



FRANKLIN & MARSHALL COLLEGE

Drug and Alcohol Abuse Prevention Program Report 2024

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Introduction

Two federal laws, The Drug-Free Schools and Communities Act of 1989 (Public Law 101-226, 20 U.S.C. § 1011i), and its implementing regulations (34 C.F.R. Part 86) and The Drug-Free Workplace Act of 1988, require that an institution of higher education that receives Federal funding, such as Franklin & Marshall College, certify to the Secretary of Education that it has adopted and implemented a drug and alcohol abuse prevention program (DAAPP) to prevent the unlawful possession, use, or distribution of illicit drugs and alcohol by all students and employees on school premises or as part of any of its activities. This information is contained in the following Drug and Alcohol Abuse Prevent Program Report and provided annually to all students and employees. It contains:

- Standards of conduct that clearly prohibit, at a minimum, the unlawful possession, use, or distribution of illicit drugs and alcohol by students and employees;
- A clear statement that the institution will impose disciplinary sanctions on students and employees for violations of the standards of conduct and a description of those sanctions, up to and including expulsion or termination of employment and referral for prosecution.
- A description of the health risks associated with the abuse of alcohol or use of illicit drugs;
- A list of drug and alcohol programs (counseling, treatment, rehabilitation, and re-entry) that are available to employees or students; and
- A list of applicable legal sanctions under federal, state, or local laws for the unlawful possession or distribution of illicit drugs and alcohol;

This information is provided in writing to employees at the beginning of each year and again during open enrollment periods. New employees are also provided this information upon hire. Student Affairs provides students this information in writing twice a year, at the beginning of each semester.

Standards of Conduct

Franklin & Marshall College is committed to maintaining a healthy and safe environment which promotes respect for oneself and others; zero tolerance for disruptive behavior, unsafe conditions, or unsatisfactory work performance resulting from alcohol or other drug use; and compliance with the law. The entire campus community shares the responsibility to eliminate alcohol and other drug abuse and the consequences of abuse. The mission of the College is supported and enhanced by these community standards. The College expects employees and students to obey all local, state, and federal laws regarding alcohol and illegal drug use. The illegal manufacture, sale, possession, or use of drugs or alcohol may subject an employee or student to serious legal sanctions as well as to corrective action.

Employees should consult the Alcohol and Other Drugs Policy for Employees which can be found at <https://www.fandm.edu/college-policies/human-resources/health-wellness-policies/alcohol-and-other-drugs-policy.html> and Standards of Conduct Policy found at <https://www.fandm.edu/college-policies/human-resources/employee-relations-policies/standards-of-conduct-policy.html>. for detailed information regarding prohibited conduct.

Students should consult the Alcohol and Drug Policies for students at <https://sites.google.com/fandm.edu/student-handbook/code-of-conduct/alcohol-and-drug-policies> and consult the Student Code of Conduct found at <https://sites.google.com/fandm.edu/student-handbook/home?authuser=0> for detailed information regarding prohibited conduct.

Disciplinary Sanctions by the College for Violation of Conduct

Employees

If an employee engages in any prohibited conduct, the consequences of that action will be corrective action up to and including immediate separation from employment, depending upon the College's view of the seriousness of the offense. Although the College offers resources to help an employee overcome substance abuse, nothing in this policy will insulate an employee from corrective action for unprofessional conduct, poor work performance, or violations of attendance requirements which may have been induced by drugs or alcohol, up to and including separation from employment. The College's response to violations on campus of local, state, and federal law includes referral for prosecution.

An employee who is required to drive a College vehicle or a personal vehicle in order to perform his/her job duties must maintain a valid driver's license. An employee who is required to drive for College business must not have had a conviction for driving under the influence/driving while intoxicated within the past 24 months. If an employee's license is suspended or revoked for any reason, and/or an employee is convicted of driving under the influence, the employee must promptly notify Human Resources. The employee may be reassigned to other job duties, if practical as determined solely by the College, or employment may be terminated.

Students

Franklin & Marshall College is committed to maintaining a healthy and safe environment that promotes respect for oneself and for others. The College is committed to the implementation of a program to prevent unlawful possession, use, or distribution of illicit drugs and alcohol by its students, on or off premises or as part of any of its activities.

The administrator or panel that reviews a case has the discretion to determine the enforcement of this policy and its outcomes. In determining final outcomes, the administrator or panel will consider the common outcomes listed below in addition to other potential violations or circumstances related to the incident.

Any employee who violates the Alcohol and Other Drug Policy or any student who violates the Code of Conduct and Alcohol Policy is subject both to the College's sanctions and to criminal sanctions provided by federal, state, and local laws.

See charts below for the range of sanctions regarding students.

Alcohol Violations
Common Outcomes

Behavior	First Violation	Second Violation	Third Violation
<ul style="list-style-type: none"> *Possession/ consumption of alcohol by an underage student (beer or wine) *Open container in public area – regardless of age *Fake ID *Failure to register party 	<ul style="list-style-type: none"> *Warning or reprimand *Educational condition *Possible Alcohol or Other Drug Wellness Course (w/fee of \$50) *Coach notification *Possible parent/legal guardian notification 	<ul style="list-style-type: none"> * Reprimand or Probation *Alcohol and Other Drug Wellness Course (w/fee of \$50) or Assessment (\$125) *Parental/legal guardian and coach notification 	<ul style="list-style-type: none"> *Reassigned housing *Possible suspension *Alcohol and Other Drug Consultation (w/fee of \$175) *Parental/legal guardian and coach notification
<ul style="list-style-type: none"> *Possession/consumption of hard alcohol by underage student *Possession of bulk containers or serving from a common source (jungle juice) – regardless of age * Serving, purchasing, sale or making available of alcohol to minors 	<ul style="list-style-type: none"> * Reprimand or Probation *Alcohol and Other Drug Wellness Course (w/fee of \$50) *Coach notification *Possible parental/legal guardian notification 	<ul style="list-style-type: none"> *Reassigned housing *Possible suspension *Alcohol and Other Drug Assessment (w/fee of \$125) *Parental/legal guardian and coach notification 	<ul style="list-style-type: none"> *Possible suspension *Alcohol and Other Drug Consultation (w/fee of \$175) *Parental/legal guardian and coach notification
<ul style="list-style-type: none"> *Excessive drinking/ rapid consumption (regardless of age) *Transport to the hospital due to alcohol *Inducing or coercing others to drink 	<ul style="list-style-type: none"> *Probation *Alcohol and Other Drug Assessment (w/fee of \$125) *Educational condition *Parental/legal guardian and coach notification 	<ul style="list-style-type: none"> * Reassigned housing *Possible suspension *Alcohol and Other Drug Consultation (w/fee of \$175) *Parental/legal guardian and coach notification 	<ul style="list-style-type: none"> *Suspension or Expulsion *Parental/legal guardian and coach notification
<ul style="list-style-type: none"> *Driving while intoxicated/DWI *Hazing 	<ul style="list-style-type: none"> *Suspension or Expulsion *Possible referral to local law enforcement agency *Parental/legal guardian notification 		

Party Violations*
Common Outcomes

Behavior	First Violation	Second Violation	Third Violation
<ul style="list-style-type: none"> *Minor disruption *Failure to register party *Minor alcohol/drug violation *Hosts/residents not managing properly (minor) 	<ul style="list-style-type: none"> *Warning or Reprimand *Educational condition *Coach notification *Possible parental/legal guardian notification (as permitted by applicable law) *Possible social hosting workshop before hosting again 	<ul style="list-style-type: none"> *Reprimand or Probation *Alcohol and Other Drug Wellness Course (w/fee of \$50) *Parental/legal guardian and coach notification *Loss of hosting privileges for one month for hosts and residence *Social hosting workshop 	<ul style="list-style-type: none"> *Reassigned housing *Possible suspension *Parental/legal guardian and coach notification *Loss of hosting privileges for one semester
<ul style="list-style-type: none"> *Disruptive behavior *Serving, purchasing, sale or making available of alcohol to minors *Serving/making available hard alcohol *Possession of bulk containers or serving from a common source (“jungle juice”), regardless of age *Allowing drug use or making drugs available *Charging cover fees *Attendance too large to manage or exceeding occupancy *Not managing party responsibly (more serious) 	<ul style="list-style-type: none"> *Reprimand or Probation *Alcohol and Other Drug Wellness Course (w/fee of \$50) *Coach notification *Possible parental/legal guardian notification* (as permitted by applicable law) *Social hosting workshop *Loss of hosting privileges for one month for hosts and residence 	<ul style="list-style-type: none"> *Reassigned housing *Possible suspension *Parental/legal guardian and coach notification *Loss of hosting privileges for one semester 	<ul style="list-style-type: none"> *Possible suspension *Parental/legal guardian and coach notification *Permanent loss of hosting privileges
<ul style="list-style-type: none"> *Excessive drinking/ rapid consumption (regardless of age) *Inducing or coercing others to drink *Serious disruption 	<ul style="list-style-type: none"> *Probation *Alcohol and Other Drug Wellness Course (w/fee of \$50) *Educational condition *Parental/legal guardian and coach notification *Social hosting workshop *Loss of hosting privileges for one semester 	<ul style="list-style-type: none"> *Reassigned housing *Possible suspension *Parental/legal guardian and coach notification *Permanent loss of hosting privileges 	<ul style="list-style-type: none"> *Suspension or Expulsion *Parental/legal guardian and coach notification

Other Drug Violations❖			
Common Outcomes			
Behavior	First Violation	Second Violation	Third Violation
*Possession/use of marijuana or other illegal drugs, including prescription drugs (small amount) *Possession of drug accessories (e.g., bong, bowls, scales, pipes)	*Warning or Reprimand *Alcohol and Other Drug Wellness Course (w/fee of \$50) *Coach notification *Possible parental/legal guardian notification	*Reprimand or Probation *Alcohol and Other Drug Assessment (w/fee of \$125) *Parental/legal guardian and coach notification	*Reassigned housing *Possible suspension *Alcohol and Other Drug Consultation (w/fee of \$175) *Parental/legal guardian and coach notification
*Possession/use of marijuana or other illegal drugs (larger amount or higher potency) *Possession/use of harder drugs *Transport to the hospital due to drug overuse *Inducing or encouraging drug use	*Probation *Alcohol and Other Drug Assessment (w/fee of \$125) *Educational condition *Parental/legal guardian and coach notification	*Reassigned housing *Possible suspension *Alcohol and Other Drug Consultation (w/fee of \$175) *Parental/legal guardian and coach notification	*Suspension *Parental/legal guardian notification
*Driving while under the influence *Other serious behaviors such as selling or distributing drugs including prescription, over the counter, or illegal drugs	*Suspension or Expulsion *Possible referral to local law enforcement agency *Parental/legal guardian notification		

❖NOTE: Conditions can apply to both hosts and location residents when appropriate. Organizations and teams can also be charged with group violations.

College Student Amnesty Protocol

Student health and safety is a primary concern for the College community. Sometimes, students are hesitant to seek medical assistance for fear that they may get themselves or others in trouble (for example, a student who has been drinking underage might hesitate to seek help for another student who is incapacitated due to alcohol or drug use, or who has been the victim of sexual misconduct).

F&M students are expected to contact Public Safety and stay with the individual of concern when it is believed they need attention due to the use of alcohol or other drugs including prescription, over the counter, or other. The Amnesty Protocol is designed to provide education rather than discipline when a student voluntarily contacts College personnel (e.g., Public Safety, House Advisor/Community Advisor) or outside emergency services for assistance related to alcohol or other drugs.

Individuals covered by the Amnesty Protocol are:

- the caller,
- the person in need of assistance
- the host student organization
- witnesses named in the incident report.

The College cannot grant amnesty or immunity from citation or arrest by legal authorities i.e., Lancaster or Manheim Township Police officers.

The Hearing Officer determines whether or not the Amnesty Protocol is applicable for each incident. Incidents involving sex discrimination, sexual harassment, sexual misconduct, sexual violence, dating violence, domestic violence, or stalking shall be covered by the Amnesty Protocol for those students reporting or intervening to prevent harm to a particular student. Incidents involving other violence or serious code violations, such as hazing, won't be covered by the Amnesty Policy.

A Conduct Officer will contact the student or the student organization involved in the incident to arrange for a meeting. There will be no official charges or conduct status from the College through the Amnesty Protocol. The person who made the call to College personnel may be invited to the meeting. At the meeting, the incident will be reviewed with the Student or Student organization to determine an appropriate educational response, which could include participation in an educational group or class, program presentations, counseling intake session, or substance abuse education and/or evaluation. A response may also include parental/ guardian notification of the incident.

If a student or student organization fails to attend the initial meeting with the Conduct Officer or complete the educational responses following the meeting, the incident will be resolved through the student conduct process.

Health Risks of Alcohol Abuse or Use of Illicit Drugs

Substance abuse can cause many consequences for college students that are not limited to their academic life. Some of the short- and long-term impacts of drug and alcohol abuse in college students can include:

- Decreased academic performance. Substance abuse can lead to a lower GPA, less time spent studying, missing class, getting behind on assignments, dropping out, or being expelled.
- Risky or dangerous behaviors. This can include doing things you normally wouldn't do, like driving under the influence, being involved in assault (either as a victim or perpetrator), getting into fights, stealing, or engaging in risky sexual behaviors or date rape. Many of these behaviors can be potentially lethal.
- Poor health. You can suffer from many physical health consequences, including hangovers, nausea, injury, negative effects on your immune system, and risk of overdose or death. You may also experience poor mental health, decreased cognitive performance, short-term memory loss, addiction, or increased risk of suicide.
- Social consequences. You can lose friendships and important relationships due to substance use. You may be more socially isolated if you spend much of your time using alcohol or drugs.

Health Consequences of Alcohol Misuse

Drinking too much can harm your health. According to the Center for Disease Control (CDC), excessive alcohol use has led to more than 140,000 deaths and 3/6 million years of potential life lost (YPLL) each year in the United States from 2015- 2019, shortening the lives of those who died by an average of 26 years. Further, excessive drinking was responsible for 1 in 10 deaths among working age adults 20-64 years old. The economic costs of excessive alcohol consumption in 2010 were estimated at \$249 billion.

Short-Term Health Risk

Excessive alcohol use has immediate effects that increase the risk of many harmful health conditions. These are most often the result of binge drinking and include the following:

- Injuries, such as motor vehicle crashes, falls, drownings, and burns.
- Violence, including homicide, suicide, sexual assault, and intimate partner violence.
- Alcohol poisoning, a medical emergency that results from high blood alcohol levels.
- Risky sexual behaviors, including unprotected sex or sex with multiple partners. These behaviors can result in unintended pregnancy or sexually transmitted diseases, including HIV.
- Miscarriage and stillbirth or fetal alcohol spectrum disorders (FASDs) among pregnant women.

Long-Term Health Risks

Over time, excessive alcohol use can lead to the development of chronic diseases and other serious problems including:

- High blood pressure, heart disease, stroke, liver disease, and digestive problems.
- Cancer of the breast, mouth, throat, esophagus, liver, and colon.
- Weakening of the immune system, increasing the chances of getting sick.
- Learning and memory problems, including dementia and poor school performance.
- Mental health problems, including depression and anxiety.
- Social problems, including lost productivity, family problems, and unemployment.
- Alcohol use disorders, or alcohol dependence.

By not drinking too much, you can reduce the risk of these short- and long-term health risks. “Alcohol Use and Your Health.” CDC, 2022, <https://www.cdc.gov/alcohol/fact-sheets/alcohol-use.htm>

Health Consequences of Drug Misuse

Drug use can have a wide range of short- and long-term, direct and indirect effects. These effects often depend on the specific drug or drugs used, how they are taken, how much is taken, the person's health, and other factors. The National Institute on Drug Abuse (NIDA) reports.

Short-Term Effects

These health effects may occur after just one use

- changes in appetite,
- wakefulness,
- heart rate,
- blood pressure,
- heart attack,

- stroke,
- mental health issues,
- psychosis,
- overdose,
- and even death.

Longer-term effects

- heart or lung disease,
- cancer,
- mental illness,
- HIV/AIDS,
- hepatitis,
- addiction

People use drugs and drink alcohol for lots of different reasons. Whatever your reason, using drugs or alcohol may have a long-term negative effect on you. The possible long-term effects include the following.

- Needing to take more to get the same effect.
- High blood pressure and strokes.
- Problems with your liver and pancreas.
- Development of certain cancers e.g., liver cancer, bowel cancer, and mouth cancer.
- Difficulty obtaining or maintaining an erection.
- Problems with orgasms.
- Difficulties becoming pregnant.
- Feeling like you must use the drug or alcohol. This is known as being dependent.
- Withdrawal symptoms including feeling sick, cold, sweaty or shaky when you don't take them.
- Having sudden mood changes.
- Having a negative outlook on life.
- Loss of motivation.
- Depression.
- Anxiety.
- Problems with relationships.
- Being secretive.
- Having episodes of drug-induced psychosis.
-

If you use alcohol or drugs for a long time, it can cause serious issues for your mental well-being. Drugs can make you more unwell and more likely to try and harm yourself or take your own life. There is also some evidence that using some drugs may cause mental illness for the first time. For example, research has shown that cannabis can increase your chances of developing psychosis or a psychotic disorder.

Psychosis is a medical term. If you have psychosis, you will process the world around you differently to other people. This can include how you experience, believe or view things.

You might see or hear things that others do not. Or believe things other people do not. Some people describe it as a "break from reality". There are different terms used to describe psychosis. Such as "psychotic symptoms", "psychotic episode" or "psychotic experience."

It can be a symptom of mental illness and can also be a short-term effect of some drugs. Below is a list of some of the different types of substances that could have an impact on your mental health. Please be aware that this list is not a list of all substances.

Taking any substances can be dangerous. They can also have bad interactions with any medications or other substances you might use.

Cannabis

Cannabis is one of the most commonly used drugs in England. According to one study, 1 in 13 people aged 16-59 had used it in the last year. Young people aged 16-24 are more likely to use cannabis. The same study shows that just under 1 in 5 young people had used cannabis between 2018 and 2019.

Some people take cannabis because it makes them feel relaxed or happy, but It can also make you feel anxious or feel paranoid. Some people may experience things that aren't real. This is a sign of drug-induced psychosis.

Some studies have shown that the risk of psychosis may be higher if you:

- use cannabis for a long time,
- use it frequently, and
- use 'high-strength' cannabis, like skunk.

If you have been using cannabis and you feel that it is affecting your health, make an appointment to see your doctor as soon as you can.

Alcohol

Some people with a mental illness have problems using alcohol. Alcohol is legal, which means it is easier to get. It can make the feelings of some mental health issues feel worse.

The long-term effects of alcohol also depend on how much you drink, and how regularly you drink it. If you drink too much on a regular basis then you could cause yourself serious physical and mental harm. Drinking can make you do something you would not normally do. This can include self-harm and suicide. Very high levels of alcohol can cause psychosis.

New Psychoactive Substances (NPS)

(Also known as: Plant Food, NPS, Mdat, Eric 3, Dimethocaine and Bath salts).

These are drugs that contain one or more chemical substance. They produce effects that are similar to cocaine, cannabis and ecstasy. Some of the drugs classed as NPS used to be known as 'legal highs'. This is a common term that people use. It is used because some NPS were legal before 2016. However, the name is now wrong, because since 2016 they have been made illegal. The short-term effects of an NPS depend on what you take.

Some new psychoactive drugs can cause confusion and a feeling of panic. You can also have hallucinations. This is when you see, smell, hear or feel things that other people don't. Hallucinations can affect the way you behave. Your behavior can become erratic and can put your own safety at serious risk. These drugs can also affect your judgement, which could put you at risk. Some NPS can be very dangerous. They can kill you or hurt you very badly. There is a higher risk of this if taken with alcohol or other psychoactive drugs.

Long-term drug use can also lead to addiction. Drug addiction is a brain disorder. Not everyone who uses drugs will become addicted, but for some, drug use can change how certain brain circuits work. These brain changes interfere with how people experience normal pleasures in life such as food and sex, their ability to control their stress level, their decision-making, their ability to learn and remember, etc. These changes make it much more difficult for someone to stop taking the drug even when it's having negative effects on their life and they want to quit.

Drug use can also have indirect effects on both the people who are taking drugs and on those around them. This can include affecting a person's nutrition; sleep; decision-making and impulsivity; and risk for trauma, violence, injury, and communicable diseases. Drug use can also affect babies born to women who use drugs while pregnant. Broader negative outcomes can be seen in education level, employment, housing, relationships, and criminal justice involvement.

Drug use is linked to risky behaviors such as needle sharing and unsafe sex and can also weaken the immune system. This combination greatly increases the likelihood of contracting HIV, hepatitis, and other infectious diseases.

Young adult males who use marijuana and began their use during adolescence are at risk for an aggressive form of testicular cancer.

Studies have found that most drugs can have adverse cardiovascular effects, ranging from abnormal heart rate to heart attack. Smoking tobacco substantially increases the risk of heart disease, including stroke, heart attack, and vascular disease.

Researchers are now reporting that the use of e-cigarettes significantly increases a person's risk of developing chronic lung diseases like asthma, bronchitis, emphysema, or chronic obstructive pulmonary disease (COPD). Injection drug use can also lead to cardiovascular problems such as collapsed veins and bacterial infections of the blood vessels and heart valves.

Drug use can lead to a variety of respiratory problems. In addition, there have been serious lung illnesses and deaths related to vaping both marijuana and nicotine. Many of these illnesses have been linked to the additive Vitamin E acetate.

Marijuana smoke can also cause respiratory problems, including chronic bronchitis. Smoking crack cocaine can cause lung damage and severe respiratory problems. The use of some drugs, such as opioids, may cause breathing to slow, block air from entering the lungs, or make asthma symptoms worse.

Chronic use of some drugs, such as heroin, inhalants, and steroids (appearance- and performance-enhancing drugs), may lead to significant damage to the liver. This damage can be worse when these drugs are combined with alcohol or other drugs.

All addictive drugs act in the brain to produce their euphoric effects. However, some can also cause damage due to seizures, stroke, and direct toxic effects on brain cells.

Appearance- and performance-enhancing drugs disrupt the normal production of hormones in the body, causing both reversible and irreversible changes. These changes include infertility and testicle shrinkage in men as well as body hair growth and male-pattern baldness in women.

Studies show that various drugs may result in miscarriage, premature birth, low birth weight, and a variety of behavioral and cognitive problems in the child. A baby can also be born dependent on the drug if the mother uses it regularly—a condition called neonatal abstinence syndrome.

Chronic use of some drugs can lead to both short- and long-term changes in the brain, which can lead to mental health issues including paranoia, depression, anxiety, aggression, hallucinations, and other problems.

Drug use and other mental illnesses often coexist. Many people who are addicted to drugs are also diagnosed with other mental disorders and vice versa. Compared with the general population, people addicted to drugs are roughly twice as likely to suffer from mood and anxiety disorders. In some cases, mental disorders such as anxiety, depression, or schizophrenia may come before addiction. In other cases, drug use may trigger or worsen those mental health conditions, particularly in people with specific vulnerabilities. Some people with disorders like anxiety or depression may use drugs in an attempt to alleviate psychiatric symptoms. This may exacerbate their mental disorder in the long run, as well as increase the risk of developing addiction.

In 2015, an estimated 43.4 million (17.9 percent) adults, ages 18 and older, experienced some form of mental illness other than a developmental or substance use disorder.

Drug-related deaths have more than tripled since 2000. There are more deaths, illness, and disabilities from substance use than from any other preventable health condition. Drug overdose death disparities are widening at the same time as a record-breaking 92,000 lives were lost to drug overdoses during 2020. There are more deaths, illnesses, and disabilities from substance abuse than from any other preventable health condition.

Of the two million deaths each year in the United States, more than one in four is attributable to alcohol, illicit drug, or tobacco use.

To learn more, go to these sites:

<https://www.gatewayfoundation.org/about-gateway-foundation/faqs/effects-of-drug-abuse/>

<https://nida.nih.gov/research-topics/commonly-used-drugs-charts>

<https://americanaddictioncenters.org/rehab-guide/college>

If you think you have a problem, talk to your doctor. There are treatment centers, counseling, and rehab resources available in Lancaster.

Resources for Assistance

The College has provided the following programming and provide the following resources for assistance.

Student Programming & Resources for Assistance

Name of Program	Date Held	Subject Matter	Location	Target Audience
Alcohol Edu	August 2022	Alcohol education and misuse prevention	Virtual	First Year Students (FYS)
Safety Awareness	August 24, 2022	Introduction to Public Safety, situational awareness and safety re: alcohol/drugs	On Campus	First Year International Students
Safety Awareness	August 28, 2022	Introduction to Public Safety, situational awareness and safety re: alcohol/drugs	On Campus	FYS
Safety Awareness	October 3, 2022	DPS information, situational awareness, general safety, risk management, alcohol education, party registration	On Campus	Chi Omega sorority
Peer Health Education Info Table	Ongoing; October 14 - December 15	Resources and awareness on a variety of wellness topics, including alcohol and drug education and risk reduction	On Campus	All students
Alcohol Education	October 20, 2022	Alcohol education and risk reduction	On Campus	FYS
Alcohol Trivia	October 23, 2022	Alcohol education and risk reduction	On Campus	Ware College House
Safety Awareness	October 27, 2022	Introduction to Public Safety, situational awareness and general safety, active threat	On Campus	Tour Talk Guide
Wellness Fair	November 4, 2022	Trivia and provision of educational resources	On Campus	Campus Community
Safety Awareness	November 6, 2022	DPS Into, Active Threat modified, Safety issues specific to SCC, situational awareness	On Campus	SCC Managers

Name of Program	Date Held	Subject Matter	Location	Target Audience
Safety Awareness	November 6, 2022	DPS information, situational awareness, general safety, risk management, alcohol education, party registration	On Campus	ADPi and AXD Chapters
Safety Awareness	November 10, 2022	DPS Intro, situational awareness, general safety, Active Threat	On Campus	Tour Talk Guide
TIPS	December 7, 2022	Alcohol awareness, liability issues, social event safety, DPS roles at alcohol medical assists, Amnesty	On Campus	Chi Omega
Substance Abuse Training with Caron Foundation	January 2023	Substance abuse education and risk reduction	On Campus	House Advisers
Alcohol Education	March 5, 2023	Alcohol education and risk management	On Campus	Alpha Xi Delta
Alcohol 101 with Caron Foundation	March 21, 2023	Alcohol education, impact on brain/body, general health, how to identify alcohol poisoning, and risk reduction	On Campus	All students
TIPS	April 9, 2023	Risk Management, alcohol education for newest member and safety discussions	On Campus	Chi Omega
TIPS	April 16, 2023	Risk Management, alcohol education for newest member and safety discussions	On Campus	Alpha Phi
TIPS	April 20, 2023	Alcohol awareness, liability issues, social event safety, DPS roles at alcohol medical assists, Amnesty Campus	On Campus	Chi Omega

In addition to the above listed programs, the College also provides additional resources and requires specific actions from specified groups. Some examples are:

- College sponsored education and growth programs for fraternities and sororities.
- The Department of Athletics & Recreation contacted a substance educator/counselor to provide services dedicated to our student athlete population.
- The College provides speakers, educational experiences and instructional programs in five topical areas: Hazing; Social Event Management and Risk Reduction; Alcohol and Other Drugs; Healthy Gender Relations and Sexual Misconduct, and Leader/Leadership Development.
- Franklin and Marshall College also requires parties where alcohol is served, to be registered if twenty (20) or more students are invited. This form must be submitted to the Office of Student Affairs of the College. Party and alcohol hosts must remain sober and are held responsible for rules and guest behavior.
- Two-week “no first-years allowed” policy at the beginning of the Fall semester for all organizations and private party hosts.
- F&M has subscribed to online educational modules through the Open Path Collaborative to provide free course content to students related to substance use, healthy relationships, mental health and many other topics.
- A new multidisciplinary team, co-chaired by the Director Care Coordinator and Violence Prevention and Assistant Director of Athletics has been charged with campus-wide programming related to substance use and mental health.
- Peer education team
- Wellness courses and recreational activities
- On-going wellness workshops for entire campus community
- Group discussions for organizations and athletic teams
- Active flier campaign
- 1-on-1 mentoring and coaching
- Campus-wide mindfulness initiative
- Robust behavior intervention team (“DipCares”) that meets weekly to discuss students of concern.
- Substance education programs open to all students each semester facilitated by staff from the Caron Foundation
- Fully-staffed counseling and medical department managed by Lancaster General Hospital: “Lancaster General Health at Franklin & Marshall”
- MOU with addiction prevention and treatment organization, Caron. Services include:
 - Workshops for students who have had minor-level substance violations
 - substance counseling for students
 - Consultation with residential staff
- Late-night programming initiative to offer substance free social options
- Training of paraprofessional House Advisor staff to assist with prevention, outreach, and crisis response
- Annual notification to each employee and student, in writing, of standards of conduct; a description of appropriate sanctions for violation of federal, state, and local law and campus policy; a description of health risks associated with alcohol and substance use; and a description of available treatment programs.
- Online education about alcohol, drug, and sexual health for all new students prior to arrival.
- New Student Orientation includes facilitated conversations about alcohol and drug issues the first night of orientation. Conversations are co-led by residential Deans and Public Safety personnel.

- Mandatory training for organization leaders and private event hosts, including private parties, to assist with prevention of party-related substance problems
- Drug testing for varsity student athletes

Employee Resources for Assistance

Franklin & Marshall College offers free access to the Alumni Sports & Fitness Center, a multipurpose athletic and recreation facility, which includes a field house with a suspended indoor track, aquatics center, and fitness center.

Franklin & Marshall College offers comprehensive health and welfare benefits that include the following resources and support for employees and their eligible enrolled dependents seeking assistance for substance issues:

Cigna Employee Assistance Program

Cigna offers the following confidential services:

- Three face-to-face meetings with a counselor
- 24/7 phone consultations to include assistance with problem identification, problem-solving skills, approaches and/or resources to address behavioral concerns
- Resources and referrals for programs, camps, organizations, agencies, and more.

Highmark Blue Shield

Employees have access to a large network of confidential support in seeking assistance with substance abuse. Highmark develops networks using consideration of the location of all types of clinicians and hospitals in relation to where members live. Clinicians are selected using nationally recognized quality standards that are developed and approved by the National Committee for Quality Assurance and cost/utilization performance measures, such as risk-adjusted total cost of care, compared to the market.

ConnectCare3 (CC3)

CC3 is a team of patient advocates, registered nurses, certified health coaches, and registered dietitians that help covered employees and dependents gain clarity in navigating the health system, managing a diagnosis, and getting help and support on their wellness journey.

Faculty, professional staff, retirees, and dependents enrolled through the College's Highmark Blue Shield health plan are eligible for this benefit.

Additional Resources for Students & Employees

All students and employees are encouraged to seek early help if they feel they have a problem with alcohol and/or other drugs and to learn how to assist others with substance abuse problems.

Alcoholics Anonymous- <http://www.aa.org>

Al-Anon- <http://pa-al-anon.org>

Narcotics Anonymous- <http://www.na.org>

Suicide & Crisis Lifeline #988 or <https://988lifeline.org>

Legal Sanctions and Penalties

Federal Alcohol Laws

The primary Federal law governing alcohol policy is the 21st Amendment, which repealed national prohibition. It also gives individual States control over:

- Whether to allow sale of alcohol in the State
- Whether to allow importing alcohol into the State
- How to distribute alcohol throughout the State
- Possession of alcohol in the State

All students and employees must abide by the 21st Amendment.

Minimum Legal Drinking Age

Congress retains the power to use financial and tax incentives to promote certain alcohol policies, such as the minimum legal drinking age. The Federal Uniform Drinking Age Act of 1984 sets the minimum legal drinking age to 21 and every State abides by that standard.

According to this Act, the Federal government can withhold ten percent of Federal funding for highways from States that do not prohibit people under age 21 from buying or publicly possessing any alcoholic beverage. While every State abides by this standard, State law varies on specifics about possession and exceptions to the law, such as allowing people under 21 to drink with their parents.

The Federal Uniform Drinking Age Act of 1984 also has other implications:

- Nobody who is legally allowed to drink may purchase or serve an alcohol beverage to a person under the age of 21.
- Nobody above the age of 21 can use their legal identification for fraudulent purposes involving the purchase of alcohol: an individual under the age of 21 shall not allow another person who is above the age of 21 to fraudulently obtain alcohol beverages for them.

Franklin & Marshall College prohibits the unlawful possession, use, and sale of alcoholic beverages and illegal drugs on Campus. Franklin & Marshall College Department of Public Safety enforces State underage drinking laws and enforces Federal and State drug laws. The College expressly prohibits the presence of controlled substances on any part of Campus, any College owned or operated property, or at any College-sponsored activity.

Additionally, no individual under the age of 21 may possess, on Campus, any College owned or operated property, or at any College-sponsored activity, for consumption or other purpose, any alcoholic beverage, nor may any individual supply an individual who is under the age of 21 with any alcoholic beverage while on Campus, any College owned or operated property, or any College-sponsored activity.

The College expects students, faculty, and employees to comply with all federal, state, and local laws and with College policies regarding the possession, use and sale of alcohol and controlled substances (illegal drugs).

Pennsylvania Alcohol laws

§ 6308. Purchase, consumption, possession or transportation of liquor or malt or brewed beverages.

(a) Offense defined. --A person commits a summary offense if he, being less than 21 years of age, attempts to purchase, purchases, consumes, possesses or knowingly and intentionally transports any liquor or malt or brewed beverages, as defined in section 6310.6 (relating to definitions). For the purposes of this section, it shall not be a defense that the liquor or malt or brewed beverage was consumed in a jurisdiction other than the jurisdiction where the citation for underage drinking was issued.

(b) Penalty. --A person convicted of violating subsection (a) may be sentenced to pay a fine of not more than \$500 for the first violation and not more than \$1,000 for the second and each subsequent violation.

(c) Pre-Adjudication disposition. --

(1) When a person is charged with violating subsection (a), the magisterial district judge may admit the offender to the adjudication alternative as authorized in 42 Pa.C.S. § 1520 (relating to adjudication alternative program) or any other pre adjudication disposition if the offender has not previously received a pre adjudication disposition for violating subsection (a).

(2) The use of a pre adjudication disposition shall be considered a first or subsequent offense, whichever is applicable, for the purpose of further adjudication under this section or under section 6310.4.

(d) Notification. --The police department making an arrest for a suspected violation of subsection (a) shall so notify the parents or guardian of the minor charged.

(e) Exception for compliance checks. --(Repealed).

(f) Exception for person seeking medical attention for another. --(Repealed).

(Apr. 28, 1978, P.L.202, No.53, eff. 60 days; Mar. 25, 1988, P.L.262, No.31, eff. 60 days; Mar. 17, 2000, P.L.11, No.4, eff. 60 days; Dec. 3, 2002, P.L.1144, No.141, eff. 60 days; Nov. 30, 2004, P.L.1618, No.207, eff. 60 days; July 7, 2011, P.L.288, No.66, eff. 60 days; Oct. 25, 2012, P.L.1663, No.205, eff. 60 days; Dec. 22, 2017, P.L.1237, No.75, eff. imd.; Oct. 19, 2018, P.L.535, No.80, eff. 30 days; Oct. 24, 2018, P.L.659, No.95, eff. 180 days)

2018 Amendments. Act 80 repealed subsec. (f) and Act 95 amended subsec. (b). Section 8 of Act 80 provided that Act 80 shall be referred to as the "Timothy J. Piazza Antihazing Law."

2017 Amendment. Act 75 repealed subsec. (e) and section 2 of Act 141 of 2002.

2012 Amendment. Section 2 of Act 205 provided that the amendment shall apply to offenses committed on or after the effective date of section 2.

2004 Amendment. Act 207 amended subsec. (c)(1). See section 29 of Act 207 in the appendix to this title for special provisions relating to construction of law.

2000 Amendment. Act 4 amended subsec. (a).

References in Text. 18 Pa.C.S. § 6310.4, referred to in subsec. (c)(2), was repealed by the act of October 24, 2018 (P.L.659, No.95).

Cross References. Section 6308 is referred to in sections 2810, 6308.1, 6310.5, 6310.6, 6313, 9122, 9123 of this title; sections 1518, 3905 of Title 4 (Amusements); sections 3573, 8902 of Title 42 (Judiciary and Judicial Procedure); sections 1532, 1553 of Title 75 (Vehicles).

§ 6309. Representing that minor is of age.

(a) Offense defined. --A person is guilty of a misdemeanor of the third degree if he knowingly, willfully, and falsely represents to any licensed dealer, or other person, any minor to be of full age,

for the purpose of inducing any such licensed dealer or other person, to sell or furnish any liquor or malt or brewed beverages, as defined in section 6310.6 (relating to definitions), to the minor.

(b) Minimum penalty. --In addition to any other penalty imposed pursuant to this title or other statute, a person committing an offense under this section shall be sentenced to pay a fine of not less than \$300. There shall be no authority in any court to impose on an offender any lesser sentence than the minimum sentence mandated by this subsection. In no case shall the sentence exceed the maximum sentence prescribed by law. No court shall have the authority to suspend any sentence as defined in this section.

(Mar. 25, 1988, P.L.262, No.31, eff. 60 days)

Cross References. Section 6309 is referred to in section 6310.6 of this title.

§ 6310. Inducement of minors to buy liquor or malt or brewed beverages.

(a) Offense defined. --A person is guilty of a misdemeanor of the third degree if he hires or requests or induces any minor to purchase, or offer to purchase, liquor or malt or brewed beverages, as defined in section 6310.6 (relating to definitions), from a duly licensed dealer for any purpose.

(b) Minimum penalty. --In addition to any other penalty imposed pursuant to this title or other statute, a person convicted of an offense under this section shall be sentenced to pay a fine of not less than \$300. There shall be no authority in any court to impose on an offender any lesser sentence than the minimum sentence mandated by this subsection. Nothing in this section shall prevent the sentencing court from imposing a sentence greater than the minimum sentence mandated in this subsection. In no case shall the sentence exceed the maximum sentence prescribed by law. No court shall have the authority to suspend any sentence as defined in this section.

(c) Exception for compliance checks. --(Repealed).

(Mar. 25, 1988, P.L.262, No.31, eff. 60 days; Dec. 3, 2002, P.L.1144, No.141, eff. 60 days; Dec. 22, 2017, P.L.1237, No.75, eff. imd.)

2017 Amendment. Act 75 repealed subsec. (c) and section 2 of Act 141 of 2002.

Cross References. Section 6310 is referred to in section 6310.6 of this title.

§ 6310.1. Selling or furnishing liquor or malt or brewed beverages to minors.

(a) Offense defined. --Except as provided in subsection (b), a person commits a misdemeanor of the third degree if he intentionally and knowingly sells or intentionally and knowingly furnishes, or purchases with the intent to sell or furnish, any liquor or malt or brewed beverages to a person who is less than 21 years of age.

(b) Exceptions. --The provisions of this section shall not apply to any religious service or ceremony which may be conducted in a private home or a place of worship where the amount of wine served does not exceed the amount reasonably, customarily and traditionally required as an integral part of the service or ceremony.

(c) Minimum penalty. --In addition to any other penalty imposed pursuant to this title or other statute, a person who is convicted of violating subsection (a) shall be sentenced to pay a fine of not less than \$1,000 for the first violation and a fine of \$2,500 for each subsequent violation. There shall be no authority in any court to impose on an offender any lesser sentence than the minimum sentence mandated by this subsection. No court shall have the authority to suspend any sentence as defined in this section. Nothing in this section shall prevent the sentencing court from imposing a sentence greater than the minimum sentence mandated in this subsection. In no case shall the sentence exceed the maximum sentence prescribed by law.

(Mar. 25, 1988, P.L.262, No.31, eff. 60 days)

1988 Amendment. Act 31 added section 6310.1.

Cross References. Section 6310.1 is referred to in section 6310.6 of this title.

§ 6310.2. Manufacture or sale of false identification card.

(a) Offense defined. --A person commits a misdemeanor of the second degree if he intentionally, knowingly or recklessly manufactures, makes, alters, sells or attempts to sell an identification card falsely representing the identity, birth date or age of another.

(b) Minimum penalty. --In addition to any other penalty imposed pursuant to this title or any other statute, a person who is convicted of violating subsection (a) shall be sentenced to pay a fine of not less than \$1,000 for the first violation and a fine of not less than \$2,500 for each subsequent violation. There shall be no authority in any court to impose on an offender any lesser sentence than the minimum sentence mandated by this subsection. In no case shall the sentence exceed the maximum sentence prescribed by law. No court shall have the authority to suspend any sentence as defined in this section.

(c) Adjudication of delinquency. --In addition to any other disposition authorized by law, a person adjudicated delinquent under subsection (a) shall be ordered to pay a fine of \$500 for the first adjudication of delinquency and a fine of \$1,000 for each subsequent adjudication of delinquency.

(Mar. 25, 1988, P.L.262, No.31, eff. 60 days)

1988 Amendment. Act 31 added section 6310.2.

Cross References. Section 6310.2 is referred to in section 6310.6 of this title.

§ 6310.3. Carrying a false identification card.

(a) Offense defined.--A person commits a summary offense for a first violation and a misdemeanor of the third degree for any subsequent violation if he, being under 21 years of age, possesses an identification card falsely identifying that person by name, age, date of birth or photograph as being 21 years of age or older or obtains or attempts to obtain liquor or malt or brewed beverages by using the identification card of another or by using an identification card that has not been lawfully issued to or in the name of that person who possesses the card.

(b) Minimum penalty. --A person who is convicted of violating subsection (a) shall be sentenced to pay a fine of not more than \$500 for the second and subsequent violations. No court shall have the authority to suspend any sentence as defined in this section.

(c) Adjudication of delinquency. --In addition to any other disposition authorized by law, a person adjudicated delinquent under subsection (a) may be ordered to pay a fine not exceeding \$500 for an adjudication of delinquency.

(d) Pre-adjudication disposition. --

(1) When a person is charged with violating subsection (a), the court may admit the offender to the adjudication alternative as authorized in 42 Pa.C.S. § 1520 (relating to adjudication alternative program) or any other pre-adjudication disposition if the offender has not previously received a pre-adjudication disposition for violating subsection (a).

(2) The use of a pre-adjudication disposition shall be considered a first or subsequent offense, whichever is applicable, for the purpose of further adjudication under this section or under section 6310.4.

(e) Notification. --The police department making an arrest for a suspected violation of subsection (a) shall so notify the parents or guardian of the minor charged.

(Mar. 25, 1988, P.L.262, No.31, eff. 60 days; Oct. 24, 2018, P.L.659, No.95, eff. 180 days)

2018 Amendment. Act 95 amended subsec. (b).

1988 Amendment. Act 31 added section 6310.3.

References in Text. 18 Pa.C.S. § 6310.4, referred to in subsec. (d)(2), was repealed by the act of October 24, 2018 (P.L.659, No.95).

Cross References. Section 6310.3 is referred to in sections 6310.5, 6310.6, 6313 of this title; section

1532 of Title 75 (Vehicles).

§ 6310.7. Selling or furnishing nonalcoholic beverages to persons under 21 years of age.

(a) Offense defined. --A person commits a summary offense if he intentionally and knowingly sells or furnishes nonalcoholic beverages to any person under 21 years of age.

(b) Definitions. --As used in this section, the term "nonalcoholic beverage" means any beverage intended to be marketed or sold as nonalcoholic beer, wine or liquor having some alcohol content but does not contain more than 0.5% alcohol by volume.

(Dec. 12, 1994, P.L.1248, No.148, eff. 60 days)

1994 Amendment. Act 148 added section 6310.7. See the preamble to Act 148 in the appendix to this title for special provisions relating to legislative findings and declarations.

Cross References. Section 6310.7 is referred to in section 6138 of Title 61 (Prisons and Parole).

(a) General rule.--A person 18 years of age or older who is convicted in any court of this Commonwealth of a violation of section 13(a)(14) or (30) of the act of April 14, 1972 (P.L.233, No.64), known as The Controlled Substance, Drug, Device and Cosmetic Act, shall, if the delivery or possession with intent to deliver of the controlled substance occurred within 1,000 feet of the real property on which is located a public, private or parochial school or a college or university or within 250 feet of the real property on which is located a recreation center or playground or on a school bus, be sentenced to a minimum sentence of at least two years of total confinement, notwithstanding any other provision of this title, The Controlled Substance, Drug, Device and Cosmetic Act or other statute to the contrary. The maximum term of imprisonment shall be four years for any offense:

(1) subject to this section; and

(2) for which The Controlled Substance, Drug, Device and Cosmetic Act provides for a maximum term of imprisonment of less than four years.

If the sentencing court finds that the delivery or possession with intent to deliver was to an individual under 18 years of age, then this section shall not be applicable and the offense shall be subject to section 6314 (relating to sentencing and penalties for trafficking drugs to minors).

(b) Proof at sentencing. --The provisions of this section shall not be an element of the crime. Notice of the applicability of this section to the defendant shall not be required prior to conviction, but reasonable notice of the Commonwealth's intention to proceed under this section shall be provided after conviction and before sentencing. The applicability of this section shall be determined at sentencing. The court shall consider evidence presented at trial, shall afford the Commonwealth and the defendant an opportunity to present necessary additional evidence and shall determine by a preponderance of the evidence if this section is applicable.

(c) Authority of court in sentencing. --There shall be no authority for a court to impose on a defendant to which this section is applicable a lesser sentence than provided for in subsection (a), to place the defendant on probation or to suspend sentence. Nothing in this section shall prevent the sentencing court from imposing a sentence greater than that provided in this section. Sentencing guidelines promulgated by the Pennsylvania Commission on Sentencing shall not supersede the mandatory sentences provided in this section. Disposition under section 17 or 18 of The Controlled Substance, Drug, Device and Cosmetic Act shall not be available to a defendant to which this section applies.

(d) Appeal by Commonwealth. --If a sentencing court refuses to apply this section where applicable, the Commonwealth shall have the right to appellate review of the action of the sentencing court. The appellate court shall vacate the sentence and remand the case to the sentencing court for imposition of a sentence in accordance with this section if it finds that the sentence was imposed in violation of this section.

(June 25, 1997, P.L.284, No.26, eff. 60 days)

1997 Amendment. Act 26 added section 6317. Section 5 of Act 26 provided that the addition of

section 6317 shall apply to all offenses occurring on or after the effective date of Act 26.

§ 5505. Public drunkenness and similar misconduct.

A person is guilty of a summary offense if he appears in any public place manifestly under the influence of alcohol or a controlled substance, as defined in the act of April 14, 1972 (P.L.233, No.64), known as The Controlled Substance, Drug, Device and Cosmetic Act, except those taken pursuant to the lawful order of a practitioner, as defined in The Controlled Substance, Drug, Device and Cosmetic Act, to the degree that he may endanger himself or other persons or property, or annoy persons in his vicinity. A person convicted of violating this section may be sentenced to pay a fine of not more than \$500 for the first violation and not more than \$1,000 for the second and each subsequent violation.

(June 18, 1999, P.L.67, No.8, eff. 60 days; Oct. 25, 2012, P.L.1663, No.205, eff. 60 days)

2012 Amendment. Section 2 of Act 205 provided that the amendment of section 5505 shall apply to offenses committed on or after the effective date of section 2.

Cross References. Section 5505 is referred to in sections 3573, 8902 of Title 42 (Judiciary and Judicial Procedure); section 6138 of Title 61 (Prisons and Parole).

Pennsylvania Laws pertaining to driving under the influence – drug or alcohol

§ 3801. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Adult." An individual who is at least 21 years of age.

"Ignition interlock system." A system approved by the department which prevents a vehicle from being started or operated unless the operator first provides a breath sample indicating that the operator has an alcohol level less than 0.025%.

"Minor." An individual who is under 21 years of age.

Cross References. Section 3801 is referred to in section 1556 of this title.

§ 3802. Driving under the influence of alcohol or controlled substance.

(a) General impairment. --

(1) An individual may not drive, operate or be in actual physical control of the movement of a vehicle after imbibing a sufficient amount of alcohol such that the individual is rendered incapable of safely driving, operating or being in actual physical control of the movement of the vehicle.

(2) An individual may not drive, operate or be in actual physical control of the movement of a vehicle after imbibing a sufficient amount of alcohol such that the alcohol concentration in the individual's blood or breath is at least 0.08% but less than 0.10% within two hours after the individual has driven, operated or been in actual physical control of the movement of the vehicle.

(b) High rate of alcohol. --An individual may not drive, operate or be in actual physical control of the movement of a vehicle after imbibing a sufficient amount of alcohol such that the alcohol concentration in the individual's blood or breath is at least 0.10% but less than 0.16% within two hours after the individual has driven, operated or been in actual physical control of the movement of the vehicle.

(c) Highest rate of alcohol. --An individual may not drive, operate or be in actual physical control of the movement of a vehicle after imbibing a sufficient amount of alcohol such that the alcohol concentration in the individual's blood or breath is 0.16% or higher within two hours after the individual has driven, operated or been in actual physical control of the movement of the vehicle.

(d) Controlled substances. --An individual may not drive, operate or be in actual physical control of the movement of a vehicle under any of the following circumstances:

(1) There is in the individual's blood any amount of a:

(i) Schedule I controlled substance, as defined in the act of April 14, 1972 (P.L.233, No.64), known as The Controlled Substance, Drug, Device and Cosmetic Act;

(ii) Schedule II or Schedule III controlled substance, as defined in The Controlled Substance, Drug, Device and Cosmetic Act, which has not been medically prescribed for the individual; or

(iii) metabolite of a substance under subparagraph (i) or (ii).

(2) The individual is under the influence of a drug or combination of drugs to a degree which impairs the individual's ability to safely drive, operate or be in actual physical control of the movement of the vehicle.

(3) The individual is under the combined influence of alcohol and a drug or combination of drugs to a degree which impairs the individual's ability to safely drive, operate or be in actual physical control of the movement of the vehicle.

(4) The individual is under the influence of a solvent or noxious substance in violation of 18 Pa.C.S. § 7303 (relating to sale or illegal use of certain solvents and noxious substances).

(e) Minors. --A minor may not drive, operate or be in actual physical control of the movement of a vehicle after imbibing a sufficient amount of alcohol such that the alcohol concentration in the minor's blood or breath is 0.02% or higher within two hours after the minor has driven, operated or been in actual physical control of the movement of the vehicle.

(f) Commercial or school vehicles. --An individual may not drive, operate or be in actual physical control of the movement of a commercial vehicle, school bus or school vehicle in any of the following circumstances:

(1) After the individual has imbibed a sufficient amount of alcohol such that the alcohol concentration in the individual's blood or breath is:

(i) 0.04% or greater within two hours after the individual has driven, operated or been in actual physical control of the movement of a commercial vehicle other than a school bus or a school vehicle.

(ii) 0.02% or greater within two hours after the individual has driven, operated or been in actual physical control of the movement of a school bus or a school vehicle.

(2) After the individual has imbibed a sufficient amount of alcohol such that the individual is rendered incapable of safely driving, operating or being in actual physical control of the movement of the vehicle.

(3) While the individual is under the influence of a controlled substance or combination of controlled substances, as defined in section 1603 (relating to definitions).

(4) While the individual is under the combined influence of alcohol and a controlled substance or combination of controlled substances, as defined in section 1603.

(g) Exception to two-hour rule.--Notwithstanding the provisions of subsection (a), (b), (c), (e) or (f), where alcohol or controlled substance concentration in an individual's blood or breath is an element of the offense, evidence of such alcohol or controlled substance concentration more than two hours after the individual has driven, operated or been in actual physical control of the movement of the vehicle is sufficient to establish that element of the offense under the following circumstances:

(1) where the Commonwealth shows good cause explaining why the chemical test sample could not be obtained within two hours; and

(2) where the Commonwealth establishes that the individual did not imbibe any alcohol or utilize a controlled substance between the time the individual was arrested and the time the sample was obtained.

(May 11, 2006, P.L.155, No.36, eff. imd.)

2006 Amendment. Act 36 amended subsec. (g)(1). See the preamble to Act 36 in the appendix to this title for special provisions relating to legislative intent.

Cross References. Section 3802 is referred to in sections 102, 1534, 1539, 1541, 1543, 1547, 1552, 1553, 1554, 1556, 1575, 1586, 1611, 3326, 3327, 3716, 3732, 3732.1, 3733, 3735, 3735.1, 3755, 3803, 3804, 3805, 3806, 3807, 3811, 3812, 3814, 3815, 3816, 3817, 6506 of this title; sections 6105, 7508.1 of Title 18 (Crimes and Offenses); section 5502 of Title 30 (Fish); section 8137 of Title 35 (Health and Safety); sections 933, 1515, 1725.3, 1725.5, 3571, 3573 of Title 42 (Judiciary and Judicial Procedure); section 1604 of Title 75 (Vehicles).

§ 3803. Grading.

(a) Basic offenses. --Except as provided in subsection (b):

(1) An individual who violates section 3802(a) (relating to driving under influence of alcohol or controlled substance) and has no more than one prior offense commits a misdemeanor for which the individual may be sentenced to a term of imprisonment of not more than six months and to pay a fine under section 3804 (relating to penalties).

(2) An individual who violates section 3802(a) and has two prior offenses commits a misdemeanor of the second degree.

(3) An individual who violates section 3802 and has three or more prior offenses or has previously been convicted of a violation of section 3735 (relating to homicide by vehicle while driving under influence) commits a felony of the third degree.

(b) Other offenses. --

(1) An individual who violates section 3802(a)(1) where there was an accident resulting in bodily injury, serious bodily injury or death of any person or in damage to a vehicle or other property, or who violates section 3802(b), (e) or (f) and who has one prior offense commits a misdemeanor for which the individual may be sentenced to a term of imprisonment of not more than six months and to pay a fine under section 3804.

(2) An individual who violates section 3802(a)(1) where the individual refused testing of breath or chemical testing pursuant to a valid search warrant, court order or any other basis permissible by the Constitution of the United States and the Constitution of Pennsylvania, or who violates section 3802(c) or (d) and who has no prior offenses commits a misdemeanor for which the individual may be sentenced to a term of imprisonment of not more than six months and to pay a fine under section 3804.

(3) An individual who violates section 3802(a)(1) where there was an accident resulting in bodily injury, serious bodily injury or death of any person or in damage to a vehicle or other property, or who violates section 3802(b), (e) or (f) and who has two prior offenses commits a misdemeanor of the first degree.

(4) An individual who violates section 3802(a)(1) where the individual refused testing of breath or chemical testing pursuant to a valid search warrant, court order or any other basis permissible by the Constitution of the United States and the Constitution of Pennsylvania, or who violates section 3802(c) or (d) and who has one prior offense commits a misdemeanor of the first degree.

(4.1) An individual who violates section 3802(a)(1) where the individual refused testing of breath or chemical testing pursuant to a valid search warrant, court order or any other basis permissible by the Constitution of the United States and the Constitution of Pennsylvania, or who violates section 3802(c) or (d), commits:

(i) A felony of the third degree if the individual has two prior offenses.

(ii) A felony of the second degree if the individual has three or more prior offenses.

(5) An individual who violates section 3802 where a minor under 18 years of age was an occupant in the vehicle when the violation occurred commits:

(i) A misdemeanor of the first degree if the individual has no more than one prior offense.

(ii) A felony of the third degree if the individual has two or more prior offenses.

(Nov. 29, 2004, P.L.1369, No.177, eff. imd.; May 8, 2012, P.L.255, No.39, eff. 60 days; Oct. 27,

2014, P.L.2905, No.189, eff. imd.; Oct. 24, 2018, P.L.925, No.153, eff. 60 days; July 11, 2022, P.L.717, No.59, eff. 120 days)

2022 Amendment. Act 59 amended subsec. (b)(4.1).

Cross References. Section 3803 is referred to in sections 3804, 3806, 3815 of this title.

§ 3804. Penalties.

(a) General impairment. --Except as set forth in subsection (b) or (c), an individual who violates section 3802(a) (relating to driving under influence of alcohol or controlled substance) shall be sentenced as follows:

(1) For a first offense, to:

- (i) undergo a mandatory minimum term of six months' probation;
- (ii) pay a fine of \$300;
- (iii) attend an alcohol highway safety school approved by the department; and
- (iv) comply with all drug and alcohol treatment requirements imposed under sections 3814 (relating to drug and alcohol assessments) and 3815 (relating to mandatory sentencing).

(2) For a second offense, to:

- (i) undergo imprisonment for not less than five days;
- (ii) pay a fine of not less than \$300 nor more than \$2,500;
- (iii) attend an alcohol highway safety school approved by the department; and
- (iv) comply with all drug and alcohol treatment requirements imposed under sections 3814 and 3815.

(3) For a third or subsequent offense, to:

- (i) undergo imprisonment of not less than ten days;
- (ii) pay a fine of not less than \$500 nor more than \$5,000; and
- (iii) comply with all drug and alcohol treatment requirements imposed under sections 3814 and 3815.

(b) High rate of blood alcohol; minors; commercial vehicles and school buses and school vehicles; accidents. --Except as set forth in subsection (c), an individual who violates section 3802(a)(1) where there was an accident resulting in bodily injury, serious bodily injury or death of any person or damage to a vehicle or other property or who violates section 3802(b), (e) or (f) shall be sentenced as follows:

(1) For a first offense, to:

- (i) undergo imprisonment of not less than 48 consecutive hours;
- (ii) pay a fine of not less than \$500 nor more than \$5,000;
- (iii) attend an alcohol highway safety school approved by the department; and
- (iv) comply with all drug and alcohol treatment requirements imposed under sections 3814 and 3815.

(2) For a second offense, to:

- (i) undergo imprisonment of not less than 30 days;
- (ii) pay a fine of not less than \$750 nor more than \$5,000;
- (iii) attend an alcohol highway safety school approved by the department; and
- (iv) comply with all drug and alcohol treatment requirements imposed under sections 3814 and 3815.

(3) For a third offense, to:

- (i) undergo imprisonment of not less than 90 days;
- (ii) pay a fine of not less than \$1,500 nor more than \$10,000; and
- (iii) comply with all drug and alcohol treatment requirements imposed under sections 3814 and 3815.

(4) For a fourth or subsequent offense, to:

- (i) undergo imprisonment of not less than one year;
- (ii) pay a fine of not less than \$1,500 nor more than \$10,000; and
- (iii) comply with all drug and alcohol treatment requirements imposed under sections 3814 and 3815.

(c) Incapacity; highest blood alcohol; controlled substances. --An individual who violates section 3802(a)(1) and refused testing of breath under section 1547 (relating to chemical testing to determine

amount of alcohol or controlled substance) or testing of blood pursuant to a valid search warrant or an individual who violates section 3802(c) or (d) shall be sentenced as follows:

- (1) For a first offense, to:
 - (i) undergo imprisonment of not less than 72 consecutive hours;
 - (ii) pay a fine of not less than \$1,000 nor more than \$5,000;
 - (iii) attend an alcohol highway safety school approved by the department; and
 - (iv) comply with all drug and alcohol treatment requirements imposed under sections 3814 and 3815.

- (2) For a second offense, to:
 - (i) undergo imprisonment of not less than 90 days;
 - (ii) pay a fine of not less than \$1,500;
 - (iii) attend an alcohol highway safety school approved by the department; and
 - (iv) comply with all drug and alcohol treatment requirements imposed under sections 3814 and 3815.

- (3) For a third or subsequent offense, to:
 - (i) undergo imprisonment of not less than one year;
 - (ii) pay a fine of not less than \$2,500; and
 - (iii) comply with all drug and alcohol treatment requirements imposed under sections 3814 and 3815.

(c.1) Violation involving minor occupant. --An individual who violates section 3803(b)(5) (relating to grading), in addition to any penalty imposed in this chapter, shall be sentenced as follows:

- (1) For a first offense, to:
 - (i) pay a fine of not less than \$1,000; and
 - (ii) complete 100 hours of community service.

- (2) For a second offense, to:
 - (i) pay a fine of not less than \$2,500; and
 - (ii) undergo imprisonment of not less than one month nor more than six months.

- (3) For a third or subsequent offense, undergo imprisonment of not less than six months nor more than two years.

(c.2) Consecutive sentence. --A sentence imposed upon an individual under this section who has two or more prior offenses shall be served consecutively to any other sentence the individual is serving and to any other sentence being then imposed by the court, except for those with which the offense must merge as a matter of law.

(c.3) Sentencing enhancement.--The Pennsylvania Commission on Sentencing, under 42 Pa.C.S. § 2154 (relating to adoption of guidelines for sentencing), shall provide for a sentencing enhancement for a violation of section 3802(a)(1) where the individual refused testing of breath or chemical testing pursuant to a valid search warrant, court order or any other basis permissible by the Constitution of the United States and the Constitution of Pennsylvania or for a violation of section 3802(c) or (d) and where the individual has four or more prior offenses.

(d) Extended supervision of court. --If a person is sentenced pursuant to this chapter and, after the initial assessment required by section 3814(1), the person is determined to be in need of additional treatment pursuant to section 3814(2), the judge shall impose a minimum sentence as provided by law and a maximum sentence equal to the statutorily available maximum. A sentence to the statutorily available maximum imposed pursuant to this subsection may, in the discretion of the sentencing court, be ordered to be served in a county prison, notwithstanding the provisions of 42 Pa.C.S. § 9762 (relating to sentencing proceeding; place of confinement).

(e) Suspension of operating privileges upon conviction. --

(1) The department shall suspend the operating privilege of an individual under paragraph (2) upon receiving a certified record of the individual's conviction of or an adjudication of delinquency for:

- (i) an offense under section 3802; or
- (ii) an offense which is substantially similar to an offense enumerated in section 3802 reported to the department under Article III of the compact in section 1581 (relating to Driver's License Compact).

- (2) Suspension under paragraph (1) shall be in accordance with the following:
- (i) Except as provided for in subparagraph (iii), 12 months for an ungraded misdemeanor or misdemeanor of the second degree under this chapter.
 - (ii) 18 months for a misdemeanor of the first degree or felony of the second or third degree under this chapter.
 - (iii) There shall be no suspension for an ungraded misdemeanor under section 3802(a) where the person is subject to the penalties provided in subsection (a) and the person has no prior offense.
 - (iv) For suspensions imposed under paragraph (1)(ii), notwithstanding any provision of law or enforcement agreement to the contrary, all of the following apply:
 - (A) Suspensions shall be in accordance with Subchapter D of Chapter 15 (relating to the Driver's License Compact).
 - (B) In calculating the term of a suspension for an offense that is substantially similar to an offense enumerated in section 3802, the department shall presume that if the conduct reported had occurred in this Commonwealth, then the person would have been convicted under section 3802(a)(2).
 - (v) Notwithstanding any other provision of law or enforcement agreement to the contrary, the department shall suspend the operating privilege of a driver for six months upon receiving a certified record of a consent decree granted under 42 Pa.C.S. Ch. 63 (relating to juvenile matters) based on section 3802.
 - (f) Community service assignments. --In addition to the penalties set forth in this section, the sentencing judge may impose up to 150 hours of community service. Where the individual has been ordered to drug and alcohol treatment pursuant to sections 3814 and 3815, the community service shall be certified by the drug and alcohol treatment program as consistent with any drug and alcohol treatment requirements imposed under sections 3814 and 3815.
- (f.1) Victim impact panels. --
- (1) In addition to any other penalty imposed under this section, the court may order a person who violates section 3802 to attend a victim impact panel program.
 - (2) A victim impact panel program shall provide a non-confrontational forum for driving under the influence crash victims, their family members, their friends or other pertinent persons to speak to driving under the influence offenders about the impact of the crash on victims' lives and on the lives of families, friends and neighbors.
 - (3) A victim impact panel shall be administrated through the local office of probation and parole or other office as the court shall determine and shall be operated in consultation with the Mothers Against Drunk Driving - Pennsylvania State Organization.
 - (4) A victim impact panel program may assess a reasonable participation fee to achieve program self-sufficiency but may not operate for profit. The department shall establish an acceptable range of fees.
 - (5) The department shall develop standards and incentives to encourage counties to establish victim impact panel programs. In developing these standards, the department shall establish and chair a coordinating committee among pertinent agencies and organizations, including the Department of Health, the Pennsylvania Commission on Crime and Delinquency, the Office of Victim Advocate, the Administrative Office of Pennsylvania Courts, county officials, the Mothers Against Drunk Driving - Pennsylvania State Organization and the Pennsylvania DUI Association. The standards shall address items including all of the following:
 - (i) Prototype design and structure standards for victim impact panels.
 - (ii) Training standards and curricula for presenters, facilitators and administrators.
 - (iii) Operations policy and guidelines manual.
 - (iv) Evaluation standards, design and structure allowing for the tracking and analysis of recidivism data.
 - (v) Standards for counseling and debriefing activities for victim presenters.
 - (vi) Standards for reimbursing reasonable costs to victims for participation in panels.

(vii) Assistance to counties through coordinating potential Federal and State funding streams to carry out this subsection and to assist counties as may be needed.

(g) Sentencing guidelines. --The sentencing guidelines promulgated by the Pennsylvania Commission on Sentencing shall not supersede the mandatory penalties of this section.

(h) Appeal. --The Commonwealth has the right to appeal directly to the Superior Court any order of court which imposes a sentence for violation of this section which does not meet the requirements of this section. The Superior Court shall remand the case to the sentencing court for imposition of a sentence in accordance with the provisions of this section.

(i) First class cities. --Notwithstanding the provision for direct appeal to the Superior Court, if, in a city of the first class, a person appeals from a judgment of sentence under this section from the municipal court to the common pleas court for a trial de novo, the Commonwealth shall have the right to appeal directly to the Superior Court from the order of the common pleas court if the sentence imposed is in violation of this section. If, in a city of the first class, a person appeals to the court of common pleas after conviction of a violation of this section in the municipal court and thereafter withdraws his appeal to the common pleas court, thereby reinstating the judgment of sentence of the municipal court, the Commonwealth shall have 30 days from the date of the withdrawal to appeal to the Superior Court if the sentence is in violation of this section.

(j) Additional conditions. --In addition to any other penalty imposed under law, the court may sentence a person who violates section 3802 to any other requirement or condition consistent with the treatment needs of the person, the restoration of the victim to pre-offense status or the protection of the public.

(k) Non-applicability. --Except for subsection (e), this section shall not apply to dispositions resulting from proceedings under 42 Pa.C.S. Ch. 63.

(Nov. 29, 2004, P.L.1369, No.177, eff. imd.; May 11, 2006, P.L.155, No.36, eff. imd.; May 8, 2012, P.L.255, No.39, eff. 60 days; July 20, 2017, P.L.333, No.30, eff. imd.; Oct. 24, 2018, P.L.925, No.153, eff. 60 days; July 11, 2022, P.L.717, No.59, eff. 120 days)

2022 Amendment. Act 59 amended subsec. (e)(2)(ii) and added subsecs. (c.2) and (c.3).

2017 Amendment. Act 30 amended subsec. (c).

2012 Amendment. Act 39 amended subsec. (k) and added subsec. (c.1).

2006 Amendment. Act 36 added subsec. (f.1). See the preamble to Act 36 in the appendix to this title for special provisions relating to legislative intent.

2004 Amendment. Act 177 amended subsecs. (a), (b) and (c) and added subsec. (k).

Cross References. Section 3804 is referred to in sections 1547, 1556, 1575, 3803, 3805, 3806, 3815, 3816 of this title; section 7508.1 of Title 18 (Crimes and Offenses); section 9763 of Title 42 (Judiciary and Judicial Procedure).

§ 3805. Ignition interlock.

(a) General rule.--Except as provided under subsection (a.1), if a person violates section 3802 (relating to driving under influence of alcohol or controlled substance) or has had their operating privileges suspended pursuant to section 1547 (relating to chemical testing to determine amount of alcohol or controlled substance) or 3808(c) (relating to illegally operating a motor vehicle not equipped with ignition interlock) and the person seeks a restoration of operating privileges, the department shall require as a condition of issuing a restricted license pursuant to this section that the following occur:

(1) Any motor vehicle to be operated by the individual has been equipped with an ignition interlock system and remains so for the duration of the restricted license period.

(2) If there are no motor vehicles owned or to be operated by the person or registered to the person that the person so certifies to the department in accordance with the department's regulations.

(a.1) Exception. --Subsection (a) shall not apply to an individual who meets all of the following:

(1) Is subject to the penalties under section 3804(a)(1) (relating to penalties) or subject to mandatory suspension of operating privilege under section 3807(d) (relating to Accelerated Rehabilitative Disposition).

(2) Has not had a prior offense, as defined under section 3806 (relating to prior offenses).

(b) Application for a restricted license. --A person subject to this section shall apply to the department for an ignition interlock restricted license under section 1951 (relating to driver's license and learner's permit), which shall be clearly marked to restrict the person to only driving, operating or being in actual physical control of the movement of motor vehicles equipped with an ignition interlock system. Upon issuance of an ignition interlock restricted license to any person, the department shall notify the person that until the person obtains an unrestricted license the person may not drive, operate or be in actual physical control of the movement of any motor vehicle which is not equipped with an ignition interlock system.

(c) Issuance of unrestricted license. --One year from the date of issuance of an ignition interlock restricted license under this section, if otherwise eligible, a person may be issued a replacement license under section 1951(d) that does not contain the ignition interlock system restriction. The department shall not issue an unrestricted license until a person has presented all of the following:

(1) Proof that the person has completed the ignition interlock restricted license period under this section.

(2) Certification by the vendor that provided the ignition interlock device that the person has complied with subsection (h.2).

(d) Prohibition. --Except as set forth in subsections (e) and (f), until the person obtains an unrestricted license, the person may not own, register, drive, operate or be in actual physical control of the movement of any motor vehicle within this Commonwealth unless the motor vehicle is equipped with an ignition interlock system.

(e) Economic hardship exemption. --A person subject to the requirements of subsection (a) may apply to the department for a hardship exemption to the requirement that an ignition interlock system must be installed in each of the person's motor vehicles. Where the department determines that the applicant establishes that such a requirement would result in undue financial hardship, the department may permit the applicant to install an ignition interlock system on only one of the applicant's motor vehicles. However, the applicant in accordance with section 3808 (relating to illegally operating a motor vehicle not equipped with ignition interlock) shall be prohibited from driving, operating or being in actual physical control of the movement of any motor vehicle, including any of the applicant's motor vehicles, which is not equipped with an ignition interlock system.

(f) Employment exemption. --If a person with a restricted license is required in the course and scope of employment to drive, operate or be in actual physical control of the movement of a motor vehicle owned by the person's employer, the following apply:

(1) Except as set forth in paragraph (2), the person may drive, operate or be in actual physical control of the movement of that motor vehicle in the course and scope of employment without installation of an ignition interlock system if:

(i) the employer has been notified that the employee is restricted; and

(ii) the employee has proof of the notification in the employee's possession while driving, operating or being in actual physical control of the movement of the employer's motor vehicle. Proof of the notification may be established only by the notarized signature of the employer acknowledging notification on a form which shall be provided by the department for this purpose and shall include a contact telephone number of the employer.

(2) Paragraph (1) does not apply in any of the following circumstances:

(i) To the extent that an employer-owned motor vehicle is made available to the employee for personal use.

(ii) If the employer-owned motor vehicle is owned by an entity which is wholly or partially owned

or controlled by the person subject to this section.

(iii) If the employer-owned motor vehicle is a school bus; a school vehicle; or a vehicle designed to transport more than 15 passengers, including the driver.

(g) Prohibition of authorization. --This section shall not give the department authorization to impose an ignition interlock requirement on a person that has committed an offense under former section 3731 prior to October 1, 2003, without the issuance of a court order.

(h) Department approval. --An ignition interlock system required to be installed under this title must be a system which has been approved by the department. The department's approval of ignition interlock systems shall be published in the Pennsylvania Bulletin. Systems approved for use under former 42 Pa.C.S. § 7002(d)

(relating to ignition interlock systems for driving under the influence) and any contracts for the installation, maintenance and inspection of the systems in effect as of the effective date of this section shall continue to be approved and in effect until the department again publishes approval of ignition interlock systems in the Pennsylvania Bulletin and enters into new contracts in support of the systems.

(h.1) Mobile installation services. --

(1) Approved service providers of department-certified manufacturers of ignition interlock systems shall be permitted to provide mobile installation of ignition interlock systems within this Commonwealth.

(2) Mobile installation of ignition interlock systems shall be held to the same security and procedural standards as provided in specifications of the department.

(3) Approved service providers of mobile installation of ignition interlock systems shall not permit the program participant or any unauthorized personnel to witness the installation of the ignition interlock system.

(4) Regular maintenance of ignition interlocks after mobile installation shall be performed according to the specifications established by the department.

(h.2) Declaration of compliance.--Restrictions imposed under section 1556 (relating to ignition interlock limited license) shall remain in effect until the department receives a declaration from the person's ignition interlock device vendor, in a form provided or approved by the department, certifying that the following incidents have not occurred in the two consecutive months prior to the date entered on the certificate, and for the purposes of a suspension imposed under section 3807(d)(2), the person's ignition interlock device vendor shall certify the following incidents have not occurred in the prior 30 days entered on the certificate:

(1) An attempt to start the vehicle with a breath alcohol concentration of 0.08% or more, not followed within 10 minutes by a subsequent attempt with a breath alcohol concentration lower than 0.08%.

(2) Failure to take or pass any required retest.

(3) Failure of the person to appear at the ignition interlock system vendor when required for maintenance, repair, calibration, monitoring, inspection or replacement of the device such that the ignition interlock system no longer functions as required under subsection (h).

(i) Offenses committed during a period for which an ignition interlock restricted license has been issued.--Except as provided in sections 1547(b.1) and 3808(c) (relating to illegally operating a motor vehicle not equipped with ignition interlock), any driver who has been issued an ignition interlock restricted license and as to whom the department receives a certified record of a conviction of an offense for which the penalty is a cancellation, disqualification, recall, suspension or revocation of operating privileges shall have the ignition interlock restricted license recalled, and the driver shall surrender the ignition interlock restricted license to the department. Following the completion of the cancellation, disqualification, recall, suspension or revocation which resulted in the recall of the ignition interlock restricted license, the department shall require that the person complete the balance of the ignition interlock restricted license period previously imposed prior to the issuance of a replacement license under section 1951(d) that does not contain an ignition interlock restriction.

(Nov. 30, 2004, P.L.1667, No.211, eff. June 30, 2007; May 11, 2006, P.L.159, No.37, eff. 60 days; May 25, 2016, P.L.236, No.33, eff. 15 months; July 20, 2017, P.L.333, No.30)

2017 Amendment. Act 30 amended subsecs. (a.1), (h.2) intro par. and (1) and (i), effective immediately as to subsecs. (a.1) and (h.2)(1) and 15 months as to (h.2) intro par. and (i).

2016 Amendment. Act 33 amended subsecs. (a), (b), (c) and (f)(2)(ii) and added subsecs. (a.1) and (h.2).

2006 Amendment. Act 37 added subsec. (h.1).

Special Provisions in Appendix. See section 20(1) of Act 24 of 2003 in the appendix to this title for special provisions relating to duties of department.

Cross References. Section 3805 is referred to in sections 1547, 1556, 3806, 3808 of this title.

§ 3806. Prior offenses.

(a) General rule. --Except as set forth in subsection (b), the term "prior offense" as used in this chapter shall mean any conviction for which judgment of sentence has been imposed, adjudication of delinquency, juvenile consent decree, acceptance of Accelerated Rehabilitative Disposition or other form of preliminary disposition before the sentencing on the present violation for any of the following:

(1) an offense under section 3802 (relating to driving under influence of alcohol or controlled substance);

(2) an offense under former section 3731;

(3) an offense substantially similar to an offense under paragraph (1) or (2) in another jurisdiction; or

(4) any combination of the offenses set forth in paragraph (1), (2) or (3).

(b) Timing. --

(1) For purposes of sections 1553(d.2) (relating to occupational limited license), 1556 (relating to ignition interlock limited license), 3803 (relating to grading), 3804 (relating to penalties) and 3805 (relating to ignition interlock), the prior offense must have occurred:

(i) within 10 years prior to the date of the offense for which the defendant is being sentenced; or

(ii) on or after the date of the offense for which the defendant is being sentenced.

(2) The court shall calculate the number of prior offenses, if any, at the time of sentencing.

(3) If the defendant is sentenced for two or more offenses in the same day, the offenses shall be considered prior offenses within the meaning of this subsection.

(Nov. 29, 2004, P.L.1369, No.177, eff. imd.; Oct. 27, 2014, P.L.2905, No.189, eff. 60 days; May 25, 2016, P.L.236, No.33, eff. imd.)

2014 Amendment. Section 2 of Act 189 provided that the amendment of subsec. (b) shall apply to persons sentenced on or after the effective date of section 2.

Cross References. Section 3806 is referred to in sections 1556, 3805 of this title.

§ 3807. Accelerated Rehabilitative Disposition.

(a) Eligibility. --

(1) Except as set forth in paragraph (2), a defendant charged with a violation of section 3802 (relating to driving under influence of alcohol or controlled substance) may be considered by the attorney for the Commonwealth for participation in an Accelerated Rehabilitative Disposition program in a county if the program includes the minimum requirements contained in this section.

(2) The attorney for the Commonwealth shall not submit a charge brought under this chapter for Accelerated Rehabilitative Disposition if any of the following apply:

(i) The defendant has been found guilty of or accepted Accelerated Rehabilitative Disposition of a charge brought under section 3802 within ten years of the date of the current offense unless the charge was for an ungraded misdemeanor under section 3802(a)(2) and was the defendant's first offense

under section 3802.

(ii) An accident occurred in connection with the events surrounding the current offense and an individual other than the defendant was killed or suffered serious bodily injury as a result of the accident.

(iii) There was a passenger under 14 years of age in the motor vehicle the defendant was operating.

(b) Evaluation and treatment. --

(1) A defendant offered Accelerated Rehabilitative Disposition for a violation of section 3802 is, as a condition of participation in the program, subject to the following requirements in addition to any other conditions of participation imposed by the court:

(i) The defendant must attend and successfully complete an alcohol highway safety school established under section 1549 (relating to establishment of schools). A participating defendant shall be given both oral and written notice of the provisions of section 1543(b) (relating to driving while operating privilege is suspended or revoked).

(ii) Prior to receiving Accelerated Rehabilitative Disposition or other preliminary disposition, the defendant must be evaluated under section 3816(a) (relating to requirements for driving under influence offenders) to determine the extent of the defendant's involvement with alcohol or other drug and to assist the court in determining what conditions of Accelerated Rehabilitative Disposition would benefit the defendant and the public. If the evaluation indicates there is a need for counseling or treatment, the defendant shall be subject to a full assessment for alcohol and drug addiction in accordance with the provisions of section 3814(3) and (4) (relating to drug and alcohol assessments).

(iii) If the defendant is assessed under subparagraph (ii) to be in need of treatment, the defendant must participate and cooperate with a licensed alcohol or drug addiction treatment program. The level and duration of treatment shall be in accordance with the recommendations of the full assessment. Nothing in this subparagraph shall prevent a treatment program from refusing to accept a defendant if the program administrator deems the defendant to be inappropriate for admission to the program. A treatment program shall retain the right to immediately discharge into the custody of the probation officer an offender who fails to comply with program rules and treatment expectations or refuses to constructively engage in the treatment process.

(iv) The defendant must remain subject to court supervision for at least six months, but not more than 12 months.

(v) The defendant must make restitution to any person that incurred determinable financial loss as a result of the defendant's actions which resulted in the offense. Restitution must be subject to court supervision.

(vi) The defendant must pay the reasonable costs of a municipal corporation in connection with the offense. Fees imposed under this subparagraph shall be distributed to the affected municipal corporation.

(vii) The defendant must pay any other fee, surcharge or cost required by law. Except as set forth in subparagraph (vi), (viii) or (ix), a fee or financial condition imposed by a judge as a condition of Accelerated Rehabilitative Disposition or any other preliminary disposition of any charge under this chapter shall be distributed as provided for in 42 Pa.C.S. §§ 3571 (relating to Commonwealth portion of fines, etc.) and 3573 (relating to municipal corporation portion of fines, etc.).

(viii) The defendant must pay the costs of compliance with subparagraphs (i), (ii) and (iii).

(ix) The defendant shall pay a cost of \$50 which shall be forwarded to the State Treasurer for deposit in the Emergency Medical Services Operating Fund.

(2) The defendant shall be subject to a full assessment for alcohol and drug addiction if any of the following apply:

(i) The evaluation under paragraph (1)(ii) indicates a likelihood that the defendant is addicted to alcohol or other drugs.

(ii) The defendant's blood alcohol content at the time of the offense was at least 0.16%.

- (3) The assessment under paragraph (2) shall be conducted by one of the following:
- (i) The Department of Health or its designee.
 - (ii) The county agency with responsibility for county drug and alcohol programs or its designee.
 - (iii) The clinical personnel of a facility licensed by the Department of Health for the conduct of drug and alcohol addiction treatment programs.

(4) The assessment under paragraph (2) shall consider issues of public safety and shall include recommendations for all of the following:

- (i) Length of stay.
- (ii) Levels of care.
- (iii) Follow-up care and monitoring.

(c) Insurance. --

(1) This subsection shall only apply to a health insurance, health maintenance organization or other health plan required to provide benefits under section 602-A of the act of May 17, 1921 (P.L.682, No.284), known as The Insurance Company Law of 1921.

(2) If an individual who is insured by a health insurance, a health maintenance organization or other health plan, that is doing business in this Commonwealth, the individual may not be deprived of alcohol and other drug abuse and addiction treatment or coverage within the scope of that plan due to the identification of an alcohol or other drug problem which occurs as a result of an assessment under this section.

(d) Mandatory suspension of operating privileges. --As a condition of participation in an Accelerated Rehabilitative Disposition program, the court shall order the defendant's license suspended as follows:

(1) There shall be no license suspension if the defendant's blood alcohol concentration at the time of testing was less than 0.10%.

(2) For 30 days if the defendant's blood alcohol concentration at the time of testing was at least 0.10% but less than 0.16%.

(3) For 60 days if:

(i) the defendant's blood alcohol concentration at the time of testing was 0.16% or higher;

(ii) the defendant's blood alcohol concentration is not known;

(iii) an accident which resulted in bodily injury or in damage to a vehicle or other property occurred in connection with the events surrounding the current offense; or

(iv) the defendant was charged pursuant to section 3802(d).

(4) For 90 days if the defendant was a minor at the time of the offense.

(e) Failure to comply. --

(1) A defendant who fails to complete any of the conditions of participation contained in this section shall be deemed to have unsuccessfully participated in an Accelerated Rehabilitative Disposition program, and the criminal record underlying participation in the program shall not be expunged.

(2) The court shall direct the attorney for the Commonwealth to proceed on the charges as prescribed in the Rules of Criminal Procedure if the defendant:

(i) fails to meet any of the requirements of this section;

(ii) is charged with or commits an offense under 18 Pa.C.S. (relating to crimes and offenses); or

(iii) violates any other condition imposed by the court.

(Nov. 29, 2004, P.L.1369, No.177, eff. imd.; Aug. 18, 2009, P.L.308, No.37, eff. 180 days; Oct. 29, 2020, P.L.773, No.93, eff. 120 days)

2020 Amendment. Act 93 amended subsec. (b)(1)(ix).

2009 Amendment. Act 37 amended subsec. (b)(1)(vii) and added subsec. (b)(1)(ix).

2004 Amendment. Act 177 amended subsecs. (b)(1)(iv) and (d).

Cross References. Section 3807 is referred to in sections 1556, 3805, 3817 of this title; section 8153 of Title 35 (Health and Safety).

§ 3808. Illegally operating a motor vehicle not equipped with ignition interlock.

(a) Offense defined. --

(1) An individual required to only drive, operate or be in actual physical control of the movement of a motor vehicle equipped with an ignition interlock system under any of the following who drives, operates or is in actual physical control of the movement of a motor vehicle within this Commonwealth without such a system commits a misdemeanor and shall, upon conviction, be sentenced to pay a fine of not less than \$300 and not more than \$1,000 and to imprisonment for not more than 90 days:

(i) Section 1556 (relating to ignition interlock limited license).

(ii) Section 3805 (relating to ignition interlock).

(iii) A requirement by another jurisdiction to operate only a vehicle with an ignition interlock system.

(2) An individual required to only drive, operate or be in actual physical control of the movement of a motor vehicle equipped with an ignition interlock system under any of the following who drives, operates or is in actual physical control of the movement of a motor vehicle within this Commonwealth without such a system and who has an amount of alcohol by weight in his blood that is equal to or greater than 0.025% at the time of testing or who has in his blood any amount of a Schedule I or nonprescribed Schedule II or III controlled substance, as defined in the act of April 14, 1972 (P.L.233, No.64), known as The Controlled Substance, Drug, Device and Cosmetic Act, or its metabolite commits a misdemeanor of the third degree and shall, upon conviction, be sentenced to pay a fine of \$1,000 and to undergo imprisonment for a period of not less than 90 days:

(i) Section 1556.

(ii) Section 3805.

(iii) A requirement by another jurisdiction to operate only a vehicle with an ignition interlock system.

(b) Tampering with an ignition interlock system. --A person that tampers with an ignition interlock system required by law commits a misdemeanor and shall, upon conviction, be sentenced to pay a fine of not less than \$300 nor more than \$1,000 and to undergo imprisonment for not more than 90 days. An offense under this subsection shall be deemed to have been committed at either the location where tampering occurred or the place where the vehicle containing the ignition interlock system required by law is registered. The term "tampering," in addition to any physical act which is intended to alter or interfere with the proper functioning of an ignition interlock system required by law, shall include attempting to circumvent or bypass or circumventing or bypassing an ignition interlock system by:

(1) means of using another individual to provide a breath sample; or

(2) providing a breath sample for the purpose of bypassing an ignition interlock system required by law.

(c) Suspension of operating privilege. --Notwithstanding section 3805(c) and (i):

(1) If a person who is required to only drive, operate or be in actual physical control of the movement of a motor vehicle equipped with an ignition interlock system violates this section, upon receipt of a certified record of the conviction, the department shall not issue a replacement license to the person under section 1951(d) (relating to driver's license and learner's permit) that does not contain an ignition interlock restriction for a period of one year from the date of conviction until the person has complied with the requirements of section 3805.

(2) Upon receipt of a certified record of a second conviction of a violation of this section committed by a person who is required to only drive, operate or be in actual physical control of the movement of a motor vehicle equipped with an ignition interlock system which occurred during the same ignition interlock restricted license period, the department shall suspend the person's operating privileges for a period of one year and recall the ignition interlock restricted license, and the person shall surrender

the ignition interlock restricted license to the department. Following completion of the suspension period, the department shall require that the person comply with the requirements of section 3805 prior to being eligible to receive a replacement license under section 1951(d) that does not contain an ignition interlock restriction.

(d) Applicability. --Notwithstanding section 3101 (relating to application of part), this section shall apply in all areas throughout this Commonwealth; however, it shall not apply to persons installing, maintaining or inspecting ignition interlock devices in the course and scope of their employment.

(Nov. 29, 2004, P.L.1369, No.177, eff. imd.; May 25, 2016, P.L.236, No.33, eff. 15 months; July 20, 2017, P.L.333, No.30, eff. 15 months)

2017 Amendment. Act 30 amended subsec. (c)(2).

2016 Amendment. Act 33 amended subsecs. (a), (b) and (c)(1).

Cross References. Section 3808 is referred to in sections 1541, 1542, 1547, 3805, 3811, 3812, 6506 of this title; section 8137 of Title 35 (Health and Safety); sections 1515, 1725.3 of Title 42 (Judiciary and Judicial Procedure).

§ 3809. Restriction on alcoholic beverages.

(a) General rule. --Except as set forth in subsection (b), an individual who is an operator or an occupant in a motor vehicle may not be in possession of an open alcoholic beverage container or consume a controlled substance as defined in the act of April 14, 1972 (P.L.233, No.64), known as The Controlled Substance, Drug, Device and Cosmetic Act, or an alcoholic beverage in a motor vehicle while the motor vehicle is located on a highway in this Commonwealth.

(b) Exception. --This section does not prohibit possession or consumption by any of the following:

(1) A passenger in the passenger area of a motor vehicle designed, maintained or used primarily for the lawful transportation of persons for compensation. This paragraph includes buses, taxis and limousines.

(2) An individual in the living quarters of a house coach or house trailer.

(c) Penalty. --An individual who violates this section commits a summary offense.

Cross References. Section 3809 is referred to in section 1542 of this title.

§ 3810. Authorized use not a defense.

The fact that a person charged with violating this chapter is or has been legally entitled to use alcohol or controlled substances is not a defense to a charge of violating this chapter.

§ 3811. Certain arrests authorized.

(a) Warrant not required.--In addition to any other powers of arrest, a police officer is authorized to arrest an individual without a warrant if the officer has probable cause to believe that the individual has violated section 1543(b)(1.1) (relating to driving while operating privilege is suspended or revoked), 3802 (relating to driving under influence of alcohol or controlled substance) or 3808(a)(2) (relating to illegally operating a motor vehicle not equipped with ignition interlock), regardless of whether the alleged violation was committed in the presence of the police officer.

(b) Territory. --The authority under subsection (a) extends to any hospital or other medical treatment facility located beyond the territorial limits of the police officer's political subdivision at which an individual to be arrested is found or was taken or removed for purposes of emergency treatment, examination or evaluation as long as there is probable cause to believe that the violation of section 1543(b) (1.1), 3802 or 3808(a)(2) occurred within the police officer's political subdivision.

§ 3812. Preliminary hearing or arraignment.

The presiding judicial officer at the preliminary hearing or preliminary arraignment relating to a

charge of a violation of section 1543(b)(1.1) (relating to driving while operating privilege is suspended or revoked), 3802 (relating to driving under influence of alcohol or controlled substance) or 3808(a)(2) (relating to illegally operating a motor vehicle not equipped with ignition interlock) shall not reduce or modify the original charges without the consent of the attorney for the Commonwealth.

§ 3813. Work release.

In any case in which an individual is sentenced to a period of imprisonment as a result of a conviction for violating a provision of this chapter, the judicial officer imposing the sentence shall consider assigning that individual to a daytime work release program. Any work release program permitted under this section shall be certified by the Drug and Alcohol Treatment program administration as being consistent with any drug and alcohol treatment requirements imposed under section 3814 (relating to drug and alcohol assessments).

§ 3814. Drug and alcohol assessments.

If a defendant is convicted or pleads guilty or no contest to a violation of section 3802 (relating to driving under influence of alcohol or controlled substance), the following apply prior to sentencing:

(1) The defendant shall be evaluated under section 3816(a) (relating to requirements for driving under influence offenders) and any other additional evaluation techniques deemed appropriate by the court to determine the extent of the defendant's involvement with alcohol or other drug and to assist the court in determining what type of sentence would benefit the defendant and the public.

(2) The defendant shall be subject to a full assessment for alcohol and drug addiction if any of the following subparagraphs apply:

(i) The defendant, within ten years prior to the offense for which sentence is being imposed, has been sentenced for an offense under:

(A) section 3802;

(B) former section 3731; or

(C) an equivalent offense in another jurisdiction.

(ii) Either:

(A) the evaluation under paragraph (1) indicates there is a need for counseling or treatment; or

(B) the defendant's blood alcohol content at the time of the offense was at least 0.16%.

(3) The assessment under paragraph (2) shall be conducted by one of the following:

(i) The Department of Health or its designee.

(ii) The county agency with responsibility for county drug and alcohol programs or its designee.

(iii) The clinical personnel of a facility licensed by the Department of Health for the conduct of drug and alcohol addiction treatment programs.

(4) The assessment under paragraph (2) shall consider issues of public safety and shall include recommendations for all of the following:

(i) Length of stay.

(ii) Levels of care.

(iii) Follow-up care and monitoring.

Special Provisions in Appendix. See section 18 of Act 24 of 2003 in the appendix to this title for special provisions relating to applicability of sections 3814 and 3815.

Cross References. Section 3814 is referred to in sections 3804, 3807, 3813, 3815, 3816 of this title; section 9763 of Title 42 (Judiciary and Judicial Procedure).

§ 3815. Mandatory sentencing.

(a) County supervision.--Notwithstanding the length of any maximum term of imprisonment imposed

pursuant to sections 3803 (relating to grading) and 3804 (relating to penalties), and notwithstanding the provisions of section 17 of the act of August 6, 1941 (P.L.861, No.323), referred to as the Pennsylvania Board of Probation and Parole Law, the sentencing judge may grant parole under the supervision of the county parole system to any offender serving a sentence for a violation of section 3802 (relating to driving under influence of alcohol or controlled substance) and, if applicable, serving any concurrent sentence of imprisonment for any misdemeanor offense arising from the same criminal episode as the violation of section 3802. The power of the sentencing judge to grant parole shall apply only to those offenders whose sentences are being served in a county prison pursuant to 42 Pa.C.S. § 9762 (relating to sentencing proceeding; place of confinement) or section 3804(d). The sentencing judge shall declare his intention to retain parole authority and supervision at the time of sentencing in cases in which he would not otherwise have parole authority and supervision.

(b) Parole. --

(1) An offender who is determined pursuant to section 3814 (relating to drug and alcohol assessments) to be in need of drug and alcohol treatment shall be eligible for parole in accordance with the terms and conditions prescribed in this section following the expiration of the offender's mandatory minimum term of imprisonment.

(2) The following shall be conditions of parole:

(i) If the offender is not determined under the procedures set forth in section 3814 to be addicted to alcohol or another substance, the offender must refrain from:

(A) the use of illegal controlled substances; and

(B) the abuse of prescription drugs, over-the-counter drugs or any other substances.

(ii) If the offender is determined under the procedures set forth in section 3814 to be addicted to alcohol or another substance, the offender must do all of the following:

(A) Refrain from:

(I) the use of alcohol or illegal controlled substances; and

(II) the abuse of prescription drugs, over-the-counter drugs or any other substances.

(B) Participate in and cooperate with drug and alcohol addiction treatment under subsection (c).

(c) Treatment. --

(1) Treatment must conform to assessment recommendations made under section 3814.

(2) Treatment must be conducted by a drug and alcohol addiction treatment program licensed by the Department of Health.

(3) The treatment program shall report periodically to the assigned parole officer on the offender's progress in the treatment program. The treatment program shall promptly notify the parole officer if the offender:

(i) fails to comply with program rules and treatment expectations;

(ii) refuses to constructively engage in the treatment process; or

(iii) without authorization terminates participation in the treatment program.

(4) Upon notification under paragraph (3), the parole officer shall report the offender's actions to the parole authority and to the department for compliance with section 1553(e) (relating to occupational limited license). The parole authority shall schedule a revocation hearing to consider recommendations of the parole officer and the treatment program.

(5) Nothing in this subsection shall prevent a treatment program from refusing to accept an offender if the program administrator deems the offender to be inappropriate for admission to the program. A treatment program shall retain the right to immediately discharge into the custody of the assigned parole officer an offender who fails to comply with program rules and treatment expectations or refuses to constructively engage in the treatment process.

(d) Enforcement. --

(1) This subsection applies to an offender ordered to participate in a treatment program under subsection (b)(2)(ii) who:

- (i) fails to comply with program rules and treatment expectations;
 - (ii) refuses to constructively engage in the treatment process; or
 - (iii) terminates participation in the treatment program without authorization.
- (2) Notwithstanding any other provision of law, all of the following apply to an offender under paragraph (1):

- (i) The offender's parole, prerelease, work release or any other release status shall be revoked.
- (ii) The offender shall be ineligible for parole, prerelease, work release or any other release from the correctional facility prior to the expiration of the offender's maximum term unless the offender is permitted to be readmitted to a treatment program.

(3) Nothing in this subsection shall be construed to grant a legal right to parole to an offender previously ineligible for parole, on the grounds that the offender is currently prepared to participate in, comply with and constructively engage in the treatment process. Under such circumstances, parole or reparole of the offender shall be at the parole authority's discretion.

(e) Follow-up. --After an offender has completed the treatment program under subsection (c), the parole officer shall take reasonable steps to ensure that the offender does not abuse alcohol, use illegal controlled substances or abuse prescription drugs, over-the-counter drugs or any other such substances. These reasonable steps include requiring chemical testing and periodic reassessment of the offender by the treatment program.

(f) Fees. --

(1) Except as set forth in paragraph (2), the parole authority shall impose upon an offender subject to this section reasonable fees to cover the cost of any of the following:

- (i) Chemical testing of the offender required under this section.
- (ii) An assessment of the offender required under this section.
- (iii) Drug or alcohol treatment provided in accordance with the assessment.

(2) If the parole authority finds the offender to be unable to pay the full amount of the fees required by paragraph (1) and section 1541(d) (relating to period of disqualification, revocation or suspension of operating privilege), it shall require the offender to pay as much of the fee as is consistent with the offender's ability to pay and shall direct the assigned parole officer to establish a reasonable payment schedule for the offender to pay as much of the remaining fees as is consistent with the offender's ability to pay.

(g) Insurance. --

(1) This subsection shall only apply to a health insurance, health maintenance organization or other health plan required to provide benefits under section 602-A of the act of May 17, 1921 (P.L.682, No.284), known as The Insurance Company Law of 1921.

(2) If an individual who is insured by a health insurance, a health maintenance organization or other health plan, that is doing business in this Commonwealth, the individual may not be deprived of alcohol and other drug abuse and addiction treatment or coverage within the scope of that plan due to the identification of an alcohol or other drug problem which occurs as a result of an assessment under this section.

(h) Additional funding. --In order to support and augment the diagnostic assessment and treatment services provided under this section, the Department of Health, the department and the Pennsylvania Commission on Crime and Delinquency shall seek all available Federal funding, including funds available through the United States National Highway Traffic Safety Administration and the Department of Health and Human Services.

(Nov. 29, 2004, P.L.1369, No.177, eff. imd.)

2004 Amendment. Act 177 amended subsec. (a).

Special Provisions in Appendix. See section 18 of Act 24 of 2003 in the appendix to this title for special provisions relating to applicability of sections 3814 and 3815.

References in Text. Section 17 of the act of August 6, 1941 (P.L.861, No.323), referred to as the

Pennsylvania Board of Probation and Parole Law, referred to in subsec. (a), was repealed by the act of August 11, 2009 (P.L.494, No.49). The subject matter is now contained in Part IV of Title 61 (Prisons and Parole).

Cross References. Section 3815 is referred to in sections 1553, 1556, 3804, 3816, 3817 of this title; section 9763 of Title 42 (Judiciary and Judicial Procedure).

§ 3816. Requirements for driving under influence offenders.

(a) Evaluation using Court Reporting Network.--In addition to any other requirements of the court, every person convicted of a violation of section 3802 (relating to driving under influence of alcohol or controlled substance) and every person offered Accelerated Rehabilitative Disposition as a result of a charge of a violation of section 3802 shall, prior to sentencing or receiving Accelerated Rehabilitative Disposition or other preliminary disposition, be evaluated using Court Reporting Network instruments issued by the department and any other additional evaluation techniques deemed appropriate by the court to determine the extent of the person's involvement with alcohol or controlled substances and to assist the court in determining what sentencing, probation or conditions of Accelerated Rehabilitative Disposition would benefit the person or the public.

(b) Court-ordered intervention or treatment. --A record shall be submitted to the department as to whether the court did or did not order a defendant to attend drug and alcohol treatment pursuant to the requirements of sections 3804 (relating to penalties), 3814 (relating to drug and alcohol assessments) and 3815 (relating to mandatory sentencing). If the court orders treatment, a report shall be forwarded to the department as to whether the defendant successfully completed the program. If a defendant fails to successfully complete a program of treatment as ordered by the court, the suspension shall remain in effect until the department is notified by the court that the defendant has successfully completed treatment and the defendant is otherwise eligible for restoration of his operating privilege. In order to implement the recordkeeping requirements of this section, the department and the court shall work together to exchange pertinent information about a defendant's case, including attendance and completion of treatment or failure to complete treatment.

Cross References. Section 3816 is referred to in sections 1541, 3807, 3814 of this title.

§ 3817. Reporting requirements for offenses.

(a) Requirement. --The department shall make an annual report on the administration of this chapter. The department, the Administrative Office of Pennsylvania Courts and the Pennsylvania Sentencing Commission shall work together to exchange pertinent information necessary to complete this report.

(b) Contents. --The report shall include the following information by county:

(1) The number of offenders charged with a violation of section 3802 (relating to driving under influence of alcohol or controlled substance) sorted by the subsection under which the offender was charged.

(2) The number of offenders convicted of violating section 3802 sorted by the subsection under which the offender was convicted.

(3) The number of offenders admitted to an Accelerated Rehabilitative Disposition program for violating section 3802 sorted by the subsection under which the offender was charged.

(4) The number of offenders completing an Accelerated Rehabilitative Disposition program for a violation of section 3802 sorted by the subsection under which the offender was charged.

(5) The number of persons refusing a chemical test sorted by the number of prior offenses.

(6) The number of offenders subject to treatment under section 3807 (relating to Accelerated Rehabilitative Disposition) sorted by the subsection of section 3802 under which the offender was charged.

(7) The number of offenders subject to section 3815 (relating to mandatory sentencing) sorted by the

subsection of section 3802 under which the offender was convicted.

(8) The number of offenders sent to treatment for alcohol and drug problems and addiction.

(9) The names of the treatment facilities providing treatment and the level of care and length of stay in treatment.

(10) The number of offenders successfully completing treatment.

(11) The number of first, second, third and subsequent offenders sorted by the subsection of section 3802 under which the offender was charged.

(12) The number of first, second, third and subsequent offenders sorted by the subsection of section 3802 under which the offender was convicted.

(13) The number of offenders who violated section 3802 for whom costs for assessment and treatment were waived by the court.

(14) The number of offenders who violated section 3802 for whom fines and costs were waived by the court.

(c) Recipients. --The annual report shall be submitted to the Judiciary Committee, Public Health and Welfare Committee and Transportation Committee of the Senate; the Health and Human Services Committee, Judiciary Committee and Transportation Committee of the House of Representatives; and the Department of Health Bureau of Drug and Alcohol Programs, who shall utilize the data for program planning purposes. The Bureau of Drug and Alcohol Programs shall consider increases in county drug and alcohol program costs that result from the implementation of this chapter when proposing annual appropriations requests. The report shall be made available to the public.

NOTE: In November 2022, a new law went into effect which increases penalties for some offenders who receive a third or subsequent DUI conviction. It aims to lengthen sentences by requiring someone convicted of a third DUI offense to serve consecutive sentences for separate counts, instead of serving the sentences at the same time. The law also increases the grading of offenses — and the potential length of the sentence — for someone convicted of a fourth DUI if they are caught with drugs or record a high blood alcohol content.

Lancaster City Alcohol Laws

DEFINITIONS

As used in this article, certain terms are defined as follows:

§ 88-1 Public Place

Any street, alley, sidewalk, park, playground or place to which the general public has access and a right to resort for business, entertainment or other lawful purpose, but does not necessarily mean a place devoted solely to the uses of the public. It shall also include the front or immediate front of any store, shop, restaurant, tavern or other place of business.

§ 88-2 Possession In Public Places Prohibited

No person within the city shall transport or have in his possession an open or unsealed bottle or container of alcoholic beverage when such person is in a public place.

§ 88-3 Possession In Nonpublic Places Regulated

No person within the city shall enter upon the private property of another having on his person an open or unsealed bottle or container of an alcoholic beverage without the permission, consent or invitation of the owner, occupant or other person having control of such private property.

§ 88-4 Violations And Penalties

Any person who violates any of the provisions of this article shall, upon conviction thereof in a summary proceeding before a District Judge, be fined:

- (1). \$25.00 for the first offense
- (2). \$100 for any subsequent offense

In default of payment thereof, such person shall be imprisoned for not more than 30 days. The fines collected by the District Justice for violations of the provisions of this article shall be paid over to the City.

Federal Drug Law

21 USC§ 841(A)(1) – Distribution/Manufacturing/Possession With Intent To Distribute

Penalty: Statutory maximum generally is 20 years

Five-year mandatory minimum and maximum 40 years (21 USC 841(b)(1)(B)) if:

- 5 grams or more of actual meth
- 28 grams or more of crack
- 50 grams or more of a mixture containing meth
- 40 grams or more of fentanyl
- 100 grams or more of heroin
- 10 grams or more of PCP
- 500 grams or more of cocaine
- 1 gram or more of LSD
- 100 kilogram or more of marijuana (or 100 or more plants)

Ten-year mandatory minimum and maximum life (21 USC 841(b)(1)(A)) if:

- 50 grams or more of actual meth
- 280 grams or more of crack
- 500 grams or more of a mixture containing meth
- 400 grams or more of fentanyl
- 1 kilogram or more of heroin
- 100 grams or more of PCP
- 5 kilograms or more of cocaine
- 10 grams or more of LSD
- 1000 kilogram or more of marijuana (or 1,000 or more plants)

Forfeiture of personal and real property used to possess or to facilitate possession of a controlled substance if that offense is punishable by more than 1 year imprisonment.

Penalties also can be increased if defendant has a prior felony drug conviction or is a career offender (two or more felony drug offense or crimes of violence). Twenty-year mandatory minimum if death or serious bodily injury results from use of the drug. Enhanced penalties also available for distribution to individuals under 21 (21 USC § 859) or distributions near schools, playgrounds, youth centers, arcades, pools, and public housing (21 USC § 860).

21 U.S.C. 853

A Denial of Federal benefits, such as **student loans**, grants, contracts, and professional and commercial licenses, up to 1 year for first offense, up to 5 years for second and subsequent offenses.

21 U.S.C. 844(a) Simple Possession

1st conviction is misdemeanor - Up to 1 year imprisonment and fined at least \$1,000 After 1 prior drug conviction: At least 15 days in prison not to exceed 2 years and fined at least \$2,500.00. After 2 or more prior drug convictions: At least 90 days in prison, not to exceed 3 years and fined at least \$5,000.00 18 U.S.C. 922(g) Ineligible to receive or purchase a firearm.

Pennsylvania's Drug Laws

Controlled Substance, Drug, Device and Cosmetic Act, 35 P.S. 780-113 (a)(31), Pennsylvania Drug Offenses (see page 47)

Being charged with a Drug offense in Pennsylvania is very serious, scary, and costly. Depending on your situation, number of past offenses, and the facts of your case, a drug offender could be facing; time in prison, significant fines, probation, loss of your driver's license, loss of student financial aid, limited future job prospects due to a permanent criminal record, loan application denial, and loss of federal benefits.

Whether you have been charged with a felony or misdemeanor involving the use, possession, distribution, or intention to distribute illegal substances or the possession of drug paraphernalia, there are options to alleviate the burdens of a drug offense. Depending on the facts of your situation, you may be eligible for a pretrial diversionary program (ARD), rehabilitative probation programs, drug court, the dropping of charges, an acquittal, or eventual expungement of your criminal record. There are many variations of options and outcomes when dealing with a drug offense. All depend on the facts of your case.

Possessing Any Amount of Marijuana is a Crime Under Pennsylvania State Law In Pennsylvania, possessing any amount of marijuana remains a criminal offense. Possessing 30 grams (just over one ounce) or less is a misdemeanor that carries a \$500 fine and up to 30 days in jail, although you may be eligible for a conditional release. Possessing more than 30 grams is also a misdemeanor, but the penalties increase to a \$5,000 fine and up to one year behind bars. If you have a previous conviction on your record, these penalties can increase substantially.

Marijuana Under Pennsylvania Law

The possession, sale, trafficking, and cultivation of marijuana is illegal in most states, but a growing number of states have legalized its use. Nearly half of all states allow the medicinal use of cannabis. **Marijuana remains illegal in Pennsylvania.** Pennsylvania law still makes it a crime to possess marijuana, unless you have a PA medical card used by patients with a serious medical condition.

Statute 35 PA C.S. §780-113 Simple Possession

Under the Controlled Substance, Drug, Device and Cosmetic Act, 35 P.S. 780-113 (a)(16), a person is guilty of Simple Possession if the individual knowingly or intentionally possessing a controlled or counterfeit substance by a person not registered under this act, or a practitioner not registered or licensed by the appropriate State board, unless the substance was obtained directly from, or pursuant to, a valid prescription order or order of a practitioner, or except as authorized by this act.

First Simple Possession Offense – Statutory Penalties

Maximum Jail Sentence – 12 Months Maximum Fine- \$5,000

Second Simple Possession Offense – Statutory Penalties

Maximum Jail Sentence – 36 Months Maximum Fine – \$25,000

Statute 35 PA C.S. § 780-102 Possession of Drug Paraphernalia

Under the Controlled Substance, Drug, Device and Cosmetic Act, 35 P.S. 780-113 (a)(32), a person is guilty of Possession of Drug Paraphernalia if the use of, or possession with intent to use, drug paraphernalia for the purpose of planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packing, repacking, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of this act.

Minimum Penalty: Ungraded misdemeanor on your criminal record; Up to one year in jail, and; Up to \$2,500 in fines.

Statute: 18 Pa. C.S. §6314 Trafficking Drugs To Minors (Under 18)

Minimum Penalty: Minimum sentence of 1 year confinement

Statute: 35 Pa. C.S. § 780-113 Illicit Manufacture, Sale, Delivery, Possession Of Controlled Substances

Minimum Penalty: 30 days in jail and \$500 fine for under 30 grams marijuana

Minimum Penalty: Imprisonment from 1 – 15 years fines from \$5,000 to \$250,000 depending on offense

Statute: 18 Pa. C.S. §7508 Drug Trafficking

Minimum Penalty: 1 year in prison and \$5000 fine for 2-10 pounds of marijuana OR 10 - 20 live marijuana plants - subsequent offenses up to 5 years in prison and \$50,000 fine

Minimum Penalty: 2 years in prison and \$5000 fine for 2- 10 grams of Schedule I or Schedule II narcotic

Minimum Penalty: 1 year in prison and \$5000 fine for 2-10 grams of cocaine/coca leaves/salt

Minimum Penalty: 3 years in prison and \$15,000 fine for 5-10 grams of methamphetamine

Minimum Penalty: 2 and a half years in prison and \$15,000 fine for 5 grams of amphetamine

Minimum Penalty: Up to 5 years in prison and \$15,000 fine for 15 grams of MDMA.

Statute: 75 Pa. C.S. §3802 Driving Under The Influence Of Alcohol Or Controlled Substance

a) General impairment. --

(1) An individual may not drive, operate or be in actual physical control of the movement of a vehicle after imbibing a sufficient amount of alcohol such that the individual is rendered incapable of safely driving, operating or being in actual physical control of the movement of the vehicle.

(2) An individual may not drive, operate or be in actual physical control of the movement of a vehicle after imbibing a sufficient amount of alcohol such that the alcohol concentration in the individual's blood or breath is at least 0.08% but less than 0.10% within two hours after the individual has driven, operated or been in actual physical control of the movement of the vehicle.

(b) High rate of alcohol. --An individual may not drive, operate or be in actual physical control of the movement of a vehicle after imbibing a sufficient amount of alcohol such that the alcohol concentration in the individual's blood or breath is at least 0.10% but less than 0.16% within two hours after the individual has driven, operated or been in actual physical control of the movement of the vehicle.

(c) Highest rate of alcohol. --An individual may not drive, operate or be in actual physical control of the movement of a vehicle after imbibing a sufficient amount of alcohol such that the alcohol concentration in the individual's blood or breath is 0.16% or higher within two hours after the individual has driven, operated or been in actual physical control of the movement of the vehicle.

(d) Controlled substances. --An individual may not drive, operate or be in actual physical control of the movement of a vehicle under any of the following circumstances:

(1) There is in the individual's blood any amount of a:

(i) Schedule I controlled substance, as defined in the act of April 14, 1972 (P.L.233, No.64), known as The Controlled Substance, Drug, Device and Cosmetic Act;

(ii) Schedule II or Schedule III controlled substance, as defined in The Controlled Substance, Drug, Device and Cosmetic Act, which has not been medically prescribed for the individual; or

(iii) metabolite of a substance under subparagraph (i) or (ii).

(2) The individual is under the influence of a drug or combination of drugs to a degree which impairs the individual's ability to safely drive, operate or be in actual physical control of the movement of the vehicle.

(3) The individual is under the combined influence of alcohol and a drug or combination of drugs to a degree which impairs the individual's ability to safely drive, operate or be in actual physical control of the movement of the vehicle.

(4) The individual is under the influence of a solvent or noxious substance in violation of 18 Pa.C.S. § 7303 (relating to sale or illegal use of certain solvents and noxious substances).

(e) Minors. --A minor may not drive, operate or be in actual physical control of the movement of a vehicle after imbibing a sufficient amount of alcohol such that the alcohol concentration in the minor's blood or breath is 0.02% or higher within two hours after the minor has driven, operated or been in actual physical control of the movement of the vehicle.

(f) Commercial or school vehicles. --An individual may not drive, operate or be in actual physical control of the movement of a commercial vehicle, school bus or school vehicle in any of the following circumstances:

(1) After the individual has imbibed a sufficient amount of alcohol such that the alcohol concentration in the individual's blood or breath is:

(i) 0.04% or greater within two hours after the individual has driven, operated or been in actual physical control of the movement of a commercial vehicle other than a school bus or a school vehicle.

(ii) 0.02% or greater within two hours after the individual has driven, operated or been in actual physical control of the movement of a school bus or a school vehicle.

(2) After the individual has imbibed a sufficient amount of alcohol such that the individual is rendered incapable of safely driving, operating or being in actual physical control of the movement of the vehicle.

(3) While the individual is under the influence of a controlled substance or combination of controlled substances, as defined in section 1603 (relating to definitions).

(4) While the individual is under the combined influence of alcohol and a controlled substance or combination of controlled substances, as defined in section 1603.

(g) Exception to two-hour rule.--Notwithstanding the provisions of subsection (a), (b), (c), (e) or (f), where alcohol or controlled substance concentration in an individual's blood or breath is an element of the offense, evidence of such alcohol or controlled substance concentration more than two hours after the individual has driven, operated or been in actual physical control of the movement of the vehicle is sufficient to establish that element of the offense under the following circumstances:

(1) where the Commonwealth shows good cause explaining why the chemical test sample could not be obtained within two hours; and

(2) where the Commonwealth establishes that the individual did not imbibe any alcohol or utilize a controlled substance between the time the individual was arrested and the time the sample was obtained.

(May 11, 2006, P.L.155, No.36, eff. imd.)

2006 Amendment. Act 36 amended subsection. (g)(1). See the preamble to Act 36 in the appendix to this title for special provisions relating to legislative intent.

Cross References. Section 3802 is referred to in sections 102, 1534, 1539, 1541, 1543, 1547, 1552, 1553, 1554, 1556, 1575, 1586, 1611, 3326, 3327, 3716, 3732, 3732.1, 3733, 3735, 3735.1, 3755, 3803, 3804, 3805, 3806, 3807, 3811, 3812, 3814, 3815, 3816, 3817, 6506 of this title; sections 6105, 7508.1 of Title 18 (Crimes and Offenses); section 5502 of Title 30 (Fish); section 8137 of Title 35 (Health and Safety); sections 933, 1515, 1725.3, 1725.5, 3571, 3573 of Title 42 (Judiciary and Judicial Procedure); section 1604 of Title 75 (Vehicles)

Minimum Penalty: Up to 6 months probation and \$300 fine for 1st offense. Sanctions vary upon multiple factors, including but not limited to, blood alcohol levels, age (under 21) of driver, existence of prior offenses, and whether there was an accident resulting in bodily injury or death.

Statute 35 PA C.S. §780-113 Possession with Intent to Deliver (PWID)

Under the Controlled Substance, Drug, Device and Cosmetic Act, 35 P.S. 780-113 (a)(30), a person is guilty of Possession with Intent to Deliver if the manufacture, delivery, or possession with intent to manufacture, deliver, a controlled substance by a person not registered under this act, or a practitioner not registered or licensed by the appropriate State board, or knowingly creating, delivering or possessing with intent to deliver, a counterfeit controlled substance.

Penalties for Possession with Intent to Deliver (PWID)

The penalty for PWID in Pennsylvania is based on the type of drug (Schedule I, II, III, IV, and V), the amount or weight possessed, aggravators (weapon enhancement and school zone enhancement), prior offenses, offense gravity score, and statutory mandatory minimums.

Mandatory minimums mean that there is a statutory floor or a set time frame that the sentencing judge cannot go below. If you are found guilty of:

Mandatory Minimum for Possession with Intent to Deliver – Marijuana

2-10 pounds – 1 year

10-50 pounds – 3 years

50+ pounds – 5 years

Mandatory Minimum for Possession with Intent to Deliver – Cocaine

2-10 grams – 1 year

10-100 grams – 3 years

100+ grams – 5 years

Mandatory Minimum for Possession with Intent to Deliver – Heroin

1-5 grams – 2 years

5-50 grams – 3 years

50+ grams – 5 years

Weapon Enhancement

5-year mandatory minimum

School Zone

2-year mandatory minimum

Statute 35 PA C.S. §780-101 780-113 Cocaine Laws in General

The possession, sale, and trafficking of cocaine is illegal in all states although many states now offer drug diversion programs to help drug abusers get treatment in lieu of prison. As with the federal and most other state drug laws, cocaine is treated as a more serious illicit drug than marijuana. Pennsylvania cocaine laws are rather strict. The possession of a misdemeanor amount can fetch one year and/or \$5,000 in fines. A subsequent offense can result in up to 3 years and/or a \$25,000 fine. Selling it is a felony with a penalty of 15 yrs. and/or \$250,00 or higher fine if necessary to recover drug profit; Subsequent offense or sale to minor: double penalties.

Statute 35 PA C.S. §780-101 780-113 Simple Possession of Heroin in Pennsylvania

Under Pennsylvania heroin laws, simple possession of less than 1 gram of heroin (including other opiates and synthetic opioids) is charged as a misdemeanor, which carries a maximum penalty of one year in jail for a first offense and a \$5000 fine. Subsequent offenses can result in prison terms of up to three years and a \$25,000 fine.

It is also a separate crime to buy heroin in Pennsylvania, although defendants charged with simple possession rarely face the additional charges. Additionally, the state makes it a misdemeanor to be in possession of heroin paraphernalia, whether or not it contains residue of the drug. For instance, possession of a syringe, spoon, and lighter may qualify as paraphernalia.

Statute 35 PA C.S. §780-101 780-113 Dealing and Trafficking Heroin in Pennsylvania

Charges for dealers and traffickers are much more serious and charged as felonies, up to 15 years in prison and \$250,000 or higher fine if necessary to recover drug profit, with mandatory minimum sentences guaranteeing some amount of incarceration. The sale of heroin to a minor can result in double penalties.

Drug-free school zones.

General rule.--A person 18 years of age or older who is convicted in any court of this Commonwealth of a violation of section 13(a)(14) or (30) of the act of April 14, 1972 (P.L.233, No.64), known as The Controlled Substance, Drug, Device and Cosmetic Act, shall, if the delivery or possession with intent to deliver of the controlled substance occurred within 1,000 feet of the real property on which is located a public, private or parochial school or a college or university or within 250 feet of the real property on which is located a recreation center or playground or on a school bus, be sentenced to a minimum sentence of at least two years of total confinement, notwithstanding any other provision of this title, The Controlled Substance, Drug, Device and Cosmetic Act or other statute to the contrary. The maximum term of imprisonment shall be four years for any offense: subject to this section; and for which The Controlled Substance, Drug, Device and Cosmetic Act provides for a maximum term of imprisonment of less than four years.

If the sentencing court finds that the delivery or possession with intent to deliver was to an individual under 18 years of age, then this section shall not be applicable and the offense shall be subject to section 6314 (relating to sentencing and penalties for trafficking drugs to minors).

Proof at sentencing. --The provisions of this section shall not be an element of the crime. Notice of the applicability of this section to the defendant shall not be required prior to conviction, but reasonable notice of the Commonwealth's intention to proceed under this section shall be provided after conviction and before sentencing. The applicability of this section shall be determined at sentencing. The court shall consider evidence presented at trial, shall afford the Commonwealth and the defendant an opportunity to present necessary additional evidence and shall determine by a

preponderance of the evidence if this section is applicable.

Authority of court in sentencing. --There shall be no authority for a court to impose on a defendant to which this section is applicable a lesser sentence than provided for in subsection (a), to place the defendant on probation or to suspend sentence. Nothing in this section shall prevent the sentencing court from imposing a sentence greater than that provided in this section. Sentencing guidelines promulgated by the Pennsylvania Commission on Sentencing shall not supersede the mandatory sentences provided in this section. Disposition under section 17 or 18 of The Controlled Substance, Drug, Device and Cosmetic Act shall not be available to a defendant to which this section applies.

Appeal by Commonwealth. --If a sentencing court refuses to apply this section where applicable, the Commonwealth shall have the right to appellate review of the action of the sentencing court. The appellate court shall vacate the sentence and remand the case to the sentencing court for imposition of a sentence in accordance with this section if it finds that the sentence was imposed in violation of this section.

(June 25, 1997, P.L.284, No.26, eff. 60 days)

1997 Amendment. Act 26 added section 6317. Section 5 of Act 26 provided that the addition of section 6317 shall apply to all offenses occurring on or after the effective date of Act 26.

Controlled Substance, Drug, Device And Cosmetic Act, The Act Of April 14, 1972, P.L. 266, No 64

Relating to the manufacture, sale and possession of controlled substances, other drugs, devices and cosmetics; conferring powers on the courts and the secretary and Department of Health, and a newly created Pennsylvania Drug, Device and Cosmetic Board; establishing schedules of controlled substances; providing penalties; requiring registration of persons engaged in the drug trade and for the revocation or suspension of certain licenses and registrations; and repealing an act.

Compiler's Note: Section 15(c) of Act 31 of 1988, provided that Act 64 is repealed insofar as it subjects to fine assets against which a forfeiture petition has been filed and is pending or against which the Commonwealth has indicated an intention to file a forfeiture petition.

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The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Short Title. --This act shall be known and may be cited as "The Controlled Substance, Drug, Device and Cosmetic Act."

Section 2. Definitions. --(a) The definitions contained and used in the "Pennsylvania Drug and Alcohol Abuse Control Act" shall also apply for purposes of this act.

(b) As used in this act:

"**Administer**" means the direct application of a controlled substance, other drug or device, whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject.

"**Advertisement**" means any representation, disseminated in any manner or by any means other than by labeling, for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase and/or use of a controlled substance, other drug, device or cosmetic.

"**Agent**" means an authorized person when acting on behalf of or 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.

"**Board**" means the Pennsylvania Drug, Device and Cosmetic Board.

"**Bureau**" means the Bureau of Drug Control, Pennsylvania Department of Health.

"**Color additive**" means a material which is a dye, pigment or other substance made by a process of synthesis or similar artifice, or extracted, isolated or otherwise derived, with or without intermediate or final change of identity, from a vegetable, animal, mineral or other source, and, when added or applied to a controlled substance, other drug, device or cosmetic to the human or animal body, is capable, alone or through reaction with another substance, of imparting color thereto, except that such term does not include any material which the appropriate authority, pursuant to the Federal act, determines is used or intended to be used solely for a purpose or purposes other than coloring. The term "color" includes black, white and intermediate grays.

"**Commercial container**" means any bottle, jar, tube, ampule, or other receptacle in which a controlled substance, other drug, device or cosmetic is held for distribution or dispensing to an ultimate user, and in addition, any box or package in which the receptacle is held for distribution or dispensing to an ultimate user. The term "commercial container" does not include any package liner, package insert or other material kept with or within a commercial container, nor any carton, crate, drum, or other package in which commercial containers are stored or are used for shipment of controlled substances.

"**Contaminated with filth**" means consisting, in whole or in part, of any decomposed, putrid or filthy substance, or prepared, packed or held under any unsanitary condition or exposed whereby the article or product concerned may have become contaminated with filth, dirt, dust or any foreign material, or in any manner rendered injurious to health.

"**Contraband**" means any controlled substance, other drug, device or cosmetic possessed by a person not authorized by law to possess such controlled substance, other drug, device or cosmetic, or obtained or held in a manner contrary to the provisions of this act.

"**Control**" means to regulate, or change the placement of a controlled substance or immediate precursor; under the provisions of this act. (Def. amended Oct. 26, 1972, P.L.1048, No.263)

"**Controlled substance**" means a drug, substance, or immediate precursor included in Schedules I through V of this act.

"**Cosmetic**" means: (i) substances intended to be rubbed, poured, sprinkled or sprayed on, introduced into or otherwise applied to the human body or other animal body or any part thereof for cleansing, beautifying, promoting attractiveness or altering the appearance, and (ii) substances intended for use as a component of any such substances, except that such term shall not include soap.

"**Council**" means the Governor's Council on Drug and Alcohol Abuse.

"**Counterfeit**" means a controlled substance, other drug, device or cosmetic which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number, or device, or any likeness thereof, of a manufacturer, distributor, or dispenser other than the person or persons who in fact manufactured, distributed, or dispensed such substance and which thereby is falsely purported or represented to be the product of, or to have been distributed by, such other manufacturer, distributor, or dispenser.

"**Court**" means all courts of the Commonwealth of Pennsylvania, including magistrates and justices

of the peace.

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

"**Department**" means the Department of Health of the Commonwealth of Pennsylvania.

"**Designer drug**" means a substance other than a controlled substance that is intended for human consumption and that either has a chemical structure substantially similar to that of a controlled substance in Schedules I, II or III of this act or that produces an effect substantially similar to that of a controlled substance in Schedules I, II or III. Examples of chemical classes in which designer drugs are found include, but are not limited to, the following: Phenethylamines, N-substituted piperidines, morphinans, ecgonines, quinazolinones, substituted indoles and arylcycloalkylamines. (Def. amended Feb. 11, 2000, P.L.9, No.3)

"**Device**" means instruments, apparatus and contrivances, including their components, parts and accessories, intended: (i) for use in the diagnosis, cure, mitigation, treatment or prevention of disease of man or other animals; or (ii) to affect the structure or any function of the body of man or other animals.

"**Dispense**" means to deliver a controlled substance, other drug or device to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling, or compounding necessary to prepare such item for that delivery.

"**Dispenser**" means a practitioner who dispenses.

"**Distribute**" means to deliver other than by administering or dispensing a controlled substance, other drug, device or cosmetic.

"**Distributor**" means any person engaged in the activities of jobber, dealer, or wholesaler who sells, or otherwise distributes, any controlled substance, other drug, device or cosmetic for resale or redistribution which he has not himself prepared, produced or compounded.

"**Drug**" means: (i) substances recognized in the official United States Pharmacopeia, or official National Formulary, or any supplement to either of them; and (ii) substances intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals; and (iii) substances (other than food) intended to affect the structure or any function of the human body or other animal body; and (iv) substances intended for use as a component of any article specified in clause (i), (ii) or (iii), but not including devices or their components, parts or accessories.

"**Drug dependent person**" means a person who is using a drug, controlled substance or alcohol, and who is in a state of psychic or physical dependence, or both, arising from administration of that drug, controlled substance or alcohol on a continuing basis. Such dependence is characterized by behavioral and other responses which include a strong compulsion to take the drug, controlled substance or alcohol on a continuous basis in order to experience its psychic effects, or to avoid the discomfort of its absence. This definition shall include those persons commonly known as "drug addicts."

"**Drug paraphernalia**" means all equipment, products and materials of any kind which are used, intended for use or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a controlled substance in violation of this act. It includes, but is not limited to:

- (1) Kits used, intended for use or designed for use in planting, propagating, cultivating, growing or harvesting of any species of plant which is a controlled substance or from which a controlled substance can be derived.
- (2) Kits used, intended for use or designed for use in manufacturing, compounding, converting, producing, processing or preparing controlled substances.
- (3) Isomerization devices used, intended for use or designed for use in increasing the potency of any

species of plant which is a controlled substance.

(4) Testing equipment used, intended for use or designed for use in identifying or in analyzing the strength, effectiveness or purity of controlled substances.

(5) Scales and balances used, intended for use or designed for use in weighing or measuring controlled substances.

(6) Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose and lactose, used, intended for use or designed for use in cutting controlled substances.

(7) Separation gins and sifters used, intended for use or designed for use in removing twigs and seeds from or in otherwise cleaning or refining marihuana.

(8) Blenders, bowls, containers, spoons and mixing devices used, intended for use or designed for use in compounding-controlled substances.

(9) Capsules, balloons, envelopes and other containers used, intended for use or designed for use in packaging small quantities of controlled substances.

(10) Containers and other objects used, intended for use or designed for use in storing or concealing controlled substances.

(11) Hypodermic syringes, needles and other objects used, intended for use, or designed for use in parenterally injected controlled substances into the human body.

(12) Objects used, intended for use or designed for use in ingesting, inhaling or otherwise introducing marihuana, cocaine, hashish or hashish oil into the human body, such as:

(i) Metal, wooden, acrylic, glass, stone, plastic or ceramic pipes with or without screens, permanent screens, hashish heads or punctured metal bowls.

(ii) Water pipes.

(iii) Carburetion tubes and devices.

(iv) Smoking and carburetion masks.

(v) Roach clips; meaning objects used to hold burning material such as a marihuana cigarette, that has become too small or too short to be held in the hand.

(vi) Miniature cocaine spoons and cocaine vials.

(vii) Chamber pipes.

(viii) Carburetor pipes.

(ix) Electric pipes.

(x) Air-driven pipes.

(xi) Chillums.

(xii) Bongs.

(xiii) Ice pipes or chillers.

In determining whether an object is drug paraphernalia, a court or other authority should consider, in addition to all other logically relevant factors, statements by an owner or by anyone in control of the object concerning its use, prior convictions, if any, of an owner, or of anyone in control of the object, under any State or Federal law relating to any controlled substance, the proximity of the object, in time and space, to a direct violation of this act, the proximity of the object to controlled substances, the existence of any residue of controlled substances on the object, direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver it to persons who he knows, or should reasonably know, intend to use the object to facilitate a violation of this act, the innocence of an owner or of anyone in control of the object, as to a direct violation of this act should not prevent a finding that the object is intended for use or designed for use as drug paraphernalia, instructions, oral or written, provided with the object concerning its use, descriptive materials accompanying the object which explain or depict its use, national and local advertising concerning its use, the manner in which the object is displayed for sale, whether the owner, or anyone in control of the object, is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products, direct or circumstantial evidence of the ratio of sales of the objects to the total

sales of the business enterprise, the existence and scope of legitimate uses for the object in the community, and expert testimony concerning its use.

(Def. added Dec. 4, 1980, P.L.1093, No.186)

"Immediate precursor" means a substance which the secretary has found to be, and by regulation designates as being a 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.

"Label" means a display of written, printed or graphic matter upon the commercial container of any substance or article and a requirement made by or under authority of this act that any word, statement or other information appearing on the label shall not be considered to be complied with unless such word, statement or other information also appears on the outside container or wrapper, if any there be, of the retail package of such substance or is easily legible through the outside container or wrapper.

"Labeling" means all labels and other written, printed, or graphic matter: (i) upon a substance or any of its containers or wrappers; or (ii) accompanying such substance.

"Manufacture" means the production, preparation, propagation, compounding, conversion or processing of a controlled substance, other drug or device or the packaging or repackaging of such substance or article, or the labeling or relabeling of the commercial container of such substance or article, but does not include the activities of a practitioner who, as an incident to his administration or dispensing such substance or article in the course of his professional practice, prepares, compounds, packages or labels such substance or article. The term "manufacturer" means a person who manufactures a controlled substance, other drug or device.

"Marihuana" consists of all forms, species and/or varieties of the genus *Cannabis sativa* L., whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or resin; but shall not include tetrahydrocannabinols, the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil, cake, or the sterilized seed of such plant which is incapable of germination. (Def. amended July 30, 1975, P.L.104, No.54)

"Narcotic" 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: (i) opium, (ii) any opiate having an addiction-forming or addiction-sustaining capacity similar to morphine, but not including the isoquinoline alkaloids of opium, (iii) any compound, manufacture, salt, derivative, or preparation of opium or any opiate, and (iv) any substance, compound, manufacture, salt, derivative, or preparation thereof, which is chemically identical with any of the substances referred to in (i), (ii) or (iii).

"New drug" means: (i) any drug the composition of which is such that such drug is not generally recognized among experts qualified by scientific training and experience to evaluate the safety and effectiveness of drugs as safe and effective for use under the conditions prescribed, recommended or suggested in the labeling thereof; or (ii) any drug the composition of which is such that such drug, as a result of investigations to determine its safety and effectiveness for use under such conditions, has become so recognized, but which has not, otherwise than in such investigations, been used to a material extent or for a material time under such conditions.

"Nonproprietary drug" means any drug containing any quantity of any controlled substance or any drug requiring a prescription, a drug containing biologicals or substances of glandular origin (except intestinal enzymes and all liver products), drugs which are administered parenterally, but not any such drugs which are prepackaged with complete dosage instructions in the labeling limiting their use to the care or treatment of poultry and livestock.

"Official compendium" means the official United States Pharmacopeia, the official National

Formulary or any supplement to either of them.

"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 the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). It does include the racemic and levorotatory forms.

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

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

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

"Practitioner" means: (i) a physician, osteopath, dentist, veterinarian, pharmacist, podiatrist, nurse, scientific investigator, or other person licensed, registered or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a controlled substance, other drug or device in the course of professional practice or research in the Commonwealth of Pennsylvania; (ii) a pharmacy, hospital, clinic or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a controlled substance, other drug or device in the course of professional practice or research in the Commonwealth of Pennsylvania.

"Production" includes the manufacture, planting, cultivation, growing or harvesting of a controlled substance, other drug, device and cosmetic.

"Prescription" or **"prescription order"** means an order for a controlled substance, other drug or device for medication which is dispensed to or for an ultimate user, but does not include an order for a controlled substance, other drug or device for medication which is dispensed for immediate administration to the ultimate user (e.g., an order to dispense a drug to a bed patient for immediate administration in a hospital is not a prescription order).

"Real-time stop-sale system" means a system intended to be used by law enforcement agencies and pharmacies or other business establishments that:

- (1) is installed, operated and maintained free of any one-time or recurring charge to the business establishment or to the Commonwealth;
- (2) is able to communicate in real time with similar systems operated in other states and similar systems containing information submitted by more than one state;
- (3) complies with the security policy of the Criminal Justice Information Services Division of the Federal Bureau of Investigation or its successor;
- (4) complies with information exchange standards adopted by the National Information Exchange Model or its successor;
- (5) uses a mechanism to prevent the completion of a sale of a product containing ephedrine or pseudoephedrine that would violate Federal or State law regarding the purchase of a product containing those substances; and
- (6) is equipped with an override of the mechanism that:
 - (i) may be activated by an employee of a business establishment; and
 - (ii) creates a record of each activation of the override. (Def. added July 9, 2013, P.L.359, No.53)

"Registrant" means any one person registered under the laws of this Commonwealth to manufacture, dispense, distribute, administer or sell drugs.

"Secretary" means the Secretary of Health of the Commonwealth of Pennsylvania.

"Structure" means any house, apartment building, shop, warehouse, barn, building, vessel, railroad car, cargo container, motor vehicle, house-car, trailer, trailer coach, camper, mine, floating home, or other enclosed structure capable of holding a child and manufacturing equipment. (Def. added Nov. 19, 2004, P.L.846, No.108)

"Temporary technological or electrical failure" means any failure of a computer system, application or device, or the loss of electrical power to that system, application or device, or any other service interruption to a computer system, application or device in a manner that reasonably prevents

a practitioner from utilizing his or her certified electronic prescribing application to transmit an electronic prescription for a controlled substance in accordance with this act and Federal requirements. (Def. added Oct. 24, 2018, P.L.662, No.96)

"Ultimate user" means a person who lawfully possesses a controlled substance, other drug, device or cosmetic for his own use or for the use of a member of his household or for administering to an animal in his care.

Compiler's Note: Section 1 of Reorganization Plan No.4 of 1981 provided that the Council on Drug and Alcohol Abuse, together with its powers, functions and duties as set forth in Act 64, are transferred from the Governor's Office to the Department of Health.

Section 3. Authority to Control. --(a) The secretary shall control all substances listed in Schedules I through V of this act and may, by regulation, upon his own motion or on the petition of any interested party, add a substance as a controlled substance. Such regulations shall be adopted in accordance with the act of July 31, 1968 (P.L.769, No.240), known as the "Commonwealth Documents Law." Before so doing, the secretary shall request the advice in writing from the board whether a substance should be added as a controlled substance. Such advice shall be rendered to the secretary within a reasonable time. The secretary shall consider with respect to each substance hereafter controlled:

- (1) Its actual or relative potential for abuse;
- (2) Scientific evidence of its pharmacological effect, if known;
- (3) State of current scientific knowledge regarding the substance;
- (4) Its history and current pattern of abuse;
- (5) The scope, duration, and significance of abuse;
- (6) The risk there is to the public health;
- (7) Its psychic or physiological dependence liability;
- (8) Whether the substance is controlled under Federal law; and
- (9) Whether the substance is an immediate precursor of a substance already controlled under this section.

After considering the above factors, the secretary shall make findings with respect thereto and shall issue a regulation controlling the substance if he finds that the substance has a potential for abuse.

(b) If the secretary designates a substance as an immediate precursor, substances which are precursors of the controlled precursor shall not be subject to control solely because they are precursors of the controlled precursor.

(c) Notwithstanding subsection (a), if the secretary finds that the health and safety of the public will not be adversely affected, the secretary may:

(1) Reschedule any controlled substance to coincide with Federal law, including the Controlled Substances Act (Public Law 91-513, 84 Stat. 1236), regulations promulgated under 21 CFR Ch. 2 (relating to drug enforcement administration, department of justice) or any Federal judicial order. The secretary shall publish a notice in the Pennsylvania Bulletin of the rescheduling of a controlled substance under this clause. The rescheduling of the controlled substance to a higher schedule may not take effect earlier than thirty days after publication of the notice in the Pennsylvania Bulletin. The rescheduling of a controlled substance to a lower schedule may take effect upon publication in the Pennsylvania Bulletin.

(2) Exclude any substance or remove any controlled substance from any schedule, provided that the substance or controlled substance has been approved for over-the-counter use without a prescription under Federal law, including the Federal Food, Drug and Cosmetic Act (52 Stat. 1040, 21 U.S.C. § 301, et seq.), regulations promulgated under 21 CFR Ch. 1 (relating to food and drug administration, department of health and human services) or any Federal judicial order.

((c) amended June 8, 2016, P.L.258, No.37)

(d) If the secretary finds that the scheduling of a substance on a temporary basis is necessary to avoid

an imminent hazard to public safety, the secretary may, by publishing a final notice in the Pennsylvania Bulletin and without regard to the requirements of subsection (a), schedule a substance under one of the schedules in section 4 if the substance is not listed in any other schedule in section 4 or 28 Pa. Code §§ 25.72 (relating to schedules of controlled substances) and 25.75 (relating to paregoric) and if no exception or approval is in effect for the substance under section 505 of the Federal Food, Drug and Cosmetic Act (52 Stat. 1040, 21 U.S.C. § 355). The following apply:

(1) A final order may not be issued before the expiration of fourteen days after both:

(i) The date of publication in the Pennsylvania Bulletin of a proposed notice of the intention to issue a final notice and the grounds upon which the order is to be issued.

(ii) The date the secretary transmitted the notice to the Attorney General as required by clause (4).

(2) The scheduling of a substance under this subsection shall expire at the end of one year from the date of publication of the final notice scheduling of the substance except that the secretary may, during the pendency of proceedings under subsection (a) with respect to the substance, extend the temporary scheduling for up to one additional year by publishing a subsequent notice in the Pennsylvania Bulletin prior to the expiration of the initial notice.

(3) When issuing a proposed notice under clause (1), the secretary shall be required to consider, with respect to the finding of an imminent hazard to public safety, only those factors set forth in subsection (a)(4), (5), (6) and (8), except that, if clause (8) has been met regarding the temporary or permanent scheduling of a specific substance under Federal law, the secretary shall be authorized to temporarily schedule the substance without regard to clauses (4), (5) and (6).

(4) The secretary shall transmit the proposed notice issued under clause (1) to the Attorney General. The Attorney General shall have thirty days from receipt of the proposed notice to provide written comments, if any, on relevant issues, including actual abuse, diversion from legitimate channels and clandestine importation, manufacture or distribution. In issuing a final notice under this subsection, the secretary shall take into consideration any comments submitted by the Attorney General.

(5) (i) Except as provided in subclause (ii), during the time period that a substance is temporarily scheduled, the secretary shall proceed with the permanent scheduling of the substance pursuant to the requirements under subsection (a).

(ii) If a substance has been temporarily scheduled and the secretary proceeds with permanent scheduling, the secretary shall only be required to proceed under section 5(a) of the act of June 25, 1982 (P.L.633, No.181), known as the "Regulatory Review Act," by submitting final omitted regulations.

(iii) A final notice issued under clause (1) with respect to a substance shall be vacated upon the conclusion of a subsequent rulemaking proceeding initiated under subsection (a) with respect to the substance or the enactment of law by the General Assembly permanently scheduling the substance.

(iv) While the substance is temporarily scheduled, if the secretary determines that a substance should not be permanently scheduled, and no law has been enacted by the General Assembly to permanently schedule the substance, the secretary shall publish a notice in the Pennsylvania Bulletin with a rationale as to why the substance is not being permanently scheduled. Upon publication of the notice, the substance shall no longer be considered a controlled substance. Withdrawal of a temporarily scheduled substance under this subclause shall not affect any criminal proceeding or civil action initiated based on the temporary scheduling.

(6) Temporary scheduling of a substance by the secretary under this subsection shall not be subject to section 612 of the act of April 9, 1929 (P.L.177, No.175), known as "The Administrative Code of 1929," the "Commonwealth Documents Law," the act of October 15, 1980 (P.L.950, No.164), known as the "Commonwealth Attorneys Act," or the "Regulatory Review Act."

(7) A proposed or final notice issued by the secretary under this subsection shall not be subject to judicial review.

((d) added June 8, 2016, P.L.258, No.37)

(e) At the time of publication by the secretary of a notice in the Pennsylvania Bulletin under subsection (c) or (d), the secretary shall also transmit the notice to the ABC-MAP Board. ((e) added June 8, 2016, P.L.258, No.37)

(f) As used in this section, the term "substance" shall include any group of substances, materials, mixtures, compounds, salts, isomers, salts of isomers, analogs, homologues or homologous series. ((f) added June 8, 2016, P.L.258, No.37)

Section 4. Schedules of Controlled Substances. --The following schedules include the controlled substances listed or to be listed by whatever official name, common or usual name, chemical name, or trade name designated.

(1) Schedule I--In determining that a substance comes within this schedule, the secretary shall find: a high potential for abuse, no currently accepted medical use in the United States, and a lack of accepted safety for use under medical supervision. The following controlled substances are included in this schedule:

(i) 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 such 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 (except its methylether).
14. Diampromide.
15. Diethylthiambutene.
16. Dimenoxadol.
17. Dimepheptanol.
18. Dimethylthiambutene.
19. Dioxaphetyl butyrate.
20. Dipipanone.
21. Ethylmethylthiambutene.
22. Etonitazene.
23. Etoxeridine.
24. Furethidine.
25. Hydroxypethidine.
26. Ketobemidone.
27. Levomoramide.
28. Levophenacymorphan.
29. Morpheridine.
30. Noracymethadol.
31. Norlevorphanol.
32. Normethadone.

33. Norpipanone.
34. Phenadoxone.
35. Phenampromide.
36. Phenomorphan.
37. Phenoperidine.
38. Pir tramide.
39. Proheptazine.
40. Properidine.
41. Racemoramide.
42. Trimeperidine.

(ii) Any of the following opium derivatives, their salts, isomers and salts of isomers, unless specifically excepted, whenever the existence of such 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. Hydromorphanol.
12. Methyl desorphine.
13. Methylhydromorphine.
14. Morphine methylbromide.
15. Morphine methylsulfonate.
16. Morphine-N-Oxide.
17. Myorphine.
18. Nicocodeine.
19. Nicomorphine.
20. Normorphine.
21. Pholcodine.
22. Thebacon.

23. Fentanyl derivatives - any compound not listed under a different schedule, not a Federal Food and Drug Administration-approved drug or not used within legitimate and approved medical research, structurally derived from N-(1-(2-phenethyl)-4-piperidinyl)-N-phenyl-propanamide. This shall include the following, their salts, isomers and salts of isomers:

- (A) Acetyl fentanyl.
- (B) Butyryl fentanyl.
- (C) para-Fluorofentanyl.
- (D) para-Fluorobutyryl fentanyl.
- (E) Furanyl fentanyl.
- (F) Hydroxythiofentanyl.
- (G) Isobutyrylfentanyl.
- (H) 4-methoxy-Butyryl fentanyl.
- (I) 3-methyl Fentanyl.
- (J) Ocfentanyl.

(K) Valeryl fentanyl.

((ii) amended June 8, 2016, P.L.258, No.37)

(iii) 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 such 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-dimethoxyamphetamine.
8. Ibogaine.
9. Lysergic acid diethylamide.
10. Mescaline.
11. Peyote.
12. N-ethyl-3-piperidyl benzilate.
13. N-methyl-3-piperidyl benzilate.
14. Psilocybin.
15. Psilocyn.
16. Tetrahydrocannabinols.
17. Salvia Divinorum.
18. Salvinorin A.
19. Divinorin A.
20. 3,4-Methylenedioxymethcathinone (Methylone).
21. 3,4-Methylenedioxypropylone (MDPV).
22. 4-Methylmethcathinone (Mephedrone).
23. 4-Methoxymethcathinone.
24. 4-Fluoromethcathinone.
25. 3-Fluoromethcathinone.
26. 3,4-Methylenedioxymethamphetamine.
27. Methoxetamine.

((iii) amended June 8, 2016, P.L.258, No.37)

(iii.1) Substituted cathinones - any compound, except bupropion or compounds listed under a different schedule, or compounds used within legitimate and approved medical research, structurally derived from 2-aminopropan-1-one by substitution at the 1-position with monocyclic or fused polycyclic ring systems, whether or not the compound is further modified in any of the following ways:

1. By substitution in the ring system to any extent with alkyl, alkylendioxy, alkoxy, haloalkyl, hydroxyl or halide substituents whether or not further substituted in the ring system by one or more other univalent substituents.
2. By substitution at the 3-position with an acyclic alkyl substituent.
3. By substitution at the 2-amino nitrogen atom with alkyl, dialkyl, benzyl or methoxybenzyl groups.
4. By inclusion of the 2-amino nitrogen atom in a cyclic structure.

((iii.1) amended June 8, 2016, P.L.258, No.37)

(iv) Marihuana.

(v) Any material, compound, mixture or preparation which contains any quantity of the following substances, including the salts, isomers and salts of isomers:

1. Methaqualone.

(vi) Gamma hydroxybutyric acid, any salt, hydroxybutyric compound, derivative or preparation of gamma hydroxybutyric acid, including any isomers, esters and ethers and salts of isomers, esters and ethers of gamma hydroxybutyric acid, except gamma-butyrolactone (GBL), whenever the existence of such isomers, esters and salts is possible within the specific chemical designation. For purposes of security requirements imposed by law or regulation upon registered distributors and registered manufacturers, this substance when manufactured, distributed or possessed in accordance with an exemption approved under section 505(i) of the Federal Food, Drug, and Cosmetic Act (52 Stat. 1040, 21 U.S.C. § 301 et seq.) shall, notwithstanding any other provision of this act, be classified as a controlled substance in Schedule III of this section.

(vii) Synthetic cannabinoids, including any material, compound, mixture or preparation that is not listed as a controlled substance in Schedules I, II, III, IV and V, is not a Federal Food and Drug Administration-approved drug or not used within legitimate and approved medical research and which contains any quantity of the following substances, their salts, isomers, whether optical, positional or geometric, analogues, homologues and salts of isomers, analogues and homologues, unless specifically exempted, whenever the existence of these salts, isomers, analogues, homologues and salts of isomers, analogues and homologues if possible within the specific chemical designation:

1. Tetrahydrocannabinols meaning tetrahydrocannabinols which are naturally contained in a plant of the genus Cannabis as well as synthetic equivalents of the substances contained in the plant or in the resinous extractives of Cannabis or synthetic substances, derivatives and their isomers with analogous chemical structure and or pharmacological activity such as the following:

(A) Delta-1 cis or trans tetrahydrocannabinol and their optical isomers.

(B) Delta-6 cis or trans tetrahydrocannabinol and their optical isomers.

(C) Delta-3,4 cis or their trans tetrahydrocannabinol and their optical isomers.

2. Indole carboxaldehydes - Any compound structurally derived from 1H-indole-3-carboxaldehyde or 1H-indole-2-carboxaldehyde:

(A) substituted in both of the following ways:

(I) At the nitrogen atom of the indole ring.

(II) At the carbon of the carboxaldehyde by a phenyl, benzyl, naphthyl, adamantyl, cyclopropyl or propionaldehyde group; and

(B) whether or not the compound is further modified to any extent in any of the following ways:

(I) Substitution to the indole ring to any extent.

(II) Substitution to the phenyl, benzyl, naphthyl, adamantyl, cyclopropyl or propionaldehyde group to any extent.

(III) A nitrogen heterocyclic analog of the indole ring.

(IV) A nitrogen heterocyclic analog of the phenyl, benzyl, naphthyl, adamantyl or cyclopropyl ring.

This shall include AM 1248, AM 2201, AM 679, AM 694, EAM-2201, FUB-144, JWH 015, JWH 018, JWH 019, JWH 073, JWH 081, JWH 122, JWH 200, JWH 203, JWH 210, JWH 250, JWH 251, JWH 302, JWH 398, MAM-2201, RCS-4, RCS-8, THJ-018, THJ-2201, UR-144, WIN 55-212, WIN 48-098 and XLR-11.

2.1. Indole carboxamides - Any compound structurally derived from 1H-indole-3-carboxamide or 1H-indole-2-carboxamide:

(A) substituted in both of the following ways:

(I) At the nitrogen atom of the indole ring.

(II) At the nitrogen of the carboxamide by a phenyl, benzyl, naphthyl, adamantyl, cyclopropyl or propionaldehyde group; and

(B) whether or not the compound is further modified to any extent in any of the following ways:

(I) Substitution to the indole ring to any extent.

(II) Substitution to the phenyl, benzyl, naphthyl, adamantyl, cyclopropyl or propionaldehyde group to any extent.

- (III) A nitrogen heterocyclic analog of the indole ring.
- (IV) A nitrogen heterocyclic analog of the phenyl, benzyl, naphthyl, adamantyl or cyclopropyl ring. This shall include AB-CHMINACA, AB-FUBINACA, AB-PINACA, ADBICA, ADB-PINACA, AKB-48, AMB, NNEI, STS-135 and THJ.
- 2.2. Indole carboxylic acids - Any compound structurally derived from 1H-indole-3-carboxylic acid or 1H-indole-2-carboxylic acid:
- (A) substituted in both of the following ways:
- (I) At the nitrogen atom of the indole.
- (II) At the hydroxyl group of the carboxylic acid by a phenyl, benzyl, naphthyl, adamantyl, cyclopropyl or propionaldehyde group; and
- (B) whether or not the compound is further modified to any extent in any of the following ways:
- (I) Substitution to the indole ring to any extent.
- (II) Substitution to the phenyl, benzyl, naphthyl, adamantyl, cyclopropyl or propionaldehyde group to any extent.
- (III) A nitrogen heterocyclic analog of the indole ring.
- (IV) A nitrogen heterocyclic analog of the phenyl, benzyl, naphthyl, adamantyl or cyclopropyl ring. This shall include BB-22, 3-CAF, FDU-PB-22, FUB-PB-22, NM2201 and PB-22.
3. Naphthylmethylindeles or any compound containing a 1H-indol-3-yl-(1-naphthyl) methane structure with a substitution at the nitrogen atom of the indole ring whether or not further substituted in the indole ring to any extent and whether or not substituted in the naphthyl ring to any extent. This shall include JWH 175 and JWH 184.
4. Naphthoylpyrroles or any compound containing a 3-(1-naphthoyl) pyrrole structure with substitution at the nitrogen atom of the pyrrole ring whether or not further substituted in the pyrrole ring to any extent and whether or not substituted in the naphthyl ring to any extent. This shall include JWH 147 and JWH 307.
5. Naphthylmethylindenes or any compound containing a naphthylideneindene structure with substitution at the 3-position of the indene ring whether or not further substituted in the indene ring to any extent and whether or not substituted in the naphthyl ring to any extent. This shall include JWH 176.
6. (Deleted by amendment).
7. Cyclohexylphenols or any compound containing a 2-(3-hydroxycyclohexyl) phenol structure with a substitution at the 5-position of the phenolic ring whether or not substituted in the cyclohexyl ring to any extent. This shall include the following:
- (A) CP 47,497 and its homologues and analogues.
- (B) Cannabicyclohexanol.
- (C) CP 55,940.
8. (Deleted by amendment).
9. [2,3-Dihydro-5 methyl-3-(4-morpholinylmethyl) pyrrolo [1,2,3-de]-1, 4-benzoxazin-6-yl]-1-naphthalenymethanone. This shall include WIN 55,212-2.
10. Dibenzopyrans or any compound containing a 11-hydroxy-delta 8-tetrahydrocannabinol structure with substitution on the 3-pentyl group. This shall include HU-210, HU-211, JWH 051 and JWH 133.
11. (Deleted by amendment).
12. (Deleted by amendment).
13. (Deleted by amendment).
14. Any other synthetic chemical compound that is a cannabinoid receptor type 1 agonist as demonstrated by binding studies and functional assays that is not listed in Schedules II, III, IV and V, not a Federal Food and Drug Administration-approved drug or not used within legitimate, approved medical research.
- ((vii) amended June 8, 2016, P.L.258, No.37)

(viii) Psychedelic phenethylamines, their analogues, congeners, homologues, isomers, salts and the salts of analogues, congeners, homologues and isomers as follows:

1. 2-(2,5-Dimethoxy-4-ethylphenyl) ethanamine (2C-E).
2. 2-(2,5-Dimethoxy-4-methylphenyl) ethanamine (2C-D).
3. 2-(4-Chloro-2,5-dimethoxyphenyl) ethanamine (2C-C).
4. 2-(4-Iodo-2,5-dimethoxyphenyl) ethanamine (2C-I).
5. 2-[4-(Ethylthio)-2,5-dimethoxyphenyl] ethanamine (2C-T-2).
6. 2-[4-(Isopropylthio)-2,5-dimethoxyphenyl] ethanamine (2C-T-4).
7. 2-(2,5-Dimethoxyphenyl) ethanamine (2C-H).
8. 2-(2,5-Dimethoxy-4-nitro-phenyl) ethanamine (2C-N).
9. 2-(2,5-Dimethoxy-4-(n)-propylphenyl) ethanamine (2C-P).
10. 2-(4-chloro-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl) ethanamine (25C-NBOMe).
11. 2-(4-iodo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl) ethanamine (25I-NBOMe).
12. 2-(4-bromo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl) ethanamine (25B-NBOMe).

((viii) amended June 8, 2016, P.L.258, No.37)

(2) Schedule II--In determining that a substance comes within this schedule, the secretary shall find: a high potential for abuse, currently accepted medical use in the United States, or currently accepted medical use with severe restrictions, and abuse may lead to severe psychic or physical dependence. The following controlled substances are included in this schedule:

(i) Any of the following substances, of any quantity, except those narcotics specifically excepted or 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, including hydrocodone, morphine and oxycodone.
2. Any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in subclause 1, except that these substances shall not include 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 shall not include decocainized coca leaves or extracts of coca leaves, which extracts do not contain cocaine or ecgonine.

((i) amended June 8, 2016, P.L.258, No.37)

(ii) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters and ethers, of any quantity, unless specifically excepted or listed in another schedule, whenever the existence of such 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-dimethylamino-4, 4-diphenyl butane.
13. Moramide-Intermediate, 2-methyl-3-morpholino-1, 1-diphenyl-propane-carboxylic acid.
14. Pethidine.
15. Pethidine-Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine.
16. Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate.
17. Pethidine-Intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid.
18. Phenazocine.
19. Piminodine.
20. Racemethorphan.
21. Racemorphan.
22. Carfentanil. (22. added Nov. 25, 2020, P.L.1190, No.117)

(iii) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances:

1. Amphetamine, its salts, optical isomers, and salts of its optical isomers.
2. Phenmetrazine and its salts.
3. Methylphenidate.
4. Methamphetamine including its salts, isomers and salts of isomers.
5. Lisdexamfetamine.

((iii) amended June 8, 2016, P.L.258, No.37)

(iv) The phrase "opiates" as used in section 4 of this act and elsewhere throughout the act shall not include the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts, but does include its racemic and levorotatory forms.

(v) Any material, compound, mixture, or preparation unless specifically excepted which contains any quantity of:

1. Phencyclidine.

((2) amended Nov. 26, 1978, P.L.1392, No.328)

(3) Schedule III--In determining that a substance comes within this schedule, the secretary shall find: a potential for abuse less than the substances listed in Schedules I and II; well documented and currently accepted medical use in the United States; and abuse may lead to moderate or low physical dependence or high psychological dependence. The following classes of controlled substances are included in this schedule:

(i) Any material, compound, mixture, or preparation unless specifically excepted or unless listed in another schedule which contains any quantity of the following substances:

1. Any substance which contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid.
2. Chorhexadol.
3. Glutethimide.
4. Lysergic acid.
5. Lysergic acid amide.
6. Methyprylon.
8. Sulfondiethylmethane.
9. Sulfonethylmethane.
10. Sulfonmethane.
11. Buprenorphine.

((i) amended June 8, 2016, P.L.258, No.37)

(ii) Nalorphine.

(iii) Any material, compound, mixture, or preparation containing limited quantities of the following narcotic drugs, or any salts thereof, unless specifically excepted or listed in other schedules:

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. (Deleted by amendment).
4. (Deleted by amendment).
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 milliliters or per 100 grams and not more than 2.5 milligrams per dosage unit with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

((iii) amended June 8, 2016, P.L.258, No.37)

(v) The secretary may by regulation except any compound, mixture, or preparation containing any drug or controlled substance listed in subclauses (i) and (ii) of this schedule above from the application of those provisions of this act covering controlled substances, if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a stimulant or depressant effect on the central nervous system: Provided, That such admixtures shall be included therein in such combinations, quantity, proportion, or concentration as to vitiate the potential for abuse of the substances which do have a stimulant or depressant effect on the central nervous system.

(vi) The secretary shall by regulation exempt any nonnarcotic substance from the control under this act if such substance may, under the provisions of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.), be lawfully sold over the counter without a prescription.

(vii) Anabolic steroid includes any material, compound, mixture or preparation that includes any of the following or any isomer, ester, salt or derivative of any of the following that acts in the same manner on the human body:

1. Chorionic gonadotropin, except when used for injection or implantation in cattle or any other nonhuman species and when that use is approved by the Federal Food and Drug Administration. ((1) amended Oct. 24, 2018, P.L.662, No.96)
2. Clostebol.
3. Dehydrochlormethyltestosterone.
4. Ethylestrenol.
5. Fluoxymesterone.
6. Mesterolone.
7. Metenolone.
8. Methandienone.
9. Methandrostenolone.
10. Methyltestosterone.
11. Nandrolone.
12. (Deleted by amendment).
13. Norethandrolone.
14. Oxandrolone.
15. Oxymesterone.
16. Oxymetholone.
17. Stanozolol.

18. Testosterone.

19. Testosterone-like related compounds.

Human Growth Hormone (HGH) shall not be included as an anabolic steroid under the provisions of this act. An anabolic steroid which is a combination of estrogen and anabolic steroid and which is expressly intended for administration to hormone-deficient women shall be exempt from the provisions of this act. A person who prescribes, dispenses or distributes an anabolic steroid which is a combination of estrogen and anabolic steroids and which is intended for administration to hormone-deficient women for use by persons who are not hormone-deficient women shall be considered to have prescribed, dispensed or distributed an anabolic steroid within the meaning of this subclause.

((vii) amended June 8, 2016, P.L.258, No.37)

(viii) Gamma hydroxybutyric acid, any salt, hydroxybutyric compound, derivative or preparation of gamma hydroxybutyric acid, including any isomers, esters and ethers and salts of isomers, esters and ethers of gamma hydroxybutyric acid, except gamma-butyrolactone (GBL), contained in a drug product for which an application has been approved under section 505 of the Federal Food, Drug, and Cosmetic Act.

(ix) Ketamine, any salt, ketamine compound, derivative or preparation of ketamine, including any isomers, esters and ethers and salts of isomers, esters and ethers of ketamine. ((ix) amended June 8, 2016, P.L.258, No.37)

((3) amended Nov. 24, 1999, P.L.894, No.55)

(4) Schedule IV--In determining that a substance comes within this schedule, the secretary shall find: a low potential for abuse relative to substances in Schedule III; currently accepted medical use in the United States; and limited physical and/or psychological dependence liability relative to the substances listed in Schedule III. The following controlled substances are included in this schedule:

(i) Any material, compound, mixture, or preparation, unless specifically excepted or unless listed in another schedule, which contains any quantity of the following substances:

1. Barbital.
2. Chloral betaine.
3. Chloral hydrate.
4. Ethchlorvynol.
5. Ethinamate.
6. Methohexital.
7. Meprobamate.
8. Methylphenobarbital.
9. Paraldehyde.
10. Petrichloral.
11. Phenobarbital.
12. Zopiclone.
13. Carisoprodol.
14. Tramadol.

((i) amended June 8, 2016, P.L.258, No.37)

(ii) The secretary may by regulation except any compound, mixture, or preparation containing any drug or controlled dangerous substance listed in subclause (i) of this schedule above from the application of those provisions of this act covering controlled drugs, if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a stimulant or depressant effect on the central nervous system: Provided, That such admixtures shall be included therein in such combinations, quantity, proportion, or concentration as to vitiate the potential for abuse of the substances which do have a stimulant or depressant effect on the central nervous system.

(iii) The secretary shall by regulation exempt any nonnarcotic substance from the control under this act if such substance may, under the provisions of the Federal Food, Drug, and Cosmetic Act (21

U.S.C. 301 et seq.), be lawfully sold over the counter without a prescription.

((4) amended Nov. 26, 1978, P.L.1392, No.328)

(5) Schedule V--In determining that a substance comes within this schedule, the secretary shall find: a low potential for abuse relative to the substances listed in Schedule IV; currently accepted medical use in the United States; and limited physical dependence and/or psychological dependence liability relative to the substances listed in Schedule IV. The following controlled substances are included in this schedule:

(i) Any compound, mixture, or preparation containing limited quantities of any of the following narcotics or any of their salts, which shall include one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation, valuable medicinal qualities other than those possessed by the narcotic alone:

1. Not more than 200 milligrams of codeine, or any of its salts, per 100 milliliter or per 100 grams and not more than 10 milligrams per dosage unit.

2. Not more than 100 milligrams of dihydrocodeine, or any of its salts, per 100 milliliters or per 100 grams and not more than 5 milligrams per dosage unit.

3. Not more than 100 milligrams of ethylmorphine, or any of its salts, per 100 milliliters or per 100 grams and not more than 5 milligrams per dosage unit.

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, or not more than 5 milligrams per dosage unit.

6. Pregabalin.

(ii) (Deleted by amendment).

((5) amended June 8, 2016, P.L.258, No.37)

(6) A drug product in a finished dosage formulation that contains 2--5-pentyl-1,3-benzenediol that has been approved by the Federal Food and Drug Administration pursuant to section 505 of the Federal Food, Drug and Cosmetic Act prior to the date of enactment shall not be subject to control under this act. ((6) added Nov. 25, 2020, P.L.1190, No.117)

Section 5. Exempt Controlled Substances, Other Drugs, Devices and Cosmetics. --(a) Except as set forth in the Schedules of Controlled Substances of section 4 of this act or otherwise provided herein, the secretary, after consultation with and upon the recommendation of the board, may, by regulation, exempt from the provisions of this act relating to controlled substances, other drugs, devices and cosmetics to such extent as he determines to be consistent with the public health.

Section 6. Registration. --(a) No person shall operate within this Commonwealth as a manufacturer, distributor or retailer of controlled substances, other drugs and devices nor sell, offer for sale nor solicit the purchase of controlled substances, other drugs and devices nor hold them for sale or resale until such person has registered under this act with the secretary. Such registration must be renewed annually in accordance with rules and regulations relating thereto.

(1) Any manufacturer or distributor not operating an establishment within this Commonwealth, but employing sales representatives or agents within this Commonwealth, shall either register as a manufacturer or distributor as the case may be, or file, in lieu of registration, with the secretary the names and addresses of such representatives and agents, and shall promptly inform the secretary of any changes in said list.

(2) Separate registration with the secretary shall be required annually for each place at which such person carries on activities as a manufacturer, distributor or retailer within this Commonwealth. The certificate evidencing such registration shall be conspicuously displayed and shall not be transferable.

(3) Registrations issued by the secretary or under the law preceding this act to manufacturers,

distributors or retailers shall continue to be valid for the period issued and, upon expiration, shall be renewed in the manner provided for renewal of registration issued pursuant to this section. Nothing contained herein shall be construed to require the registration hereunder of any practitioner registered or licensed by the appropriate State board, nor to require the separate registration of agents or employes of persons registered pursuant to the provisions of this section, or of sales representatives or agents of manufacturers or distributors not operating an establishment within this Commonwealth whose names and addresses are on file with the secretary: Provided, however, That all persons registered pursuant to this section, whether located within this Commonwealth or not, shall be deemed to have accepted and shall be subject to all provisions of this act.

(b) No person shall operate as a manufacturer of controlled substances or other drugs unless they are manufactured under the supervision of a registered pharmacist, chemist or other person possessing at least five years' experience in the manufacture of controlled substances, or other drugs or such other person approved by the secretary as qualified by scientific or technical training or experience to perform such duties of supervision as may be necessary to protect the public health and safety.

(c) Each application for registration as a manufacturer, distributor or retailer shall be accompanied by a fee to be set by the secretary. Applications shall be on forms prescribed by the secretary. Registration shall be renewed annually and applications therefor shall be accompanied by the same fee as for initial applications.

(d) Initial registration shall become effective at noon on the sixtieth day after application therefor is filed: Provided, however, That the secretary shall have authority to issue a registration or to issue an order denying such registration pursuant to subsection (e) hereof at any time prior to the expiration of such sixty-day period. Renewal of registration shall be effective upon certification by the secretary that the applicant has met all requirements for such renewal.

(e) The secretary may refuse the initial registration and may, after notice and hearing pursuant to the Administrative Agency Law, suspend registration (i) of any person who has made material false representation in the application for registration; (ii) of any manufacturer or distributor who has been convicted of a violation of any law of this Commonwealth or of the United States relating to controlled substances, if such refusal shall be necessary for the protection of the public health and safety; (iii) of any manufacturer or distributor who knowingly employs in a capacity directly connected with the preparation, handling or sale of controlled substances, any person convicted of a violation of the laws of this Commonwealth or of the United States relating to the sale, use or possession of controlled substances, if such refusal shall be necessary for the protection of the public health and safety.

(f) If the secretary takes any action refusing registration or revoking or suspending registration under subsections (e) and (f), the aggrieved party may, within fifteen days after the date upon which a copy of the order is delivered to the address indicated on the application or the registration whichever is applicable, petition the board for review. The board shall, within thirty days, grant a hearing and, as soon thereafter as practicable, adopt, modify or reject the action of the secretary. Any action by the board shall be deemed an adjudication to which the provisions of the Administrative Agency Law, as amended, shall be applicable.

(g) The following persons need not register and may lawfully possess controlled substances under this act:

- (1) an agent or employe of any registered manufacturer, distributor, dispenser or any person listed in lieu of registration with the secretary if he is acting in the usual course of his business or employment;
- (2) a common or contract carrier or warehouseman, or an employe thereof, whose possession of any controlled substance is in the usual course of business or employment;
- (3) an ultimate user or a person in possession of any controlled substance pursuant to a lawful order of a practitioner or in lawful possession of a Schedule V substance.

Section 7. Adulteration. --A controlled substance, other drug, device or cosmetic shall be deemed to

be adulterated:

(1) (i) If it consists, in whole or in part, of any filthy, putrid or decomposed substance; (ii) if it has been prepared, packed or held under unsanitary conditions whereby it may have been contaminated with filth, or whereby it may have been rendered injurious to health; (iii) and if it is a drug or a device its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health; (iv) if it has been exposed to conditions of fire, water or extreme temperature, which may have rendered it injurious to health; (v) if (A) it bears or contains for purposes of coloring only a color additive, unless it be a hair dye which is unsafe within the meaning of section 9 of this act, or (B) it is a color additive the intended use of which in or on drugs, devices or cosmetics is for purposes of coloring only and is unsafe, unless it be a hair dye within the meaning of section 9 of this act.

(2) If it purports to be or is represented as a drug or device, the name of which is recognized in an official compendium and its strength differs from or its quality or purity falls below the standards set forth in such compendium. Such determination as to strength, quality or purity, shall be made in accordance with the tests or methods of assay set forth in such compendium, or in the absence of or inadequacy of such tests or methods of assay those prescribed under the authority of the Federal act. No drug or device defined in an official compendium shall be deemed to be adulterated under this subsection because it differs from the standard of strength, quality or purity therefor set forth in such compendium, if its difference in strength, quality or purity from such standard is plainly stated on its label.

(3) If it is a color additive and is to be used or is recommended for use as a hair dye and it is not exempt under section 9 unless its label bears the following legend conspicuously displayed thereon: "Caution. This product contains ingredients which may cause skin irritation on certain individuals and a preliminary test according to accompanying directions should first be made. This product must not be used for dyeing the eyelashes or eyebrows, to do so may cause blindness," and the labeling bears adequate directions for such preliminary testing. For the purpose of this paragraph, the term "hair dye" shall not include eyelash dyes or eyebrow dyes.

(4) If it is not subject to the provisions of clause (2) of this section and its strength differs from or its purity or quality falls below that which it purports or is represented to possess.

(5) If it is a drug or device and any substance has been (i) mixed or packed therewith so as to reduce its quality or strength, or (ii) substituted wholly or in part therefor.

Section 8. Misbranding. --A controlled substance, other drug or device or cosmetic shall be deemed to be misbranded:

(1) If its labeling is false or misleading in any particular.

(2) If in package form unless it bears a label containing (i) the name and place of business of the manufacturer, packer or distributor, and (ii) an accurate statement of the quantity of the contents in terms of weight measure or numerical count: Provided, That under subclause (ii) of this clause, reasonable variations shall be permitted and exemptions as to small packages shall be established by regulations.

(3) If any word, statement or other information required by or under authority of this act to appear on the label, or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs or devices in the labeling), and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

(4) If it is for use by man and is a controlled substance designated by Federal law as habit-forming, unless its label bears the statement "Warning. May Be Habit-Forming."

(5) If it is a drug and is not designated solely by a name recognized in an official compendium, unless its label bears (i) the common or usual name of the drug, if such there be, and (ii) in case it is fabricated

from two or more ingredients, the common or usual name of each active ingredient including the kind and quantity or proportion of any alcohol and also including whether active or not, the name and quantity or proportion of any bromides, ether, chloroform, acetanilid, acetphenetidin, amidopyrine, antipyrine, atropine, hyoscyne, hyoscyamine, arsenic, digitalis glycosides, mercury, ouabain, strophanthin, strychnine, thyroid or any derivative or preparation of any such substances contained therein: Provided, That to the extent that compliance with the requirements of subclause (ii) of this clause is impracticable, exemptions shall be established by regulations.

(6) Unless its labeling bears (i) adequate directions for use, and (ii) such adequate warnings against use in those pathological conditions or by children where its use may be dangerous to health or against unsafe dosage or methods or duration of administration or application in such manner and form as are necessary for the protection of users: Provided, That where any requirement of subclause (i) of this clause as applied to any drug, device or cosmetic is not necessary for the protection of the public health, regulations shall be promulgated exempting such drug, device or cosmetic from such requirements.

(7) If it purports to be a drug or device the name of which is recognized in an official compendium, unless it is packaged and labeled as prescribed therein: Provided, That the method of packaging may be modified with a consent of the secretary.

(8) If it has been found by the secretary to be a drug, device or cosmetic liable to deterioration unless it is packaged in such form and manner and its label bears a statement specifying such precautions against deterioration as the secretary shall by regulation require as necessary for the protection of public health.

(9) If it is offered for sale or sold under the name of another drug, device or cosmetic or brand of drug, device or cosmetic, or if it is manufactured, packaged, labeled or sold in such manner as to give rise to a reasonable probability that the purchaser will be led to believe he is purchasing such drug, device or cosmetic as another drug, device or cosmetic or as the product of another manufacturer.

(10) If it is dangerous to health when used in the dosage or with the frequency or duration prescribed, recommended or suggested in the labeling thereof.

(11) If it is a drug, device or cosmetic and its container is so made, formed or filled as to be misleading.

(12) If it is a controlled substance, its commercial container must bear a label containing an identifying symbol for such substance in accordance with Federal regulations.

Section 9. Color Additives. --A color additive shall be deemed unsafe unless there is in effect with respect to such additive a regulation issued pursuant to the Federal act permitting such use and unless such additive and use thereof conforms in all respects to the requirements of the Federal act and regulations issued pursuant thereto.

Section 10. New Drugs. --No person shall sell, deliver, offer for sale, hold for sale, or give away, any new drug unless (i) an application with respect thereto has been approved or a notice of claimed investigational exemption for a new drug has been filed under the appropriate Federal act.

Section 11. Professional Prescription, Administration, and Dispensing. --(a) Except when dispensed or administered directly to the patient by a practitioner or his authorized agent, other than a pharmacist, to an ultimate user, no controlled substance in Schedule II shall be dispensed without an electronic prescription of a practitioner, except in situations, as prescribed by the secretary by regulation. No prescription for a controlled substance in Schedule II may be refilled. All electronic prescription applications shall meet the requirements outlined in 21 CFR § 1311.120 (relating to electronic prescription application requirements). The electronic prescription requirement under this subsection shall not apply if the prescription is issued:

- (1) by a veterinarian;
- (2) under circumstances when an electronic prescription is not available to be issued or received due to a temporary technological or electrical failure, and, in the instance of a temporary technological failure, a practitioner shall, within seventy-two hours, seek to correct any cause for the failure that is reasonably within his or her control;
- (3) by a practitioner and dispensed by a pharmacy located outside this Commonwealth;
- (4) by a practitioner who or health care facility that does not have either of the following:
 - (i) Internet access; or
 - (ii) an electronic health record system;
- (5) by a practitioner treating a patient in an emergency department or a health care facility under circumstances when the practitioner reasonably determines that electronically prescribing a controlled substance would be impractical for the patient to obtain the controlled substance prescribed by electronic prescription or would cause an untimely delay resulting in an adverse impact on the patient's medical condition;
- (6) for a patient enrolled in a hospice program or for a patient residing in a nursing home or residential health care facility;
- (7) for controlled substance compounded prescriptions and prescriptions containing certain elements required by the Federal Food and Drug Administration or any other governmental agency that are not able to be accomplished with electronic prescribing;
- (8) pursuant to an established and valid collaborative practice agreement between a practitioner and a pharmacist, a standing order or a drug research protocol;
- (9) in an emergency situation pursuant to Federal or State law and regulations of the department;
- (10) under circumstances where the pharmacy that receives the prescription is not set up to process electronic prescriptions; or
- (11) for controlled substances that are not required to be reported to the Prescription Drug Monitoring Program system administered by the department.

((a) amended Oct. 24, 2018, P.L.662, No.96)

(b) Except when dispensed directly by a practitioner, other than a pharmacist, to an ultimate user, no controlled substance in Schedule III, IV or V shall be dispensed without an electronic prescription of a practitioner, except in situations, as prescribed by the secretary by regulation. Such prescriptions shall not be filled or refilled more than six months after the date thereof or be refilled more than five times after the date of the prescription unless renewed by the practitioner. All electronic prescription applications shall meet the requirements outlined in 21 CFR § 1311.120. The electronic prescription requirement under this subsection shall not apply if the prescription is issued:

- (1) by a veterinarian;
- (2) under circumstances when an electronic prescription is not available due to a temporary technological or electrical failure;
- (3) by a practitioner and dispensed by a pharmacy located outside this Commonwealth;
- (4) by a practitioner who or health care facility that does not have either of the following:
 - (i) Internet access; or
 - (ii) an electronic health record system;
- (5) by a practitioner treating a patient in an emergency department or a health care facility under circumstances when the practitioner reasonably determines that electronically prescribing a controlled substance would be impractical for the patient to obtain the controlled substance prescribed by electronic prescription or would cause an untimely delay resulting in an adverse impact on the patient's medical condition;
- (6) for a patient enrolled in a hospice program or for a patient residing in a nursing home or residential health care facility;
- (7) for controlled substance compounded prescriptions and prescriptions containing certain elements

required by the Federal Food and Drug Administration or any other governmental agency that are not able to be accomplished with electronic prescribing;

(8) for a prescription issued pursuant to an established and valid collaborative practice agreement between a practitioner and a pharmacist, a standing order or a drug research protocol;

(9) for a prescription issued in an emergency situation pursuant to Federal or State law and regulations of the board;

(10) under circumstances where the pharmacy that receives the prescription is not set up to process electronic prescriptions; or

(11) for controlled substances that are not required to be reported to the Prescription Drug Monitoring Program system administered by the department.

((b) amended Oct. 24, 2018, P.L.662, No.96)

(b.1) (1) A practitioner, pharmacy or health care facility that does not meet an exception to the electronic prescribing requirements under subsection (a) or (b) and is unable to timely comply with the electronic prescribing requirements may petition the department for an exemption from the requirements based upon economic hardship, technical limitations or exceptional circumstances.

(2) The department shall adopt rules establishing the form and specific information to be included in a request for an exemption.

(3) The department may approve an exemption for a period of time determined by the department not to exceed one year from the date of approval and may be renewed annually upon request subject to department approval.

(4) The department may grant additional exemptions beyond the exemptions provided for in subsections (a) and (b), subject to the act of June 25, 1982 (P.L.633, No.181), known as the "Regulatory Review Act."

((b.1) added Oct. 24, 2018, P.L.662, No.96)

(b.2) A prescription generated on an electronic system and printed or transmitted via facsimile is not an electronic prescription. ((b.2) added Oct. 24, 2018, P.L.662, No.96)

(b.3) (1) A pharmacist who receives a written, oral or faxed prescription shall not be required to verify that the prescription properly falls under one of the exceptions provided in subsections (a) and (b) from the requirement to electronically prescribe. A pharmacist may continue to dispense medications from the otherwise valid written, oral or faxed prescriptions that are consistent with current laws and regulations.

(2) If a pharmacist has a reasonable belief that a patient may be seeking a monitored prescription drug for a purpose other than the treatment of an existing medical condition, the pharmacist shall have the responsibility described in 21 CFR § 1306.04 (relating to purpose of issue of prescription).

(3) A practitioner shall be subject to the responsibilities described in 21 CFR § 1311.102 (relating to practitioner responsibilities).

((b.3) added Oct. 24, 2018, P.L.662, No.96)

(b.4) The department shall require the prescription origin to be submitted by dispensers under the authority of the department in compliance with the act of October 27, 2014 (P.L.2911, No.191), known as the "Achieving Better Care by Monitoring All Prescriptions Program (ABC-MAP) Act."

((b.4) added Oct. 24, 2018, P.L.662, No.96)

(b.5) A practitioner who violates subsection (a) or (b) is subject to an administrative penalty of one hundred dollars (\$100) for the first through tenth violations and two hundred and fifty dollars (\$250) for each subsequent violation after the tenth violation, up to a maximum of five thousand dollars (\$5,000) per calendar year. Violations shall reset and shall not carry over to subsequent calendar years. The assessment of an administrative penalty pursuant to this subsection by the department to a practitioner alleged to have violated subsection (a) or (b) shall not be reported by the department to the practitioner's appropriate licensing board and shall not be considered a disciplinary action or need to be reported by the practitioner as a violation to the practitioner's appropriate licensing board. A

practitioner may appeal the assessment of an administrative penalty pursuant to 2 Pa.C.S. (relating to administrative law and procedure). ((b.5) added Oct. 24, 2018, P.L.662, No.96)

(b.6) The department, within one hundred eighty days of the effective date of this subsection, shall promulgate regulations necessary to implement the requirements of this act. ((b.6) added Oct. 24, 2018, P.L.662, No.96)

(c) No controlled substance in Schedule V may be distributed or dispensed for other than a medicinal purpose.

(d) A practitioner may prescribe, administer, or dispense a controlled substance or other drug or device only (i) in good faith in the course of his professional practice, (ii) within the scope of the patient relationship, and (iii) in accordance with treatment principles accepted by a responsible segment of the medical profession. A practitioner may cause a controlled substance, other drug or device or drug to be administered by a professional assistant under his direction and supervision.

(d.1) A practitioner shall not prescribe, administer or dispense any anabolic steroid for the purpose of enhancing a person's performance in an exercise, sport or game. A practitioner may not prescribe, administer or dispense any anabolic steroid for the purpose of hormonal manipulation intended to increase muscle mass, strength or weight except when medically necessary. ((d.1) added Dec. 22, 1989 P.L.750, No.104)

(e) A veterinarian may prescribe, administer, or dispense a controlled substance, other drug or device only (i) in good faith in the course of his professional practice, and (ii) not for use by a human being. He may cause a controlled substance, other drug or device to be administered by a professional assistant under his direction and supervision.

(f) Any drug or device dispensed by a pharmacist pursuant to a prescription order shall bear a label showing (i) the name and address of the pharmacy and any registration number obtained pursuant to any applicable Federal laws, (ii) the name of the patient, or, if the patient is an animal, the name of the owner of the animal and the species of the animal, (iii) the name of the practitioner by whom the prescription order was written, and (iv) the serial number and date of filing of the prescription order. In addition, the following statement shall be required on the label of a controlled substance: "Transfer of this drug to anyone other than the patient for whom it was prescribed is illegal." ((f) amended July 2, 1993, P.L.377, No.53)

Section 12. Records of Distribution of Controlled Substances. --(a) Every person who sells or otherwise distributes controlled substances, shall keep records of all purchases or other receipt and sales or other distribution of such substances for two years from the date of purchase or sale. Such records shall include the name and address of the person from whom purchased or otherwise received or to whom sold or otherwise distributed, the date of purchase or receipt or sale or distribution, and the quantity involved: Provided, however, That this subsection shall not apply to a practitioner who dispenses controlled substances to his patients, unless the practitioner is regularly engaged in charging his patients, whether separately or together with charges for other professional services, for substances so dispensed.

(b) Every practitioner licensed by law to administer, dispense or distribute controlled substances shall keep a record of all such substances administered, dispensed or distributed by him, showing the amount administered, dispensed or distributed, the date, the name and address of the patient, and in the case of a veterinarian, the name and address of the owners of the animal to whom such substances are dispensed or distributed. Such record shall be kept for two years from the date of administering, dispensing or distributing such substance and shall be open for inspection by the proper authorities.

(c) Persons registered or licensed to manufacture or distribute or dispense a controlled substance, other drug or device under this act shall keep records and maintain inventories in conformity with the record-keeping, order form and inventory requirements of Federal law and with any additional regulations the secretary issues. Controlled substances in Schedules I and II shall be distributed by a

registrant to another registrant only pursuant to an order form.

Section 13. Prohibited Acts; Penalties. --(a) The following acts and the causing thereof within the Commonwealth are hereby prohibited:

- (1) The manufacture, sale or delivery, holding, offering for sale, or possession of any controlled substance, other drug, device or cosmetic that is adulterated or misbranded.
- (2) The adulteration or misbranding of any controlled substance, other drug, device or cosmetic.
- (3) The dissemination or publication of any false or materially misleading advertisement.
- (4) The removal or disposal of a detained or embargoed substance or article, whether or not such substance or article is in fact adulterated or misbranded.
- (5) The adulteration, mutilation, destruction, obliteration or removal of the whole or any part of the labeling of, or the doing of any other act with respect to a controlled substance, other drug, device or cosmetic, if such act is done while such substance or article is held for sale and results in such substance or article being adulterated or misbranded.
- (6) Forging, counterfeiting, simulating or falsely representing, or without proper authority using any mark, stamp, tag, label or other identification symbol authorized or required by regulation promulgated under the provisions of this act.
- (7) Placing or causing to be placed upon any controlled substance, other drug, device or cosmetic, or upon the container of any controlled substance, other drug, device or cosmetic, with intent to defraud, the trademark, trade name or other identifying mark, imprint or symbol of another, or any likeness of any of the foregoing.
- (8) Selling, dispensing, disposing of or causing to be sold, dispensed or disposed of, or keeping in possession, control or custody, or concealing any controlled substance, other drug, device or cosmetic or any container of any drug, device or cosmetic with knowledge that the trademark, trade name or other identifying mark, imprint or symbol of another, or any likeness of any of the foregoing, has been placed thereon in a manner prohibited by clause (7) hereof.
- (9) Making, selling, disposing of or causing to be made, sold, or disposed of, or keeping in possession, control or custody, or concealing with intent to defraud, any punch, die, plate, stone or other thing designed to print, imprint or reproduce the trademark, trade name or other identifying mark, imprint or symbol of another or any likeness of any of the foregoing upon any controlled substance, other drug, device or cosmetic or container thereof.
- (10) The sale at retail of a nonproprietary drug except by a registered pharmacist in a licensed pharmacy or by a practitioner.
- (11) The operation of a drug manufacturing, distributing or retailing establishment, except by registered pharmacists in a licensed pharmacy, without conforming with such standards respecting sanitation, materials, equipment and supplies as the secretary, after consultation with the board, may establish by regulation for the protection of the public health and safety.
- (12) The acquisition or obtaining of possession of a controlled substance by misrepresentation, fraud, forgery, deception or subterfuge.
- (13) The sale, dispensing, distribution, prescription or gift by any practitioner otherwise authorized by law so to do of any controlled substance to any person known to such practitioner to be or whom such practitioner has reason to know is a drug dependent person, unless said drug is prescribed, administered, dispensed or given, for the cure or treatment of some malady other than drug dependency, except that the council, in accordance with Federal narcotic and food and drug laws, shall allocate the responsibility for approving and designating certain clinics, and shall provide or allocate the responsibility for providing regulations for such clinics at which controlled substances, including but not limited to methadone, may be prescribed, administered or dispensed for the treatment of drug dependency. This clause shall not prohibit any practitioner from prescribing, distributing or dispensing any controlled substance for a period of time not to exceed fourteen days

pending confirmed admission of the patient to a hospital or rehabilitation center.

(14) The administration, dispensing, delivery, gift or prescription of any controlled substance by any practitioner or professional assistant under the practitioner's direction and supervision unless done (i) in good faith in the course of his professional practice; (ii) within the scope of the patient relationship; (iii) in accordance with treatment principles accepted by a responsible segment of the medical profession.

(15) The sale at retail or dispensing of any controlled substance listed in Schedules II, III and IV to any person, except to one authorized by law to sell, dispense, prescribe or possess such substances, unless upon the written or oral prescription of a person licensed by law to prescribe such drug and unless compounded or dispensed by a registered pharmacist or pharmacy intern under the immediate personal supervision of a registered pharmacist, or the refilling of a written or oral prescription order for a drug, unless such refilling is authorized by the prescriber either in the original written prescription order or by written confirmation of the original oral prescription order. The provisions of this subsection shall not apply to a practitioner licensed to prescribe or dispense such drugs, who keeps a record of the amount of such drugs purchased and a dispensing record showing the date, name, and quantity of the drug dispensed and the name and address of the patient, as required by this act.

(16) Knowingly or intentionally possessing a controlled or counterfeit substance by a person not registered under this act, or a practitioner not registered or licensed by the appropriate State board, unless the substance was obtained directly from, or pursuant to, a valid prescription order or order of a practitioner, or except as otherwise authorized by this act.

(17) The willful dispensing of a controlled substance by a practitioner otherwise authorized by law so to do without affixing to the container in which the drug is sold or dispensed a label bearing the name and address of the practitioner, the date dispensed, the name of the patient and the directions for the use of the drug by the patient.

(18) The selling by a pharmacy or distributor of any controlled substance or other drug unless the container bears a label, securely attached thereto, stating the specific name of the drug and the proportion or amount thereof unless otherwise specifically directed in writing by the practitioner.

(19) The intentional purchase or knowing receipt in commerce by any person of any controlled substance, other drug or device from any person not authorized by law to sell, distribute, dispense or otherwise deal in such controlled substance, other drug or device.

(20) The using by any person to his own advantage, or revealing other than to the secretary or officers or employees of the department or to the council or to the board or to courts or a hearing examiner when relevant to proceedings under this act any information acquired under authority of this act concerning any method or process which as a trade secret is entitled to protection. Such information obtained under the authority of this act shall not be admitted in evidence in any proceeding before any court of the Commonwealth except in proceedings under this act.

(21) The refusal or failure to make, keep or furnish any record, notification, order form, statement, invoice or information required under this act.

(22) The refusal of entry into any premises for any inspection authorized by this act.

(23) The unauthorized removing, breaking, injuring, or defacing a seal placed upon embargoed substances or the removal or disposal of substances so placed under seal.

(24) The failure by a manufacturer or distributor to register or obtain a license as required by this act.

(25) The manufacture of a controlled substance by a registrant who knows or who has reason to know, the manufacturing is not authorized by his registration, or who knowingly distributes a controlled substance not authorized by his registration to another registrant or other authorized person.

(26) The knowing distribution by a registrant of a controlled substance classified in Schedules I or II, except pursuant to an order form as required by this act.

(27) The use in the course of the manufacture or distribution of a controlled substance of a registration

number which is fictitious, revoked, suspended, or issued to another person.

(28) The furnishing of false or fraudulent material information in, or omission of any material information from any application, report, or other document required to be kept or filed under this act, or any record required to be kept by this act.

(29) The intentional making, distributing, or possessing of any punch, die, plate, stone, or other thing designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or symbol of another or any likeness of any of the foregoing upon any drug or container or labeling thereof so as to render the drug a counterfeit substance.

(30) Except as authorized by this act, the manufacture, delivery, or possession with intent to manufacture or deliver, a controlled substance by a person not registered under this act, or a practitioner not registered or licensed by the appropriate State board, or knowingly creating, delivering or possessing with intent to deliver, a counterfeit controlled substance.

(31) Notwithstanding other subsections of this section, (i) the possession of a small amount of marihuana only for personal use; (ii) the possession of a small amount of marihuana with the intent to distribute it but not to sell it; or (iii) the distribution of a small amount of marihuana but not for sale.

For purposes of this subsection, thirty (30) grams of marihuana or eight (8) grams of hashish shall be considered a small amount of marihuana.

(32) The use of, or possession with intent to use, drug paraphernalia for the purpose of planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packing, repacking, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a controlled substance in violation of this act.

(33) The delivery of, possession with intent to deliver, or manufacture with intent to deliver, drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it would be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled substance in violation of this act.

(34) The placing in any newspaper, magazine, handbill or other publication or by written or electronic means, including electronic mail, Internet, facsimile and similar transmission, any advertisement, knowing, or under circumstances where one reasonably should know, that the purpose of the advertisement, in whole or in part is to promote the sale of objects designed or intended for use as drug paraphernalia. ((34) amended Nov. 24, 1999, P.L.894, No.55)

(35) (i) Except as otherwise provided by law, manufacturing, processing, packaging, distributing, possessing with intent to distribute or selling a noncontrolled substance that has a stimulant or depressant effect on humans, other than a prescription drug, which, or the label or container of which, substantially resembles a specific controlled substance. In determining whether there has been a violation of this subclause, the following factors shall be considered:

(A) Whether the noncontrolled substance in its overall finished dosage appearance is substantially similar in size, shape, color and markings or lack thereof to a specific controlled substance.

(B) Whether the noncontrolled substance in its finished dosage form is packaged in a container which, or the labeling of which, bears markings or printed material substantially similar to that accompanying or containing a specific controlled substance.

(ii) Except as otherwise provided by law, no person shall knowingly distribute or sell a noncontrolled substance upon the express or implied representation that the substance is a controlled substance. In determining whether there has been a violation of this subclause, the following factors shall be considered:

(A) Whether the noncontrolled substance in its overall finished dosage appearance is substantially similar in size, shape, color and markings or lack thereof to a specific controlled substance.

(B) Whether the noncontrolled substance in its finished dosage form is packaged in a container which, or the labeling of which, bears markings or printed material substantially similar to that accompanying or containing a specific controlled substance.

(C) Whether the noncontrolled substance is packaged in a manner ordinarily used for the illegal delivery of a controlled substance.

(D) Whether the consideration tendered in exchange for the noncontrolled substance substantially exceeds the reasonable value of the substance, considering the actual chemical composition of the substance and, where applicable, the price at which over-the-counter substances of like chemical composition sell.

(E) Whether the consideration tendered in exchange for the noncontrolled substance approximates or exceeds the price at which the substance would sell upon illegal delivery were it actually the specific controlled substance it physically resembles.

(iii) Except as otherwise provided by law, no person shall knowingly distribute or sell a noncontrolled substance upon the express representation that the recipient, in turn, will be able to distribute or sell the substance as a controlled substance.

(iv) In any criminal prosecution brought under this clause, it shall not be a defense that the defendant believed the noncontrolled substance actually to be a controlled substance.

(v) The provisions of this clause shall not be applicable to:

(A) Law enforcement officers acting in the course and legitimate scope of their employment.

(B) Persons who manufacture, process, package, distribute or sell noncontrolled substances to licensed medical practitioners for use as placebos in the course of professional practice or research or for use in FDA approved investigational new drug trials.

(C) Licensed medical practitioners, pharmacists and other persons authorized to dispense or administer controlled substances and acting in the legitimate performance of their professional license pursuant to subclause (v)(B).

(D) A noncontrolled substance that was initially introduced into commerce prior to the initial introduction into commerce of the controlled substance which it is alleged to imitate.

(36) The knowing or intentional manufacture, distribution, possession with intent to distribute, or possession of a designer drug. Nothing in this section shall be construed to apply to a person who manufactures or distributes a substance in conformance with the provisions of an approved new drug application or an exemption for investigational use within the meaning of section 505 of the Federal Food, Drug and Cosmetic Act (21 U.S.C. § 355). For purposes of this section, no new drug shall be introduced or delivered for introduction except upon approval of an application pursuant to section 505 of the Federal Food, Drug and Cosmetic Act. ((36) amended Feb. 11, 2000, P.L.9, No.3)

(37) The possession by any person, other than a registrant, of more than thirty doses labeled as a dispensed prescription or more than three trade packages of any anabolic steroids listed in section 4(3)(vii). ((37) added Dec. 22, 1989, P.L.750, No.104)

(38) The unlawful manufacture of methamphetamine or phencyclidine or their salts, isomers and salts of isomers, whenever the existence of such salts, isomers or salts of isomers is possible within the specific chemical designation:

(i) in a structure where any child under 18 years of age is present; or

(ii) where the manufacturing of methamphetamine or phencyclidine causes any child under 18 years of age to suffer bodily injury.

((38) added Nov. 19, 2004, P.L.846, No.108)

(39) The knowing possession of ephedrine, pseudoephedrine or phenylpropanolamine, or any of their salts, optical isomers or salts of optical isomers with the intent to manufacture methamphetamine.

((39) added Feb. 17, 2010, P.L.137, No.8, and amended April 29, 2010, P.L.182, No.21)

(40) (Reserved). ((40) amended July 9, 2013, P.L.359, No.53)

(b) Any person who violates any of the provisions of clauses (1) through (11), (13) and (15) through

(20) or (37) of subsection (a) shall be guilty of a misdemeanor, and except for clauses (4), (6), (7), (8), (9) and (19) shall, on conviction thereof, be sentenced to imprisonment not exceeding one year or to pay a fine not exceeding five thousand dollars (\$5,000), or both, and for clauses (4), (6), (7), (8), (9) and (19) shall, on conviction thereof, be sentenced to imprisonment not exceeding three years or to pay a fine not exceeding five thousand dollars (\$5,000), or both; but, if the violation is committed after a prior conviction of such person for a violation of this act under this section has become final, such person shall be sentenced to imprisonment not exceeding three years or to pay a fine not exceeding twenty-five thousand dollars (\$25,000), or both. ((b) amended Dec. 22, 1989, P.L.750, No.104)

(c) Any person who violates the provisions of clauses (21), (22), (24) and (39) of subsection (a) shall be guilty of a misdemeanor, and shall, on conviction thereof, be punished only as follows:

(1) Upon conviction of the first such offense, he shall be sentenced to imprisonment not exceeding six months, or to pay a fine not exceeding ten thousand dollars (\$10,000), or both.

(2) Upon conviction of the second and subsequent offense, he shall be sentenced to imprisonment not exceeding two years, or to pay a fine not exceeding twenty-five thousand dollars (\$25,000), or both.

((c) amended July 9, 2013, P.L.359, No.53)

(d) Any person who knowingly or intentionally violates clause (23) of subsection (a) is guilty of a misdemeanor and upon conviction thereof shall be sentenced to imprisonment not exceeding three years, or to pay a fine not exceeding fifteen thousand dollars (\$15,000), or both.

(e) Any person who violates clauses (25) through (29) of subsection (a) is guilty of a misdemeanor and upon conviction shall be sentenced to imprisonment not exceeding three years, or to pay a fine not exceeding twenty-five thousand dollars (\$25,000), or both.

(f) Any person who violates clause (12), (14) or (30) of subsection (a) with respect to:

(1) A controlled substance or counterfeit substance classified in Schedule I or II which is a narcotic drug, is guilty of a felony and upon conviction thereof shall be sentenced to imprisonment not exceeding fifteen years, or to pay a fine not exceeding two hundred fifty thousand dollars (\$250,000), or both or such larger amount as is sufficient to exhaust the assets utilized in and the profits obtained from the illegal activity.

(1.1) Phencyclidine; methamphetamine, including its salts, isomers and salts of isomers; coca leaves and any salt, compound, derivative or preparation of coca leaves; any salt, compound, derivative or preparation of the preceding which is chemically equivalent or identical with any of these substances, except decocainized coca leaves or extracts of coca leaves, which extracts do not contain cocaine or ecgonine; and marihuana in a quantity in excess of one thousand (1,000) pounds, is guilty of a felony and upon conviction thereof shall be sentenced to imprisonment not exceeding ten years, or to pay a fine not exceeding one hundred thousand dollars (\$100,000), or both, or such larger amount as is sufficient to exhaust the assets utilized in and the profits obtained from the illegal manufacture or distribution of these substances.

(2) Any other controlled substance or counterfeit substance classified in Schedule I, II, or III, is guilty of a felony and upon conviction thereof shall be sentenced to imprisonment not exceeding five years, or to pay a fine not exceeding fifteen thousand dollars (\$15,000), or both.

(3) A controlled substance or counterfeit substance classified in Schedule IV, is guilty of a felony and upon conviction thereof shall be sentenced to imprisonment not exceeding three years, or to pay a fine not exceeding ten thousand dollars (\$10,000), or both.

(4) A controlled substance or counterfeit substance classified in Schedule V, is guilty of a misdemeanor and upon conviction thereof shall be sentenced to imprisonment not exceeding one year, or to pay a fine not exceeding five thousand dollars (\$5,000), or both.

(g) Any person who violates clause (31) of subsection (a) is guilty of a misdemeanor and upon conviction thereof shall be sentenced to imprisonment not exceeding thirty days, or to pay a fine not

exceeding five hundred dollars (\$500), or both.

(h) Any penalty imposed for violation of this act shall be in addition to, and not in lieu of, any civil or administrative penalty or sanction authorized by law.

(i) Any person who violates clauses (32), (33) and (34) of subsection (a) is guilty of a misdemeanor and upon conviction thereof shall be sentenced to pay a fine not exceeding two thousand five hundred dollars (\$2,500) or to imprisonment not exceeding one (1) year, or both. Any person who violates clause (33) by delivering drug paraphernalia to a person under eighteen (18) years of age who is three (3) or more years his junior shall be guilty of a misdemeanor of the second degree and upon conviction thereof shall be sentenced to pay a fine not exceeding five thousand dollars (\$5,000) or to imprisonment not exceeding two (2) years, or both.

(j) Any person who violates any provisions of subclause (i) or (ii) or (iii) of clause (35) of subsection (a) is guilty of a felony, and upon conviction thereof shall be sentenced to imprisonment not exceeding five years, or to pay a fine not exceeding ten thousand dollars (\$10,000), or both.

(k) Any person convicted of manufacture of amphetamine, its salts, optical isomers and salts of its optical isomers; methamphetamine, its salts, isomers and salts of isomers; or phenylacetone and phenyl-2-propanone shall be sentenced to at least two years of total confinement without probation, parole or work release, notwithstanding any other provision of this act or other statute to the contrary.

((k) amended July 3, 1985, P.L.138, No.39)

(l) Any person who violates clause (36) is guilty of a felony and upon conviction thereof shall be sentenced to imprisonment not exceeding fifteen years or to pay a fine not exceeding two hundred fifty thousand dollars (\$250,000), or both. ((l) added Dec. 11, 1986, P.L.1488, No.154)

(m) ((m) repealed June 28, 1993, P.L.137, No.33, July 2, 1993, P.L.408, No.58 and Feb. 10, 1994, P.L.20, No.3)

(n) Any person who violates subsection (a)(12), (14), (16), (30) or (34) with respect to gamma hydroxybutyric acid, any salt, compound derivative or preparation of gamma hydroxybutyric acid, including any isomers, esters and ethers and salts of isomers, or esters and ethers of gamma hydroxybutyric acid, except gamma-butyrolactone (GBL), whenever the existence of such isomers, esters, ethers or salts is possible within the specific chemical designation, is guilty of a felony and upon conviction thereof shall be sentenced to imprisonment not exceeding fifteen years, or to pay a fine not exceeding two hundred fifty thousand dollars (\$250,000), or both, or such larger amount as is sufficient to exhaust the assets utilized in and the profits obtained from the illegal activity. ((n) added Nov. 24, 1999, P.L.894, No.55)

(o) Any person who violates subsection (a)(12), (14) or (30) with respect to 3,4-methylenedioxyamphetamine (MDA); 3,4-methylenedioxymethamphetamine (MDMA); 5-methoxy-3,4-methylenedioxyamphetamine (MMDA); 3,4-methylenedioxy-N-ethylamphetamine; N-hydroxy-3,4-methylenedioxyamphetamine; or their salts, isomers and salts of isomers, whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation, is guilty of a felony and upon conviction thereof shall be sentenced to imprisonment not exceeding fifteen years or to pay a fine not exceeding two hundred fifty thousand dollars (\$250,000), or both, or such larger amount as is sufficient to exhaust the assets utilized in and the profits obtained from the illegal activity. ((o) added June 10, 2003, P.L.9, No.3)

(p) (1) Any person who violates subsection (a)(38)(i) is guilty of a felony of the third degree and upon conviction thereof shall be sentenced to not more than seven years in prison and a fine of not more than twenty-five thousand dollars (\$25,000), or such larger amount as is sufficient to exhaust the assets utilized in and the profits obtained from the illegal activity.

(2) Any person who violates subsection (a)(38)(ii) is guilty of a felony of the second degree and upon conviction thereof shall be sentenced to not more than ten years in prison and a fine of not more than fifty thousand dollars (\$50,000), or such larger amount as is sufficient to exhaust the assets utilized in and the profits obtained from the illegal activity.

((p) added Nov. 19, 2004, P.L.846, No.108)
(13 amended Dec. 14, 1984, P.L.988, No.200)

Section 13.1. Liquefied Ammonia Gas; Precursors and Chemicals. --(a) The following acts are prohibited:

- (1) Possessing or transporting liquefied ammonia gas:
 - (i) for any purpose other than legitimate agricultural or industrial use; or
 - (ii) in a container not approved by the Department of Agriculture or the Department of Transportation or both.
 - (2) Possessing or transporting liquefied ammonia gas with intent to unlawfully manufacture a controlled substance.
 - (3) Possessing phenylpropanolamine, phenyl acetone, methylamine, ammonium sulfate, ammonium nitrate, phenyl acetic acid or a precursor substance with intent to unlawfully manufacture a controlled substance.
 - (4) Possessing the esters, salts, optical isomers or salts of optical isomers of any of the substances under clause (3) with intent to manufacture a controlled substance.
- (b) A person who violates subsection (a)(1) commits a misdemeanor and upon conviction shall be sentenced to imprisonment not exceeding five years and to pay a fine not exceeding ten thousand dollars (\$10,000).
- (c) A person who violates subsection (a)(2), (3) or (4) commits a felony and upon conviction shall be sentenced to imprisonment not exceeding seven years and to pay a fine not exceeding fifteen thousand dollars (\$15,000).
- (d) As used in this section, the term "precursor substance" means:
- (1) red phosphorous, hypophosphoric acid, ammonium sulfate, phosphorous, iodine, hydriodic acid or ephedrine, pseudoephedrine, phenylpropanolamine or any of their salts or optical isomers;
 - (2) salts of optical isomers or lithium, sodium, potassium, saffrafras oil or safrole oil or other oil containing safrole or equivalent, whether in powder or liquid form; and
 - (3) any chemical in a regulation promulgated by the secretary under section 35(b).
- (13.1 amended June 8, 2016, P.L.258, No.37)

Section 13.2. Clandestine Drug Laboratory Data Repository. --The Pennsylvania State Police shall maintain a Statewide repository of data relating to clandestine drug laboratories, clandestine drug laboratory dump sites and the seizure of chemicals, glassware and other laboratory implements associated with manufacturing-controlled substances and develop and implement a program to enable collection of data and reporting thereof by law enforcement agencies of this Commonwealth. Data acquired by law enforcement agencies shall be sent to the repository within twenty days of acquisition.
(13.2 added July 15, 2004, P.L.729, No.84)

Section 13.3. Methamphetamine Production. --(a) Proof that a person had in his possession more than 40 grams or 15 packages of any drug containing ephedrine, pseudoephedrine or phenylpropanolamine, or any of their salts, optical isomers or salts of optical isomers as an active ingredient shall give rise to a rebuttable presumption that the person acted with intent to manufacture methamphetamine.

- (b) Proof that a person had in his possession any amount of ephedrine, pseudoephedrine or phenylpropanolamine, or any of their salts, optical isomers or salts of optical isomers and at the same time possessed any amount of any other precursor or reagent substance under section 13.1 shall give rise to a rebuttable presumption that the person acted with intent to manufacture methamphetamine.
- (c) The provisions of this section shall not apply to a licensed pharmaceutical manufacturer, wholesaler, or the sales representative of a licensed manufacturer or wholesaler, or to a licensed

pharmacist or licensed health care professional, or to any other person engaged by a licensed manufacturer, wholesaler, pharmacist or health care provider, who lawfully markets, transports, delivers or dispenses a product containing ephedrine, pseudoephedrine or phenylpropanolamine, or any of their salts, optical isomers or salts of optical isomers.

(13.3 added Feb. 17, 2010, P.L.137, No.8, and amended April 29, 2010, P.L.182, No.21)

Section 13.4. Operating a Methamphetamine Laboratory and Illegal Dumping of Methamphetamine Waste. --(a) (1) A person commits the offense of operating a methamphetamine laboratory if the person knowingly causes a chemical reaction involving ephedrine, pseudoephedrine or phenylpropanolamine, or any other precursor or reagent substance under section 13.1, for the purpose of manufacturing methamphetamine or preparing a precursor or reagent substance for the manufacture of methamphetamine.

(2) Except as provided in clause (3), an offense under this subsection constitutes a felony of the second degree and is also subject to 18 Pa.C.S. § 1110 (relating to restitution for cleanup of clandestine laboratories).

(3) A person who violates this subsection commits a felony of the first degree if the chemical reaction occurs within 1,000 feet of the real property on which is located a public, private or parochial school, a college or university or a nursery school or daycare center or within 250 feet of the real property on which is located a recreation center or playground. The person shall also be subject to 18 Pa.C.S. § 1110.

(4) This subsection does not apply to the manufacturing operation of a licensed pharmaceutical company in the normal course of business.

(b) (1) A person commits a felony of the third degree if he intentionally, knowingly or recklessly deposits, stores or disposes on any property a precursor or reagent substance, chemical waste or debris, used in or resulting from the manufacture of methamphetamine or the preparation of a precursor or reagent substance for the manufacture of methamphetamine.

(2) Clause (1) does not apply to the disposal of waste products:

(i) by a licensed pharmaceutical company in the normal course of business; or

(ii) pursuant to Federal or State laws regulating the cleanup or disposal of waste products from unlawful manufacturing of methamphetamine.

(c) In addition to restitution under 18 Pa.C.S. § 1110, a person who is convicted of an offense under this section shall be ordered to reimburse the appropriate law enforcement agency, emergency medical services organization, fire company or other organization for the costs of cleaning up the environmental hazards associated with the operation of the laboratory or the possession or use of a precursor or reagent substance to manufacture methamphetamine.

(13.4 added Feb. 17, 2010, P.L.137, No.8, and amended April 29, 2010, P.L.182, No.21)

Section 13.5. Environmental Costs.--In addition to restitution under 18 Pa.C.S. § 1110 (relating to restitution for cleanup of clandestine laboratories), a person who is convicted of an offense involving the operation of a methamphetamine laboratory or the possession or use of a precursor or reagent substance to manufacture methamphetamine shall be ordered to reimburse the appropriate law enforcement agency, emergency medical services organization, fire company or other organization for the costs of cleaning up the environmental hazards associated with the operation of the laboratory or the possession or use of a precursor or reagent substance to manufacture methamphetamine.

(13.5 added Feb. 17, 2010, P.L.137, No.8, and amended April 29, 2010, P.L.182, No.21)

Section 13.6. Ephedrine and Pseudoephedrine; Electronic Tracking. --(a) Retailers shall be prohibited from making sales to an individual of, and an individual shall be prohibited from purchasing, ephedrine or pseudoephedrine base, or their salts, isomers or salts of isomers in excess of the

following amounts:

(1) 3.6 grams of ephedrine or pseudoephedrine base contained in a product or combination of products per day.

(2) 9 grams of ephedrine or pseudoephedrine base contained in a product or combination of products per thirty-day period.

(b) Nonprescription products containing ephedrine or pseudoephedrine shall be maintained behind the counter or in a locked case where the customer does not have direct access.

(c) A retailer shall require any person purchasing a nonprescription product that contains ephedrine or pseudoephedrine to present a valid government-issued photo identification, or other document considered acceptable under Federal law for this purpose, at the point of sale. The retailer shall record the following:

(1) Name and address of the purchaser.

(2) Name and quantity of product purchased.

(3) Date and time of purchase.

(4) Purchaser identification type and number, such as driver's license state and number, and require the purchaser's signature in a logbook.

(d) A retailer shall, before completing a sale under this section, electronically submit the required information to the real-time stop sale system administered by the department, provided that the system is available without a charge for retailers to access. Absent negligence, wantonness, recklessness or deliberate misconduct, any retailer using the electronic sales tracking system in accordance with this subsection shall not be civilly liable as a result of any act or omission in carrying out the duties required by this subsection and shall be immune from liability to any third party unless the retailer has violated any provision of this subsection in relation to a claim brought for such violation.

(e) If a retailer selling a nonprescription product containing ephedrine or pseudoephedrine experiences mechanical or electronic failure of the electronic sales tracking system and is unable to comply with the electronic sales tracking requirement, the retailer shall maintain a written log or an alternative electronic recordkeeping mechanism until such time as the retailer is able to comply with the electronic sales tracking requirement. A retailer that does not have Internet access to the electronic sales tracking system is compliant with the requirements of this section if the retailer maintains a written log or an alternative recordkeeping mechanism.

(f) The vendor of the real-time stop-sale system shall forward State transaction records in the real-time stop-sale system to the department weekly and provide real-time access to the real-time stop-sale system information through the system's online portal to law enforcement in this Commonwealth as authorized by the department.

(g) The department shall work with the real-time stop-sale vendor to ensure that the real-time stop-sale system shall be capable of generating a stop-sale alert, which shall be a notification that completion of the sale would result in the retailer or purchaser violating the quantity limits set forth in this section. The retailer shall not complete the sale if the electronic system generates a stop-sale alert. The department shall work with the real-time stop-sale vendor to ensure that the system contains an override function that may be used by a retailer of ephedrine or pseudoephedrine who has a reasonable fear of imminent bodily harm if it does not complete a sale. Each instance in which the override function is used shall be logged in the system.

(h) A violation of any provision of this section is a misdemeanor, punishable by fine only.

(i) This section does not apply to a person who obtains the product pursuant to a valid prescription.

(j) This section shall supersede any other laws or regulations governing the sales of products containing ephedrine or pseudoephedrine.

(13.6 added July 9, 2013, P.L.359, No.53)

Section 13.7. Drug Overdose Response Immunity. --(a) A person may not be charged and shall be

immune from prosecution for any offense listed in subsection (b) and for a violation of probation or parole if the person can establish the following:

(1) law enforcement officers only became aware of the person's commission of an offense listed in subsection (b) because the person transported a person experiencing a drug overdose event to a law enforcement agency, a campus security office or a health care facility; or

(2) all of the following apply:

(i) the person reported, in good faith, a drug overdose event to a law enforcement officer, the 911 system, campus security officer or emergency services personnel and the report was made on the reasonable belief that another person was in need of immediate medical attention and was necessary to prevent death or serious bodily injury due to a drug overdose;

(ii) the person provided his own name and location and cooperated with the law enforcement officer, 911 system, campus security officer or emergency services personnel; and

(iii) the person remained with the person needing immediate medical attention until a law enforcement officer, campus security officer or emergency services personnel arrived.

(b) The prohibition on charging or prosecuting a person as described in subsection (a) bars charging or prosecuting a person for probation and parole violations and for violations of section 13(a)(5), (16), (19), (31), (32), (33) and (37).

(c) Persons experiencing drug overdose events may not be charged and shall be immune from prosecution as provided in subsection (b) if a person who transported or reported and remained with them may not be charged and is entitled to immunity under this section.

(d) The prohibition on charging or prosecuting a person as described in this section is limited in the following respects:

(1) This section may not bar charging or prosecuting a person for offenses enumerated in subsection (b) if a law enforcement officer obtains information prior to or independent of the action of seeking or obtaining emergency assistance as described in subsection (a).

(2) This section may not interfere with or prevent the investigation, arrest, charging or prosecution of a person for the delivery or distribution of a controlled substance, drug-induced homicide or any other crime not set forth in subsection (b).

(3) This section may not bar the admissibility of any evidence in connection with the investigation and prosecution for any other prosecution not barred by this section.

(4) This section may not bar the admissibility of any evidence in connection with the investigation and prosecution of a crime with regard to another defendant who does not independently qualify for the prohibition on charging or prosecuting a person as provided for by this section.

(e) In addition to any other applicable immunity or limitation on civil liability, a law enforcement officer or prosecuting attorney who, acting in good faith, charges a person who is thereafter determined to be entitled to immunity under this section shall not be subject to civil liability for the filing of the charges.

(f) As used in this section, the following words and phrases shall have the meanings given to them in this subsection unless the context clearly indicates otherwise:

"911 system." A system, including enhanced 911 service and a wireless E-911 system, that permits a person dialing 911 by telephone to be connected to a public safety answering point, via normal telephone facilities, for the reporting of police, fire, medical or other emergency situations.

"Campus security officer." An employee of an institution of higher education charged with maintaining the safety and security of the property of the institution and the persons on the property.

"Drug overdose event." An acute medical condition, including, but not limited to, severe physical illness, coma, mania, hysteria or death, which is the result of consumption or use of one or more controlled substances causing an adverse reaction. A patient's condition shall be deemed to be a drug overdose if a prudent layperson, possessing an average knowledge of medicine and health, would reasonably believe that the condition is in fact a drug overdose and requires immediate medical

attention.

"Emergency services personnel." Individuals, including a trained volunteer or a member of the armed forces of the United States or the National Guard, whose official or assigned responsibilities include performing or directly supporting the performance of emergency medical and rescue services or firefighting.

"Law enforcement officer." A person who by virtue of the person's office or public employment is vested by law with a duty to maintain public order or to make arrests for offenses, whether that duty extends to all offenses or is limited to specific offenses, or a person on active State duty under 51 Pa.C.S. § 508 (relating to active duty for emergency). (13.7 added Sept. 30, 2014, P.L.2487, No.139) Section 13.8. Drug Overdose Medication. --(a) The department, in carrying out its duties under 28 Pa. Code Ch. 1023 (relating to personnel), shall have the following duties:

(1) By December 31, 2014, amend the prehospital practitioner scope of practice of emergency medical services providers to include the administration of naloxone.

(2) In consultation with the Pennsylvania Emergency Health Services Council, implement training, treatment protocols, equipment lists and other policies and procedures for all types of emergency medical services providers.

(3) In consultation with the Department of Drug and Alcohol Programs, develop or approve training and instructional materials about recognizing opioid-related overdoses, administering naloxone and promptly seeking medical attention. The training and instruction materials shall be provided free of charge on the Internet.

(b) A law enforcement agency, fire department or fire company may enter into written agreements with emergency medical services agencies, with the consent of that agency's medical director or a physician, to do the following:

(1) Obtain a supply of naloxone.

(2) Authorize a law enforcement officer or firefighter who has completed training under subsection (a)(2), or who has received the training and instructional materials under subsection (a)(3), to administer naloxone to an individual undergoing or believed to be undergoing an opioid-related drug overdose.

(c) Notwithstanding any other law to the contrary, a health care professional otherwise authorized to prescribe naloxone may dispense, prescribe or distribute naloxone directly or by a standing order to an authorized law enforcement officer or firefighter in accordance with an agreement under subsection (b) or to a person at risk of experiencing an opioid-related overdose or family member, friend or other person in a position to assist a person at risk of experiencing an opioid-related overdose.

(d) The provisions of the act of September 27, 1961 (P.L.1700, No.699), known as the "Pharmacy Act," shall not apply to a law enforcement officer or firefighter who stores naloxone pursuant to an agreement under subsection (b), and in accordance with directions from the health care professional that prescribed, dispensed or distributed the naloxone, or to a person or organization acting at the direction of a health care professional authorized to prescribe naloxone so long as such activities are undertaken without charge or compensation.

(e) (1) A licensed health care professional who, acting in good faith, prescribes or dispenses naloxone shall not be subject to any criminal or civil liability or any professional disciplinary action for:

(i) such prescribing or dispensing; or

(ii) any outcomes resulting from the eventual administration of naloxone.

(2) The immunity under paragraph (1) shall not apply to a health professional who acts with intent to harm or with reckless indifference to a substantial risk of harm.

(f) (1) A person, law enforcement agency, fire department or fire company under subsection (b)(2) or (c) who, acting in good faith and with reasonable care, administers naloxone to another person whom the person believes to be suffering an opioid-related drug overdose:

- (i) Shall be immune from criminal prosecution, sanction under any professional licensing statute and civil liability for such act.
 - (ii) Shall not be subject to professional review for such act.
 - (iii) Shall not be liable for any civil damages for acts or omissions resulting from such act.
- (2) Receipt of training and instructional materials that meet the criteria of subsection (a) and the prompt seeking of additional medical assistance shall create a rebuttable presumption that the person acted with reasonable care in administering naloxone.
- (g) Nothing in this section shall be interpreted to limit any existing immunities for emergency response providers and others provided for under 42 Pa.C.S. § 8332 (relating to emergency response provider and bystander good Samaritan civil immunity).
- (13.8 added Sept. 30, 2014, P.L.2487, No.139)

Section 14. Distribution to Persons Under Age Eighteen. --Any person who is at least twenty-one years of age and who is not himself a drug dependent person who violates this act by distributing a controlled substance listed in Schedules I through V to a person under eighteen years of age who is at least four years his junior is punishable by a term of imprisonment up to twice that otherwise authorized by subsection (f) of section 13 of this act, in addition to any fine authorized by this act.

(14 amended Oct. 26, 1972, P.L.1048, No.263)

Section 15. Second or Subsequent Offense. --(a) Any person convicted of a second or subsequent offense under clause (30) of subsection (a) of section 13 of this act or of a similar offense under any statute of the United States or of any state may be imprisoned for a term up to twice the term otherwise authorized, fined an amount up to twice that otherwise authorized, or both.

(b) For purposes of this section, an offense is considered a second or subsequent offense, if, prior to the commission of the second offense, the offender has at any time been convicted under clause (30) of subsection (a) of section 13 of this act or of a similar offense under any statute of the United States or of any state relating to controlled substances.

(15 amended Oct. 26, 1972, P.L.1048, No.263)

Section 16. Enforcement Provisions. --The following guidelines shall be applicable in the enforcement of any penalties imposed by this act:

(1) No publisher, radio broadcast licensee, or agency or medium for the dissemination of an advertisement, except the manufacturer, distributor or seller of the article to which a false advertisement relates, shall be liable under section 12 of this act by reason of the dissemination by him of such false advertisement unless he has refused on the request of the secretary to furnish the secretary with the name and post office address of the manufacturer, distributor, seller or advertising agency who causes him to disseminate such advertisement or unless he publishes such advertisement knowing or having good cause to know that it is false or otherwise in violation of the law.

(2) For purposes of this section, any conviction under any Federal or State law relating to any controlled substance or other drug, other than a juvenile violation, shall constitute a prior offense if it related to the type of conduct against which a subsequent offense is directed.

(3) Any penalty relating to license or registration suspension or revocation shall be executed by the appropriate licensing or registration agency upon receipt of a court order setting forth the penalty.

(4) ((4) repealed Dec. 22, 1989, P.L.724, No.97)

Section 17. Probation Without Verdict. --Except as provided in clause (1) of this subsection, the court may place a person on probation without verdict if the person pleads nolo contendere or guilty to any nonviolent offense under this act and the person proves he is drug dependent. For the purposes of proving drug dependency, the person must present the testimony of a physician or psychologist

trained in the field of drug abuse. The term of probation shall be for a specific time period not to exceed the maximum for the offense upon such reasonable terms and conditions as the court may require. The following shall apply:

(1) The following persons shall be ineligible for probation without verdict:

(i) Any person who has previously been convicted of an offense under this act or similar act of the United States or any other state.

(ii) Any person who has been convicted of a misdemeanor or felony in this Commonwealth or an equivalent crime under the laws of any other state.

(iii) Any person who has been placed on Accelerated Rehabilitative Disposition where the person was charged with a violation of this act or the commission of a misdemeanor or felony in this Commonwealth.

(iv) Any person who is charged with or has pleaded guilty or nolo contendere to multiple offenses which are based on separate conduct or arise from separate criminal episodes such that those offenses could be tried separately in accordance with 18 Pa.C.S. § 110 (relating to when prosecution barred by former prosecution for different offense).

(v) Any person who is a dangerous juvenile offender under 42 Pa.C.S. § 6302 (relating to definitions) or who was adjudicated delinquent for conduct which would constitute a violation of clause (30) or (37) of subsection (a) of section 13 of this act.

(vi) Any person who is charged with violating clause (14), (30) or (37) of subsection (a) of section 13 of this act.

(2) Upon violation of a term or condition of probation, the court may enter a judgment and proceed as in any criminal case, or may continue the probation without verdict.

(3) Upon fulfillment of the terms and conditions of probation, the court shall discharge such person and dismiss the proceedings against him. Discharge and dismissal shall be without adjudication of guilt and shall not constitute a conviction for any purpose whatever, including the penalties imposed for second or subsequent convictions: Provided, That probation without verdict shall be available to any person only once: And further provided, That notwithstanding any other provision of this act, the prosecuting attorney or the court, and the council shall keep a list of those persons placed on probation without verdict, which list may only be used to determine the eligibility of persons for probation without verdict and the names on such lists may be used for no other purpose whatsoever.

(17 amended Dec. 28, 1994, P.L.1406, No.164)

Section 18. Disposition in Lieu of Trial or Criminal Punishment.--(a) If a person charged with a nonviolent crime claims to be drug dependent or a drug abuser and prior to trial he requests appropriate treatment, including but not limited to, admission or commitment under the Mental Health and Mental Retardation Act of 1966 in lieu of criminal prosecution, a physician experienced or trained in the field of drug dependency or drug abuse shall be appointed by the court to examine, if necessary, and to review the accused's record and advise the government attorney, the accused and the court in writing setting forth that for the treatment and rehabilitation of the accused it would be preferable for the criminal charges to be held in abeyance or withdrawn in order to institute treatment for drug dependence, or for the criminal charges to be prosecuted. The government attorney shall exercise his discretion whether or not to accept the physician's recommendation.

(b) In the event that the government attorney does not accept the physician's recommendation, the person charged shall not be eligible for relief under this section.

(c) If the government attorney accepts the physician's advice to hold in abeyance, he shall arrange for a hearing before the appropriate court to hold in abeyance the criminal prosecution. The court, upon its approval, shall proceed to make appropriate arrangements for treatment.

(d) The government attorney, upon his own application, may institute proceedings for appropriate treatment, including but not limited to, commitment pursuant to the Mental Health and Mental

Retardation Act of 1966.

(e) A criminal charge may be held in abeyance pursuant to this section for no longer than the lesser of either (i) the appropriate statute of limitations or (ii) the maximum term that could be imposed for the offense charged. At the expiration of such period, the criminal charge shall be automatically dismissed. A criminal charge may not be prosecuted except by order of court so long as the medical director of the treatment facility certifies that the accused is cooperating in a prescribed treatment program and is benefiting from treatment.

(g) Disposition in lieu of trial as provided in this section shall be available to any person only once. (18 amended Apr. 16, 1992, P.L.165, No.30)

Section 19. Expunging Criminal Records.--(a) Any records of arrest or prosecution or both for a criminal offense under this act, except for persons indicted for violations of clause (30) of subsection (a) of section 13, or under the provisions previously governing controlled substances in the Commonwealth of Pennsylvania or any political subdivision thereof shall be promptly expunged from the official and unofficial arrest and other criminal records pertaining to that individual when the charges are withdrawn or dismissed or the person is acquitted of the charges: Provided, That such expungement shall be available as a matter of right to any person only once. Within five days after such withdrawal, dismissal or acquittal the court, in writing, shall order the appropriate keepers of criminal records (i) to expunge and destroy the official and unofficial arrest and other criminal records of that individual, to request in so far as they are able the return of such records as they have made available to Federal and other State agencies, and to destroy such records on receipt thereof; and (ii) to file with the court within thirty days an affidavit that such records have been expunged and destroyed, together with the court's expunction order and to retain no copies thereof. Upon receipt of such affidavit, the court shall seal the same together with the original and all copies of its expunction order and shall not permit any person or agency to examine such sealed documents.

The court shall file with the council a list of those persons whose record was expunged. The council shall maintain a confidential list, which list may be used only for the purpose of determining the eligibility of persons for the expunction provisions under this section and to be made available to any court upon request. ((a) amended Oct. 26, 1972, P.L.1048, No.263)

(b) Any expunged record of arrest or prosecution shall not hereafter be regarded as an arrest or prosecution for the purpose of any statute or regulation or license or questionnaire or any civil or criminal proceeding or any other public or private purpose. No person shall be permitted to learn of an expunged arrest or prosecution, or of the expunction, either directly or indirectly. Any person, except the individual arrested or prosecuted, who divulges such information in violation of this subsection shall be guilty of a summary offense and shall, upon conviction thereof, be punished by imprisonment not exceeding thirty (30) days or a fine not exceeding five hundred dollars (\$500), or both.

(c) Nothing contained in this section shall prohibit a person acting pursuant to prior practice from petitioning an appropriate court for an expunction order.

Section 20. Offenses by a Corporation, Co-partnership or Association. --If any violation of the provisions of this act is by a corporation, co-partnership or association, the officers and directors of such corporation or the members of such co-partnership or association, the agents and employees with prior guilty knowledge of the fact, shall be deemed guilty of a violation of the provisions of this act to the same extent as though said violation were committed by them personally.

Compiler's Note: Section 1 of Reorganization Plan No.4 of 1981 provided that the Council on Drug and Alcohol Abuse, together with its powers, functions and duties as set forth in Act 64, are transferred from the Governor's Office to the Department of Health.

Section 21. Burden of Proving Exemptions. --In any prosecution under this act, it shall not be necessary to negate any of the exemptions or exceptions of this act in any complaint, information or trial. The burden of proof of such exemption or exception shall be upon the person claiming it.

Section 22. Judicial Review. --Any person aggrieved by a final administrative decision may obtain review of the decision pursuant to the provisions of the Administrative Agency Law.

Section 23. Revocation of Licenses of Practitioners. --(a) Any license or registration heretofore issued to any practitioner may either be revoked or suspended by the proper officers or boards having power to issue licenses or registration to any of the foregoing, upon proof that the licensee or registrant is a drug dependent person on the use of any controlled substance, after giving such licensee or registrant reasonable notice and opportunity to be heard.

(b) The appropriate licensing boards in the Department of State are hereby authorized to revoke or suspend the registration or license of any practitioner when such person has pleaded guilty or nolo contendere or has been convicted of a felony under this act or any similar State or Federal law. Before any such revocation or suspension, the licensee or registrant shall be given a hearing before the appropriate board. At such hearing the accused may be represented by counsel and shall be entitled to compulsory attendance of witnesses.

(c) The appropriate licensing boards in the Department of State shall automatically suspend, for a period not to exceed one year, the registration or license of any practitioner when the person has pleaded guilty or nolo contendere or has been convicted of a misdemeanor under this act. The district attorney of each county shall immediately notify the appropriate State licensing board of practitioners subject to the provisions of this section. However, the provisions of such automatic suspension may be stayed by the appropriate State licensing board in those cases where a practitioner has violated the provisions of this act only for the personal use of controlled substances by the practitioner and the practitioner participates in the impaired professional program approved by the appropriate State licensing board for a period of between three and five years, as directed by the appropriate licensing board. If the practitioner fails to comply in all respects with the standards of such a program, the appropriate licensing board shall immediately vacate the stay of the enforcement of the suspension provided for herein. Automatic suspension shall not be stayed pending any appeal of a conviction. Restoration of such license shall be made as in the case of a suspension of license. ((c) amended July 2, 1993, P.L.377, N0.53)

Section 24. Administrative Inspections and Warrants. --(a) As used in this section, the term "controlled premises" means:

(1) Places where original or other records or documents required under this act are kept or required to be kept; and

(2) Places, including factories, warehouses, or other establishments, and conveyances, where persons registered under section 6 (or exempted from registration under section 6) may lawfully hold, manufacture, or distribute, dispense, administer or otherwise dispose of controlled substances.

(b) (1) For the purpose of inspecting, copying, and verifying the correctness of records, reports, or other documents required to be kept or made under this act and otherwise facilitating the carrying out of his functions under this act, the secretary is authorized, in accordance with this section, to enter controlled premises and to conduct administrative inspections thereof, and of the things specified in this section, relevant to those functions.

(2) Such entries and inspections shall be carried out through officers or employees (hereinafter referred to as "officers") designated by the secretary. Any such officer upon stating his purpose and presenting to the owner, operator, or officer in charge of such premises (i) appropriate credentials and

(ii) a written notice of his inspection authority (which notice in the case of an inspection requiring, or in fact supported by, an administrative inspection warrant shall consist of such warrant), shall have the right to enter such premises and conduct such inspection at reasonable times.

(3) Except as may otherwise be indicated in an applicable inspection warrant, the officer shall have the right: (i) to inspect and copy records, reports, and other documents required to be kept or made under this act; (ii) to inspect, within reasonable limits and in a reasonable manner, controlled premises and all pertinent equipment, finished and unfinished drugs and other substances or materials, containers, and labeling found therein, and, except as provided in this subsection, all other things therein (including records, files, papers, processes, controls, and facilities) appropriate for verification of the records, reports, and documents referred to in subclause (i) or otherwise bearing on the provisions of this act; and (iii) to inventory any stock of any controlled substance therein and obtain samples of any such substance or article.

(4) Except when the owner, operator, or officer in charge of the controlled premises so consents in writing, no inspection authorized by this section shall extend to: (i) financial data; (ii) sales data other than shipment data; (iii) pricing data; or (iv) research data.

(c) A warrant under this section shall not be required for the inspection of books and records pursuant to an administrative subpoena issued in accordance with any provisions of any Act of Assembly nor for entries and administrative inspections (including seizures of property):

(1) With the consent of the owner, operator, or officer in charge of the controlled premises;

(2) In situations presenting imminent danger to health or safety;

(3) In situations involving inspection of conveyances where there is reasonable cause to believe that the mobility of the conveyance makes it impracticable to obtain a warrant;

(4) In any other exceptional or emergency circumstance where time or opportunity to apply for a warrant is lacking; or

(5) In any other situations where a warrant is not constitutionally required.

(d) Issuance and execution of administrative inspection warrants shall be as follows:

(1) Any judge of a court, may, within his territorial jurisdiction, and upon proper oath or affirmation showing probable cause, issue warrants for the purpose of conducting administrative inspections authorized by this act or regulations thereunder, and seizures of property appropriate to such inspections. For the purposes of this section, the term "probable cause" exists upon showing a valid public interest in the effective enforcement of this act or regulations thereunder sufficient to justify administrative inspections of the area, premises, building, or conveyance, or contents thereof, in the circumstances specified in the application for the warrant.

(2) A warrant shall issue only upon an affidavit of a designated officer or employee having knowledge of the facts alleged, sworn to before the judge and establishing the grounds for issuing the warrant. If the judge is satisfied that grounds for the application exist or that there is probable cause to believe they exist, he shall issue a warrant identifying the area, premises, building, or conveyance to be inspected, the purpose of such inspection, and, where appropriate, the type of property to be inspected, if any. The warrant shall identify the items or types of property to be seized, if any. The warrant shall be directed to a person authorized under subsection (b) (2) to execute it. The warrant shall state the grounds for its issuance and the name of the person or persons whose affidavit has been taken in support thereof. It shall command the person to whom it is directed to inspect the area, premises, building, or conveyance identified for the purpose specified, and, where appropriate, shall direct the seizure of the property specified. The warrant shall direct that it be served during normal business hours. It shall designate the judge to whom it shall be returned.

(3) A warrant issued pursuant to this section must be executed and returned within ten days of its date unless, upon a showing by the secretary of a need therefor, the judge allows additional time in the warrant. If property is seized pursuant to a warrant, the person executing the warrant shall give to the person from whom or from whose premises the property was taken a copy of the warrant and a

receipt for the property taken or shall leave the copy and receipt at the place from which the property was taken. The return of the warrant shall be made promptly and shall be accompanied by a written inventory of any property taken. The inventory shall be made in the presence of the person executing the warrant and of the person from whose possession or premises the property was taken, if they are present, or in the presence of at least one credible person other than the person making such inventory, and shall be verified by the person executing the warrant. A copy of the inventory shall be delivered to the person from whom or from whose premises the property was taken and to the applicant for the warrant.

(4) The judge who has issued a warrant under this section shall attach to the warrant a copy of the return and all papers returnable filed in connection therewith and shall file them with the clerk of the court for the judicial district in which the inspection was made.

Section 25. Injunctive Relief. --In addition to the remedies provided herein, the secretary is hereby authorized to apply to the court of common pleas in the county in which such violation occurs or to the Commonwealth Court for, and such court shall have jurisdiction to grant, a temporary or permanent injunction restraining any person from continued violation of any provision of this act irrespective of the existence of an adequate remedy at law.

Section 26. Cooperation With Other Authorities. --The agencies charged with the enforcement of this act shall actively cooperate and coordinate with the agencies charged with the enforcement of all Federal and State laws relating to the regulation of the distribution of controlled substances, other drugs, devices or cosmetics.

Section 27. Embargo.--(a) Whenever a duly authorized officer of the secretary finds or has probable cause to believe that any controlled substance, other drug, device or cosmetic is adulterated or misbranded or contraband, the same shall be deemed subject to embargo and he shall affix to such substance or article a tag or other appropriate marking, approved by the secretary, giving notice that such substance or article is or is suspected of being adulterated, misbranded or contraband and warning all persons not to remove or dispose of such substance or article until permission so to do has been granted by such officer, or until it shall have determined by proper authority that such substance or article is not adulterated, misbranded or contraband. At the time such notice is offered, the officer shall provide the person in charge of such substance or article, if any, or the owner, if he is known, a statement in writing, setting forth both the basis for the embargo and supporting facts.

(b) When a substance or article is detained or embargoed under subsection (a), the secretary shall serve within three days from the date of such embargo a citation upon the claimant thereof or owner, if he is known, setting forth both the basis for the embargo and supporting facts and fixing a date for a hearing not later than ten days from the date of service of said citation at which a hearing examiner, appointed under the authority of section 30, will receive evidence pertaining to the alleged offense. Unless postponed by mutual consent, failure to serve a citation or commence hearings within the time herein specified shall operate to void such embargo.

(c) If, after hearing, the examiner is satisfied from the evidence presented that a detained or embargoed substance or article is adulterated, misbranded or contraband, he shall, within five days of the conclusion of the hearing, order such substance or article destroyed at the expense of the claimant thereof under supervision of an agent of the secretary: Provided, That when the embargo is based on an adulteration or misbranding which can be corrected by proper labeling or processing of the substance or article, the examiner, after entry of the order and after such costs, fees and expenses have been paid and a good and sufficient bond conditioned that such substance or article shall be so labeled or processed has been executed, may by order direct that such substance or article be released to the claimant thereof for such labeling or processing under the supervision of an officer of the secretary.

The expense of such supervision, if any, shall be paid by the claimant. Such substance or article shall be released to the claimant when it is no longer in violation of this act and the expenses of such supervision have been paid.

(d) If no claimant shall appear to defend such proceedings, the hearing examiner may order the embargoed substances or articles destroyed or distributed to a nonprofit institution.

Section 28. Forfeiture. --(28 repealed June 30, 1988, P.L.464, No.79)

Section 29. Procedure With Respect to Seized Property Subject to Liens and Rights of Lienholders. --(29 repealed June 30, 1988, P.L.464, No.79)

Section 30. Hearing Examiners. --(a) The secretary shall appoint, with the approval of the Governor, such hearing examiners as shall be necessary to conduct hearings as provided in section 27.

(b) Hearing examiners appointed under this act shall have the power to issue subpoenas requiring the attendance and testimony of, or the production of, pertinent books and papers by persons whom they believe to have information relevant to any matter pending before him. Such examiner shall also have the power to administer oaths.

(c) Any person who refuses to obey a subpoena issued hereunder or to be sworn or affirmed or to testify, or who is guilty of any contempt after summons to appear, may be punished as for contempt of court. For this purpose, an application may be made by the examiner to the court of common pleas within the territorial jurisdiction of which the offense was committed for which purpose such court is hereby given jurisdiction.

(d) In any action or proceeding before him, the hearing examiner may assess all costs incurred in connection with the prosecution of such proceeding, including investigative and laboratory costs incurred by the Commonwealth, against respondent in such proceeding; such costs to be in addition to any other penalty imposed and to be retained by the Department of Health and applied to cost to the department administering this act.

(e) Hearings shall be conducted under the provisions of the Administrative Agency Law, as amended, and subject to such other rules and regulations not inconsistent therewith as the secretary may provide and any person aggrieved by any action of the hearing examiner may appeal in accordance with the provisions of the Administrative Agency Law, as amended.

Section 31. Board Creation. --(a) There is hereby created within the Department of Health a departmental administrative board to be known as the "Pennsylvania Drug, Device and Cosmetic Board."

(b) The board shall consist of the Secretary of Health, his successors in office, and ten additional members whom the Governor shall appoint, by and with the consent of a majority of all the members of the Senate. Of the members: one shall be a physician, one a dentist, one a veterinarian, one a psychologist or psychiatrist and one a pharmacist, each of whom shall be duly licensed in their respective professions by the Commonwealth; one shall be a biochemist and one shall be a pharmacologist, each of whom shall have earned an advanced degree in that field from an institution of higher learning and shall have been engaged as such for three years in this State; one shall be a manufacturer registered to manufacture drugs or an employee thereof; and the two remaining persons shall be members of the general public not engaged in any of the aforementioned but one of whom shall be well informed on the problems caused by the abuse and misuse of drugs or other chemicals. Two members initially shall serve for terms of one, two, three and four years, respectively, the particular term of each to be designated by the Governor at the time of appointment. Any additional member, the appointment of whom is authorized by amending act, shall serve for a term of four years. Thereafter, the term of office of each member shall be four years from his appointment, or until his

successor has been appointed and qualified, but no longer than six months beyond the four-year period. In the event that any member shall die or resign or otherwise become disqualified during his term of office, his successor shall be appointed in the same way and with the same qualifications as above set forth and shall hold office for the unexpired term. Any appointed member of the board shall be eligible for reappointment. Each member, who is not otherwise an officer or employee of the Commonwealth, when actually engaged in official meetings or otherwise in the performances of his official duties as directed by the chairman, shall receive sixty dollars (\$60) per diem and shall receive, in addition, the amount of reasonable travel, hotel and other necessary expenses incurred in performing his duties for the board. ((b) amended Dec. 20, 1985, P.L.373, No.105)

(b.1) The department shall provide the public members of the board with orientation and training. ((b.1) added Dec. 20, 1985, P.L.373, No.105)

(c) The Secretary of Health, or his designate, shall serve as chairman of the board. A majority of the members shall constitute a quorum for the purpose of organizing the board, conducting its business, and exercising all of its powers. A vote of the majority of the members present shall be sufficient for all actions of the board unless the bylaws require a greater number. The board shall meet at least four times yearly. A member of the board who fails to attend three consecutive meetings shall forfeit his seat unless the Secretary of Health, upon written request from the member, finds that the member should be excused from a meeting because of illness or the death of an immediate family member. ((c) amended Dec. 20, 1985, P.L.373, No.105)

(d) The board shall have the power to prescribe, amend and repeal bylaws, rules and regulations governing the manner in which the business of the body is conducted and the manner in which the powers granted to it are exercised. The board may delegate supervision of the administration of board activities to an administrative secretary and such other employees as the Secretary of Health shall appoint.

(e) The board shall have the power to do all things necessary or convenient to carry out the powers granted to it by this act.

(f) The board may, for the authentication of its records, process and proceedings, adopt, keep and use a common seal of which seal judicial notice shall be taken in all courts of this Commonwealth and any process, writ, notice or other document, which the board may be authorized by law to issue, shall be deemed sufficient if signed by the chairman or secretary of the board and authenticated by such seal. All acts, proceedings, orders, papers, findings, minutes and records of the board, and all reports and documents filed with the board, may be proved in any court of this Commonwealth by a copy thereof certified to by the chairman or secretary of the board with the seal of the board attached.

(g) In order to enable the board to carry out the provisions of this act, including its power to advise the secretary on various matters, it shall have the power to issue subpoenas, requiring the attendance and testimony of, or the production of, pertinent books and papers by persons whom the board believes to have information, books or papers of importance to it in carrying out the purposes and intent of this act. Each member of the board and such officers, employees or others employed in the work of the board designated by the chairman of the board also shall have the power to administer oaths and affirmations, to question witnesses thereunder, and to examine such books and papers. The board may issue commissions, letters rogatory, or other appropriate processes outside the Commonwealth.

(h) Any person who refuses to obey a subpoena issued hereunder, or to be sworn or affirmed, or to testify, or who is guilty of any contempt after summons to appear, may be punished as for contempt of court. For this purpose, an application may be made by the board to the court of common pleas within the territorial jurisdiction of which the offense was committed, for which purpose, such court is hereby given jurisdiction.

Section 32. Persons Authorized to Prescribe Drugs to Remain as Heretofore. --No provision of this

act or any rule or regulation promulgated pursuant to this act shall authorize or be construed as authorizing any person to prescribe drugs who is not specifically so authorized under existing law.

Section 33. Conformity With Federal Law.--No controlled substance, other drug, device or cosmetic shall be deemed to be adulterated or misbranded under this act if it complies with the applicable Federal act and/or regulations and interpretations issued pursuant thereto, unless the secretary, after consultation with and upon the recommendation of the board, shall have previously promulgated a regulation stating that the applicable provision of the Federal act and/or regulations and interpretations thereof would not be followed.

Section 34. Administration of Act. --(a) Except as may be otherwise provided by law, the provisions of this act shall be administered by the department. The secretary is authorized to employ personnel and to fix their compensation subject to the act of April 9, 1929 (P.L.177, No.175), known as "The Administrative Code of 1929."

(b) The secretary is authorized and directed to establish a Bureau of Drug Control within the department and to employ therein sufficient personnel to perform the duties imposed upon the department by this act. ((b) suspended insofar as inconsistent June 25, 1973, Reorg.Pl.6, P.L.463)

(c) The secretary may designate specific officers and employees of the Bureau of Drug Control as law enforcement personnel and authorize such personnel to:

- (1) Carry firearms in the performance of his official duties;
- (2) Execute and serve search warrants, arrest warrants, administrative inspection warrants, subpoenas, and summonses issued under the authority of the Commonwealth;
- (3) Make arrests without warrant for any offense under this act committed in his presence, or if he has probable cause to believe that the person to be arrested has committed or is committing a violation of this act which may constitute a felony;
- (4) Make seizures of property pursuant to this act; or
- (5) Perform other law enforcement duties as the secretary designates.

((c) suspended insofar as inconsistent June 25, 1973, Reorg.Pl.6, P.L.463)

(d) Nothing contained herein shall be deemed to limit the authority of the Bureau of Drug Control, the Pennsylvania State Police, the Department of Justice or any other law enforcement agency in dealing with law enforcement matters with respect to persons engaged in the unlawful importation, manufacture, distribution, sale and production of controlled substances, other drugs or devices or cosmetics nor the authority of the council in performing any duties imposed upon it by the "Pennsylvania Drug and Alcohol Abuse Act." ((d) suspended insofar as inconsistent June 25, 1973, Reorg.Pl.6, P.L.463)

Compiler's Note: Section 1 of Reorganization Plan No.6 of 1973 provided that the functions, powers and duties of the Department of Health and Secretary of Health with regard to the establishment and operation of the Bureau of Drug Control, as set forth in 34(b), (c) and (d), are transferred to the Department of Justice and the Attorney General.

Section 35. Promulgation of Regulations.--(a) The secretary shall have the authority to promulgate in accordance with the provisions of this section and of the act of July 31, 1968 (P.L.769, No. 240), known as the "Commonwealth Documents Law" any regulations hereinbefore referred to in this act and such other regulations with the consent of the board regarding the possession, distribution, sale, purchase or manufacture of controlled substances, other drugs or devices or cosmetics as may be necessary to aid in the enforcement of this act.

(b) The following apply to a regulation adding a chemical to the definition of "precursor substance" in section 13.1(d):

- (1) The secretary may promulgate the regulation:

- (i) as part of the administration of this act; or
- (ii) in response to a petition of an interested party.
- (2) In determining whether to add a chemical, the secretary shall consider all of the following:
 - (i) Whether the chemical is already a controlled substance.
 - (ii) The availability of the chemical for potential illegal diversion.
 - (iii) The historical, actual or potential use of the chemical in the illegal production of a controlled substance, including the scope, duration and significance of use.
 - (iv) The nature and extent of the legitimate uses of the chemical.
 - (v) The clandestine and legitimate importation, manufacture or distribution of the chemical.
 - (vi) Any other factors relevant to and consistent with public health and safety.
- (3) Promulgation of the regulation is exempt from section 612 of the act of April 9, 1929 (P.L.177, No.175), known as "The Administrative Code of 1929," and the act of June 25, 1982 (P.L.633, No.181), known as the "Regulatory Review Act." (35 amended June 8, 2016, P.L.258, No.37)

Section 36. Administrative Procedure. --The Administrative Agency Law, as amended, shall be applicable in its entirety to the Department of Health in the administration of this act.

Section 37. Cooperative Agreements and Confidentiality. --(a) The secretary shall cooperate with Federal and other State agencies in discharging his responsibilities concerning traffic in controlled substances, other drugs, devices and cosmetics and in suppressing the abuse of such substances and articles. To this end, he may:

- (1) Arrange for the exchange of information among governmental officials concerning the use and abuse of such substances and articles;
 - (2) Coordinate and cooperate in training programs concerning law enforcement at local and State levels;
 - (3) Request the Federal Bureau of Narcotics and Dangerous Drugs to establish a centralized unit to collect, accept, catalogue and file nonconfidential statistics and make the information available for Federal, State and local law enforcement purposes; and
 - (4) Conduct programs of eradication aimed at destroying wild or illicit growth of plant species from which drugs may be extracted.
- (b) Results, information, and evidence received from the bureau relating to the regulatory functions of this act, including results of inspections conducted by it may be relied and acted upon by the secretary in the exercise of his regulatory functions under this act.
- (c) A practitioner engaged in medical practice or clinical research is not required nor may he be compelled to furnish the name or identity of a patient or research subject to the secretary, nor may he be compelled in any State or local civil, criminal, administrative, legislative or other proceedings to furnish the name or identity of such an individual.
- (d) This section shall not exempt the practitioner from regulations of the secretary pertaining to the prescription of controlled substances to a patient over an extended period or in an increasingly large dosage.

Section 38. Savings Provision.--The provisions of this act shall not affect any act done, liability incurred, or right accrued or vested, or affect any suit or prosecution pending to enforce any right or penalty or punish any offense under the authority of any Act of Assembly, or part thereof, repealed by this act: Provided, however, That in any case final on or before June 12, 1972 in which a defendant was sentenced for the commission of acts similar to those proscribed by subsection (16) or (31), but not (30), of section 13 (a) of this act, such defendant shall be resentenced under this act upon his petition if the penalties hereunder are less than those under prior law and in such case the prior

criminal record of the defendant shall be expunged to the extent that such record shall no longer contain any reference to the prior grade of the offense if higher than the grade of the offense to which defendant is resentenced.

(38 amended July 25, 1973, P.L.219, No.54)

Section 39. Pending Proceedings. --(a) Prosecution for any violation of law occurring prior to the effective date of this act is not affected or abated by this act. In any case not yet final if the offense is similar to one set out in this act, the penalties under this act apply if they are less than those under prior law.

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

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

(d) The secretary shall initially permit persons to register who own or operate any establishment engaged in the manufacture or distribution of any controlled substance prior to the effective date of this act and who are registered or licensed by this Commonwealth.

(e) This act applies to violations of law, seizures and forfeitures, injunctive proceedings, administrative proceedings and investigations which occur following its effective date.

Section 40. Continuation of Regulations. --Any orders and regulations promulgated under any law affected by this act and in effect on the effective date of this act and not in conflict with it continue in effect until modified, superseded or repealed.

Section 41. Uniformity of Interpretation. --This act shall be so applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of this act among those states which enact similar legislation.

Section 41.1. Effect on Local Ordinances. --Nothing in this act relating to drug paraphernalia shall be deemed to supersede or invalidate any consistent local ordinance, including zoning and nuisance ordinances, relating to the possession, sale or use of drug paraphernalia.

(41.1 added Dec. 4, 1980, P.L.1093, No.186)

Section 42. Bar to Prosecution. --If a violation of this act 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 Commonwealth.

Section 43. Repeals. --(a) The act of September 26, 1961 (P.L.1664), known as "The Drug, Device and Cosmetic Act," is hereby repealed.

(b) All other acts, or parts of acts, inconsistent with this act are hereby repealed.

Section 44. Effective Dates. --Sections 13, 14, 15, 20 and 39 shall take effect immediately. All other sections shall take effect on June 14, 1972. (44 added June 27, 1972, P.L.499, No.158)

Lancaster City Drug Laws

Article I. Possession And Use Of Marijuana And Marijuana Paraphernalia

[Adopted 9-25-2018 by Ord. No. 13-2018]

§ 132-1. Legislative Findings And Intent.

The purpose and intent of this article is to promote the general safety and welfare of the public by establishing a mechanism to process the minor nonviolent offenses of personal possession or personal use of a small amount of marijuana and personal possession of marijuana paraphernalia within the City of Lancaster and not to promote or condone the possession or use of marijuana or marijuana paraphernalia.

§ 132-2. Definitions.

As used in this article, the following terms shall have the meanings indicated:

Marijuana - All forms or varieties of the genus Cannabis, whether growing or not, as defined by Pennsylvania's Controlled Substance, Drug, Device, and Cosmetic Act, 35 P.S. § 780-101 et seq.

Marijuana Paraphernalia- Any device, instrument, apparatus or object used, intended to be used, or designed to be used for introducing marijuana into the human body or for storing, containing, concealing, or transporting marijuana.

Personal Possession - Actual physical custody of or the ability to exercise control over or have access to, for the sole purpose of one's own personal use. The term "personal possession" does not include possession with intent to deliver, distribute, transfer or sell.

Personal Use - Introducing marijuana into one's own body, which includes smoking, inhaling, exhaling, vaporizing, or burning any lighted cigar, cigarette, pipe or other such device which contains marijuana or marijuana extracts.

Small Amount - Thirty grams or less of marijuana or eight grams or less of hashish as set forth in Pennsylvania's Controlled Substance, Drug, Device, and Cosmetic Act, 35 P.S. § 780-113(a)(31).

§ 132-3. Personal Possession Or Personal Use Of A Small Amount Of Marijuana.

So long as marijuana shall be listed as a controlled substance in the Controlled Substance, Drug, Device, and Cosmetic Act, 1972, April 14, P.L. 233, No. 64, § 1 et seq., 35 P.S. § 780- 101 et seq., no person shall be in possession of a small amount of marijuana as defined in said Act.

The following shall be violations of this section of this article:

1. Personal possession of a small amount of marijuana; or
2. Personal use of a small amount of marijuana.

C. Any person who is found in violation of this section of this article shall be issued a non-traffic summary citation by the police or other authorized law enforcement officer or, alternatively, the officer can obtain the subject's name and address and later send the citation by first-class mail, all to be in accordance with the Pennsylvania Rules of Criminal Procedure.

D. Any police officer or other authorized law enforcement officer who observes a violation of this section of this article by a person under 18 years of age shall:

1. Temporarily detain the minor and follow all existing procedures for the handling of summary

offenses committed by a minor;

2. Advise the parent or guardian that the minor was found in personal possession of a small amount of marijuana or to have been engaging in personal use of a small amount of marijuana;
3. Issue a copy of the citation to the parent or guardian advising that he or she is responsible for the payment of the violation fine; and
4. Provide the parents or guardian with contact information for a local agency where substance abuse educational and treatment programs are available.

§ 132-4. Personal Possession Of Marijuana Paraphernalia.

- A. So long as drug paraphernalia includes objects used in connection with marijuana possession or use in the Controlled Substance, Drug, Device, and Cosmetic Act, 1972, April 14, P.L. 233, No. 64, § 1 et seq., 35 P.S. § 780-101 et seq., no person shall be in possession of marijuana paraphernalia.
- B. It shall be a violation of this section of this article to be in personal possession of marijuana paraphernalia.
- C. Any person who is found in violation of this section of this article shall be issued a non-traffic summary citation by the police officer or other authorized law enforcement officer or, alternatively, the officer can obtain the subject's name and address and later send the citation by first-class mail, all to be in accordance with the Pennsylvania Rules of Criminal Procedure.
- D. Any law enforcement officer who observes a violation of this section by a person under 18 years of age shall:
 1. Temporarily detain the minor and follow all existing procedures for the handling of summary offenses committed by a minor;
 2. Advise the parent or guardian that the minor was found in personal possession of a small amount of marijuana or to have been engaging in personal use of a small amount of marijuana;
 3. Issue a copy of the citation to the parent or guardian advising that he or she is responsible for the payment of the violation fine; and
 4. Provide the parents or guardian with contact information for a local agency where substance abuse educational and treatment programs are available.

§ 132-5. Penalties

- A. The penalty for a first and second violation of § 132-3 of this article relating to possession of a small amount of marijuana shall be a fine of \$25.
- B. The penalty for a third violation of § 132-3 of this article relating to possession of a small amount of marijuana shall be a fine of \$50.
- C. The penalty for a first violation of § 132-3 of this article relating to personal use of marijuana shall be a fine of \$75.
- D. The penalty for a second violation of § 132-3 of this article relating to personal use of marijuana shall be a fine of \$100.
- E. The penalty for a third violation of § 132-3 of this article relating to personal use of marijuana shall be a fine of \$125.
- F. The penalty for a first and second violation of § 132-4 of this article relating to personal possession of marijuana paraphernalia shall be a fine of \$25.
- G. The penalty for a third violation of § 132-4 of this article relating to personal possession of marijuana paraphernalia shall be a fine of \$50.
- H. Subsequent offenses. A person is only eligible to be charged under this article for three offenses within a five-year period. All subsequent offenses shall be charged in accordance with federal and Pennsylvania law.
- I. The court may, in its discretion, suspend the fine imposed under this section if the person found

guilty agrees to and does, in fact, perform such community service as the court deems appropriate, of as much as four hours for a determination of guilt for possession of a small amount of marijuana or personal possession of marijuana paraphernalia and eight hours for personal use of a small amount of marijuana.

J. Enforcement.

1. A non-traffic summary citation issued under this article shall be enforced in accordance with the procedures established by the City of Lancaster Bureau of Police for enforcement of summary violations.

2. The Chief of Police or his or her designee shall report to the Council of the City of Lancaster regarding implementation of this article on an annual basis for the first three years following adoption of this article.

3. This article shall not be construed to supersede any existing Pennsylvania or federal law. The City of Lancaster police and law enforcement officers retain the authority to enforce any applicable laws, and it is the City Council of the City of Lancaster's intent that such law enforcement officers may undertake custodial arrests where there is probable cause to believe that a criminal offense other than personal possession or personal use of a small amount of marijuana or personal possession of marijuana paraphernalia has been or is being committed.