. 17.35.030. PATIENT QUALIFICATION REVIEW COMMITTEE. (a) The board shall appoint a Patient Qualification Review Committee to serve at its pleasure. The committee shall consist of four members with the following qualifications:

(1) two physicians licensed to practice medicine in the state, one of whom specializes in the practice of ophthalmology;

(2) a physician licensed to practice medicine in the state who specializes in the practice of psychiatry; and

(3) a physician licensed to practice medicine in the state who specializes in the practice of radiology.

(b) Members of the Patient Qualification Review Committee receive no salary but are entitled to per diem for travel and expenses authorized by law for boards and commissions.

(c) The Patient Qualification Review Committee shall review all applicants for the therapeutic research program and their licensed

practitioners and certify their participation in the program.

(d) The Patient Qualification Review Committee and the board shall protect the privacy of individuals who participate in the therapeutic research program by withholding the names and other identifying characteristics of those individuals from all persons who are not connected with the research. Persons authorized to engage in research under the therapeutic research program may not be compelled in any civil, criminal, administrative, legislative, or other proceeding to identify the individuals who are the subjects of research for which the authorization was granted unless necessary to permit the board to determine whether the research is being conducted in accordance with the authorization.

(e) The Patient Qualification Review Committee may include other disease groups for participation in the therapeutic research program. However, a practitioner must present pertinent medical data to both the committee and the board before a disease group may be added. The participation of a disease group must be approved by the board consistent with applicable regulations adopted by the Drug Enforcement Administration of the United States Department of Justice, the federal Food and Drug Administration, and the National Institute on Drug Abuse.

Sec. 17.35.040. SOURCES, DISTRIBUTION AND POSSESSION OF MARIJUANA. (a) A patient who is certified to participate in the therapeutic research program by the Patient Qualification Review Committee may obtain and possess marijuana, its derivatives, or its active ingredients, whether synthetic or natural, for the patient's own use.

(b) The board shall establish procedures by which a person authorized under this section to possess marijuana, its derivatives or active ingredients, whether synthetic or natural, may do so, subject to applicable regulations adopted by the Drug Enforcement Administration of the United States Department of Justice, the United States Food and Drug

Administration, and the National Institute on Drug Abuse.

Sec. 17.35.050. REPORT TO THE GOVERNOR AND LEGISLATURE. The board, in conjunction with the Patient Qualification Review Committee, shall report its findings and recommendations to the governor and the legislature regarding the effectiveness of the therapeutic research program by March 1, 1984.

Sec. 17.35.060. DEFINITIONS. In this chapter

(1) "board" means the Board of Pharmacy;

(2) "marijuana" has the meaning set out in AS 11.71.900(14);

(3) "practitioner" means a physician authorized to practice medicine in the state under AS 08.64.

* Sec. 6. AS 08.64.380(3)(B) is amended to read:

(B) habitual overuse of alcoholic beverages or <u>controlled substances</u> [DEPRESSANT, HALLUCINOGENIC OR STIMULANT DRUGS,] as defined in <u>AS 11.71.900(4)</u> [AS 17.12.150(3), OR ADDICTION TO THE USE OF NARCOTIC DRUGS AS DEFINED IN AS 17.10.230(13)];

* Sec. 7. AS 08.80.040 is amended by adding a new paragraph to read:

(10) provide for the regulation of controlled substances under AS 17.30.

* Sec. 8. AS 08.80.470 is amended to read:

Sec. 08.80.470. CONSTRUCTION. Nothing in this chapter amends, modifies, repeals or otherwise changes any provision of <u>AS 11.71, AS 17.30,</u> [THE UNIFORM NARCOTIC DRUG ACT (AS 17.10)] or the Alaska Food, Drug and Cosmetic Act (AS 17.20).

* Sec. 9. AS 08.80.480(20) is repealed and reenacted to read:

(20) "controlled substance" has the same meaning set out in AS 11.71.900(4).

* Sec. 10. AS 11.31.100(d)(1) is amended to read:

(1) class A felony if the crime attempted is <u>an unclassified</u>

felony [MURDER IN ANY DEGREE OR KIDNAPPING];

* Sec. 11. AS 11.31.110(c)(1) is amended to read:

(1) class A felony if the crime solicited is an unclassified felony [MURDER IN ANY DEGREE OR KIDNAPPING];

* Sec. 12. AS 11.81.900(b)(4) is amended to read:

(4) "cannabis" has the meaning ascribed to it in AS 11.71.-900(10), (11), and (14) [AS 17.12.150];

* Sec. 13. AS 11.81.900(b)(6) is repealed and reenacted to read:

(6) "controlled substance" has the meaning ascribed to it in AS 11.71.900(4);

* Sec. 14. AS 11.81.900(b)(16) is repealed and reenacted to read:

(16) "drug" has the meaning ascribed to it in AS 11.71.-900(9);

* Sec. 15. AS 12.30.040(b) is repealed and reenacted to read:

(b) Notwithstanding the provisions of (a) of this section, if a person has been convicted of an offense which is an unclassified felony or a class A felony, the person may not be released on bail either before sentencing or pending appeal.

* Sec. 16. AS 12.45 is amended by adding a new section to read:

Sec. 12.45.155. LABORATORY REPORT OF CONTROLLED SUBSTANCES. (a) In a prosecution under AS 11.71.010 - 11.71.070, a complete copy of an official laboratory report from the Department of Public Safety or a laboratory operated by another law enforcement agency is prima facie evidence of the content, identity, and weight of a controlled substance. The report must be signed by the person performing the analysis and must state that the substance which is the basis of the alleged offense has been weighed and analyzed. In the report, the author shall state with specificity findings as to the content, weight, and identity of the substance.

(b) A sworn statement prepared by the author of the report provided for in (a) of this section must be attached to the report. The statement must set out the identity of the author and include a statement that the author is an employee of the laboratory issuing the report and that performing the analysis is a part of the author's regular duties. The statement must also include an outline of the author's education, training, and experience for performing an analysis. The author shall state that scientifically accepted tests were performed with due caution, and whether to the author's knowledge the evidence was handled in accordance with established and accepted procedures while in the custody of the laboratory.

(c) The prosecuting attorney shall serve a copy of the report on the attorney of record for the accused, or on the defendant if the defendant has no attorney, not later than 20 days before a proceeding in which the report is to be used against the accused. However, at a preliminary hearing or grand jury proceeding, the report may be used without having previously been served upon the accused.

(d) The accused or the accused's attorney may demand the testimony of the person signing the report, by serving a written demand showing cause upon the prosecuting attorney within seven days from receipt of the report.

(e) A report issued for use under this section must contain notice of the right of the accused to demand the testimony of the person signing the report.

* Sec. 17. AS 12.55.035(b)(1) is amended to read:

(1) $75,000 for murder in the first or second degree, [OR] kidnapping, or misconduct involving a controlled substance in the first degree;

* Sec. 18. AS 12.55.125(b) is amended to read:

(b) A defendant convicted of murder in the second degree, [OR] kidnapping, or misconduct involving a controlled substance in the first degree shall be sentenced to a definite term of imprisonment of at least five years but not more than 99 years.

* Sec. 19. AS 12.55.155(c) is amended by adding new paragraphs to read:

(19) the defendant is convicted of an offense specified in AS 11.71 and the offense involved the delivery of a controlled substance under circumstances manifesting an intent to distribute the substance as part of a commercial enterprise;

(20) the defendant is convicted of an offense specified in AS 11.71 and the offense involved the transportation of controlled substances into the state;

(21) the defendant is convicted of an offense specified in AS 11.71 and the offense involved large quantities of a controlled substance;

(22) the defendant is convicted of an offense specified in AS 11.71 and the offense involved the distribution of a controlled substance that had been adulterated with a toxic substance.

* Sec. 20. AS 12.55.155(d) is amended by adding new paragraphs to read:

(14) the defendant is convicted of an offense specified in AS 11.71 and the offense involved small quantities of a controlled substance;

(15) the defendant is convicted of an offense specified in AS 11.71 and the offense involved the distribution of a controlled substance, other than a schedule IA controlled substance, to a personal acquaintance who is 19 years of age or older for no profit;

(16) the defendant is convicted of an offense specified in AS 11.71 and the offense involved the possession of a small amount of a controlled substance for personal use in the defendant's home.

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* Sec. 21. AS 28.35.030(a)(1) is amended to read:

(1) while under the influence of intoxicating liquor, or any controlled substance listed [DEPRESSANT, HALLUCINOGENIC, STIMULANT OR NARCOTIC DRUGS AS DEFINED] in AS 11.71.140 - 11.71.190 [AS 17.10.230(13) AND AS 17.12.150(3)];

* Sec. 22. AS 33.15.190 is amended by adding a new subsection to read:

(b) A prisoner who is imprisoned because of a conviction for misconduct involving a controlled substance in the first, second, third, fourth, fifth, or sixth degree and who is a drug abuser may not be released on parole unless the prisoner has participated in a program for treatment of drug abusers, if such a program is available. Parole may be conditioned upon continued participation in a program for treatment of drug abusers after release from imprisonment. Nothing in this subsection shall be construed to reduce any mandatory sentence or to grant a right to parole.

* Sec. 23. (a) Prosecution for a violation of law occurring before January 1, 1983, is not affected or abated by this Act. Violation of any law repealed by this Act may still be prosecuted and brought to a final determination in accordance with the laws and regulations in effect at the time of the violation.

(b) This Act does not apply to a civil seizure, forfeiture, or injunctive proceeding commenced before January 1, 1983.

(c) Administrative proceedings pending under a law repealed or amended by this Act shall be continued and brought to a final determination in accordance with the laws and regulations in effect before January 1, 1983.

(d) The Board of Pharmacy shall permit persons who own or operate an establishment engaged in the manufacture, distribution, or dispensing of a controlled substance to register before January 1, 1983.

(e) This Act applies to violations of law, seizures, forfeitures,

injunctive proceedings, administrative proceedings, and investigations which occur after December 31, 1982.

* Sec. 24. Orders issued and regulations adopted under a law amended or repealed by this Act and in effect on January 1, 1983, and not in conflict with this Act continue until amended or repealed.

* Sec. 25. The members of the Controlled Substances Advisory Committee first appointed under AS 11.71.100(a)(5) - (8) shall serve terms as follows:

(1) one member for two years;

(2) two members for three years; and

(3) two members for four years.

* Sec. 26. AS 17.10, AS 17.12, and AS 17.15 are repealed.

* Sec. 27. This Act takes effect on January 1, 1983.