

## **CHAPTER 19-03.1 UNIFORM CONTROLLED SUBSTANCES ACT**

### **19-03.1-01. Definitions.**

As used in this chapter and in chapters 19-03.2 and 19-03.4, unless the context otherwise requires:

1. "Administer" means to apply a controlled substance, whether by injection, inhalation, ingestion, or any other means, directly to the body of a patient or research subject by:
  - a. A practitioner or, in the practitioner's presence, by the practitioner's authorized agent; or
  - b. The patient or research subject at the direction and in the presence of the practitioner.
2. "Agent" means an authorized person who acts 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.
3. "Anabolic steroids" means any drug or hormonal substance, chemically and pharmacologically related to testosterone, other than estrogens, progestins, and corticosteroids.
4. "Board" means the state board of pharmacy.
5. "Bureau" means the drug enforcement administration in the United States department of justice or its successor agency.
6. "Controlled substance" means a drug, substance, or immediate precursor in schedules I through V as set out in this chapter.
7. "Counterfeit substance" means a controlled substance 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 who in fact manufactured, distributed, or dispensed the substance.
8. "Deliver" or "delivery" means the actual, constructive, or attempted transfer from one person to another of a controlled substance whether or not there is an agency relationship.
9. "Dispense" means to deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling, or compounding necessary to prepare the substance for that delivery.
10. "Dispenser" means a practitioner who dispenses.
11. "Distribute" means to deliver other than by administering or dispensing a controlled substance.
12. "Distributor" means a person who distributes.
13. "Drug" means:
  - a. Substances recognized as drugs in the official United States pharmacopeia national formulary, or the official homeopathic pharmacopeia of the United States, or any supplement to any of them;
  - b. Substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in individuals or animals;
  - c. Substances, other than food, intended to affect the structure or any function of the body of individuals or animals; and
  - d. Substances intended for use as a component of any article specified in subdivision a, b, or c. The term does not include devices or their components, parts, or accessories.
14. "Hashish" means the resin extracted from any part of the plant cannabis with or without its adhering plant parts, whether growing or not, and every compound, manufacture, salt, derivative, mixture, or preparation of the resin.
15. "Immediate precursor" means a substance:

- a. That the board has found to be and by rule designates as being the principal compound commonly used or produced primarily for use in the manufacture of a controlled substance;
- b. That is an immediate chemical intermediary used or likely to be used in the manufacture of the controlled substance; and
- c. The control of which is necessary to prevent, curtail, or limit the manufacture of the controlled substance.

16. "Manufacture" means the production, preparation, propagation, compounding, conversion, or processing of a controlled substance, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis and includes any packaging or repackaging of the substance or labeling or relabeling of its container. The term does not include the preparation or compounding of a controlled substance by an individual for the individual's own use or the preparation, compounding, packaging, or labeling of a controlled substance:

- a. By a practitioner as an incident to the practitioner's administering or dispensing of a controlled substance in the course of the practitioner's professional practice; or
- b. By a practitioner, or by the practitioner's authorized agent under the practitioner's supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale.

17. "Marijuana" means all parts of the plant cannabis whether growing or not; the seeds thereof; the resinous product of the combustion of the plant cannabis; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds. The term does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of mature stalks, fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

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

- a. Opium and opiate and any salt, compound, derivative, or preparation of opium or opiate.
- b. Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in subdivision a, but not including the isoquinoline alkaloids of opium.
- c. Opium poppy and poppy straw.
- d. Coca leaves and any salt, compound, derivative, or preparation of coca leaves, any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions of coca leaves which do not contain cocaine or ecgonine.

19. "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. The term does not include, unless specifically designated as controlled under section 19-03.1-02, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). The term includes its racemic and levorotatory forms.

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

21. "Over-the-counter sale" means a retail sale of a drug or product other than a controlled, or imitation controlled, substance.

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

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

24. "Practitioner" means:

- a. A physician, dentist, veterinarian, pharmacist, scientific investigator, or other person licensed, registered, or otherwise permitted by the jurisdiction in which the individual is practicing to distribute, dispense, conduct research with respect to, or to administer a controlled substance in the course of professional practice or research.
- b. A pharmacy, hospital, or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to, or to administer a controlled substance in the course of professional practice or research in this state.

25. "Production" includes the manufacturing, planting, cultivating, growing, or harvesting of a controlled substance.

26. "Sale" includes barter, exchange, or gift, or offer therefor, and each such transaction made by a person, whether as principal, proprietor, agent, servant, or employee.

27. "Scheduled listed chemical product" means a product that contains ephedrine, pseudoephedrin, or phenylpropanolamine, or each of the salts, optical isomers, and salts of optical isomers of each chemical, and that may be marketed or distributed in the United States under the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.] as a nonprescription drug unless prescribed by a licensed physician.

28. "State" when applied to a part of the United States includes any state, district, commonwealth, territory, insular possession thereof, and any area subject to the legal authority of the United States.

29. "Ultimate user" means an individual who lawfully possesses a controlled substance for the individual's own use or for the use of a member of the individual's household or for administering to an animal owned by the individual or by a member of the individual's household.

**19-03.1-01.1. Board - Agreements - Gifts.**

1. In carrying out its duties under this chapter, the board shall consult with representatives of each of the following interests: board of medical examiners, board of dental examiners, board of registry in podiatry, board of veterinary medical examiners, board of nursing, the college of pharmacy, and the school of medicine.
2. To carry out its duties under this chapter, the board may enter into agreements or memorandums of understanding with the interests named in subsection 1. Additionally, the board may contract for and accept private contributions, gifts, and grants-in-aid from the federal government, private industry, and other sources. The income received from these sources must be spent for the purpose designated in the gift, grant, or donation.

**19-03.1-02. Authority to control.**

1. The board shall administer this chapter and may add substances to or delete or reschedule all substances enumerated in the schedules in sections 19-03.1-05, 19-03.1-07, 19-03.1-09, 19-03.1-11, or 19-03.1-13 pursuant to the procedures of chapter 28-32. In making a determination regarding a substance, the board shall consider the following:
  - a. The actual or relative potential for abuse;
  - b. The scientific evidence of its pharmacological effect, if known;
  - c. The state of current scientific knowledge regarding the substance;
  - d. The history and current pattern of abuse;
  - e. The scope, duration, and significance of abuse;
  - f. The risk to the public health;
  - g. The potential of the substance to produce psychic or physiological dependence liability; and
  - h. Whether the substance is an immediate precursor of a substance already controlled under this chapter.

2. After considering the factors enumerated in subsection 1, the board shall make findings with respect thereto and issue a rule controlling the substance if it finds the substance has a potential for abuse.
3. If the board designates a substance as an immediate precursor, substances which are precursors of the controlled precursor are not subject to control solely because they are precursors of the controlled precursor.
4. If any substance is designated, rescheduled, or deleted as a controlled substance under federal law and notice thereof is given to the board, the board shall similarly control the substance under this chapter after the expiration of thirty days from publication in the federal register of a final order designating a substance as a controlled substance or rescheduling, or deleting a substance, unless within that thirty-day period, the board objects to inclusion, rescheduling, or deletion. In that case, the board shall publish the reasons for objection and afford all interested parties an opportunity to be heard. At the conclusion of the hearing, the board shall publish its decision, which is final unless altered by statute. Upon publication of objection to inclusion, rescheduling, or deletion under this chapter by the board, control under this chapter is stayed until the board publishes its decision.
5. Authority to control under this section does not extend to distilled spirits, wine, malt beverages, or tobacco as those terms are defined or used in title 5.

#### **19-03.1-03. Nomenclature.**

The controlled substances listed or to be listed in the schedules in sections 19-03.1-05, 19-03.1-07, 19-03.1-09, 19-03.1-11, and 19-03.1-13 are included by whatever official, common, usual, chemical, or trade name designated.

#### **19-03.1-04. Schedule I tests.**

The board shall place a substance in schedule I if it finds that the substance:

1. Has high potential for abuse; and
2. Has no accepted medical use in treatment in the United States or lacks accepted safety for use in treatment under medical supervision.

#### **19-03.1-05. Schedule I.**

1. The controlled substances listed in this section are included in schedule I.
2. Schedule I consists of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section.
3. Opiates. Unless specifically excepted or unless listed in another schedule, any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever the existence of those isomers, esters, ethers, and salts is possible within the specific chemical designation:
  - a. Acetyl-alpha-methylfentanyl (also known as N-[1-(1-methyl-2-phenethyl)-4-piperidinyl]-N-phenylacetamide).
  - b. Acetylmethadol.
  - c. Allylprodine.
  - d. Alphacetylmethadol.
  - e. Alphameprodine.
  - f. Alphamethadol.
  - g. Alpha-methylfentanyl (also known as N-[1-(alpha-methyl-beta-phenyl)ethyl-4-piperidyl]-1-(1-methyl-2-phenylethyl)-4-(N-propanilido) piperidine).
  - h. Alpha-methylthiofentanyl (also known as N-[1-methyl-2-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide).
  - i. Benzethidine.
  - j. Betacetylmethadol.

- k. Beta-hydroxyfentanyl (also known as N-[1-(2-hydroxy-2-phenethyl)-4-piperidinyl]-N-phenylpropanamide).
- l. Beta-hydroxy-3-methylfentanyl (also known as N-[1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidinyl]-N-phenylpropanamide).
- m. Betameprodine.
- n. Betamethadol.
- o. Betaprodine.
- p. Clonitazene.
- q. Dextromoramide.
- r. Diampromide.
- s. Diethylthiambutene.
- t. Difenoxin.
- u. Dimenoxadol.
- v. Dimepheptanol.
- w. Dimethylthiambutene.
- x. Dioxaphetyl butyrate.
- y. Dipipanone.
- z. Ethylmethylthiambutene.
- aa. Etonitazene.
- bb. Etoxeridine.
- cc. Furethidine.
- dd. Hydroxypethidine.
- ee. Ketobemidone.
- ff. Levomoramide.
- gg. Levophenacylmorphan.
- hh. 3-Methylfentanyl (also known as N-[3-methyl-1-(2-phenylethyl)4-piperidyl]-N-phenylpropanamide).
- ii. 3-Methylthiofentanyl (also known as N-[3-methyl-1-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide).
- jj. Morpheridine.
- kk. MPPP (also known as 1-methyl-4-phenyl-4-propionoxypiperidine).
- ll. Noracymethadol.
- mm. Norlevorphanol.
- nn. Normethadone.
- oo. Norpipanone.
- pp. Para-fluorofentanyl (also known as N-(4-fluorophenyl)-N-[1-(2-phenethyl)-4-piperidinyl] propanamide).
- qq. PEPAP (1-(2-Phenylethyl)-4-Phenyl-4-acetoxypiperidine).
- rr. Phenadoxone.
- ss. Phenampromide.
- tt. Phenomorphan.
- uu. Phenoperidine.
- vv. Piritramide.
- ww. Proheptazine.
- xx. Properidine.
- yy. Propiram.
- zz. Racemoramide.
- aaa. Thiofentanyl (also known as N-phenyl-N-[1-(2-thienyl)ethyl-4-piperidinyl]-propanamide).
- bbb. Tilidine.
- ccc. Trimeperidine.

4. Opium derivatives. Unless specifically excepted or unless listed in another schedule, any of the following opium derivatives, its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

- a. Acetorphine.

- b. Acetyldihydrocodeine.
- c. Benzylmorphine.
- d. Codeine methylbromide.
- e. Codeine-N-Oxide.
- f. Cyprenorphine.
- g. Desomorphine.
- h. Dihydromorphine.
- i. Drotebanol.
- j. Etorphine (except hydrochloride salt).
- k. Heroin.
- l. Hydromorphenol.
- m. Methyldesorphine.
- n. Methylidihydromorphine.
- o. Morphine methylbromide.
- p. Morphine methylsulfonate.
- q. Morphine-N-Oxide.
- r. Myrophine.
- s. Nicocodeine.
- t. Nicomorphine.
- u. Normorphine.
- v. Pholcodine.
- w. Thebacon.

5. Hallucinogenic substances. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any quantity of the following hallucinogenic substances, including their salts, isomers, and salts of isomers whenever the existence of those salts, isomers, and salts of isomers is possible within the specific chemical designation (for purposes of this subsection only, the term "isomer" includes the optical, position, and geometric isomers):

- a. Alpha-ethyltryptamine, its optical isomers, salts, and salts of isomers (also known as etryptamine; a-ethyl-1H-indole-3-ethanamine; 3-(2-aminobutyl) indole).
- b. Alpha-methyltryptamine.
- c. 4-bromo-2, 5-dimethoxy-amphetamine (also known as 4-bromo-2, 5-dimethoxy-a-methylphenethylamine; 4-bromo-2, 5-DMA).
- d. 4-bromo-2, 5-dimethoxyphenethylamine (also known as 4-bromo-2, 5-DMPEA).
- e. 2,5-dimethoxy-amphetamine (also known as 2, 5-DMA).
- f. 2,5-dimethoxy-4-ethylamphetamine (also known as DOET).
- g. 2,5-dimethoxy-4-(n)-propylthiophenethylamine (also known as 2C-T-7).
- h. 4-methoxyamphetamine (also known as 4-methoxy-a-methylphenethylamine; paramethoxyamphetamine; PMA).
- i. 5-methoxy-3,4-methylenedioxy-amphetamine.
- j. 4-methyl-2,5-dimethoxy-amphetamine (also known as 4-methyl-2,5-dimethoxy-a-methylphenethylamine; DOM and STP).
- k. 5-Methoxy-N,N-Dimethyltryptamine.
- l. 3,4-methylenedioxy amphetamine.
- m. 3,4-methylenedioxymethamphetamine (also known as MDMA).
- n. 3,4-methylenedioxy-N-ethylamphetamine (also known as N-ethyl-alpha-methyl-3,4(methylenedioxy)phenethylamine, N-ethyl, MDA, MDE, MDEA).
- o. N-hydroxy-3,4-methylenedioxyamphetamine (also known as N-hydroxy-alpha-methyl-3,4(methylenedioxy)phenylamine, and N-hydroxy MDA).
- p. 3,4,5-trimethoxy amphetamine.
- q. Bufotenine (also known as 3-(Beta-Dimethyl-aminoethyl)-5-hydroxyindole; 3-(2-dimethylaminoethyl)-5-indolol; N, N-dimethylserotonin; 5-hydroxy-N,N-dimethyltryptamine; mappine).
- r. 5-methoxy-N,N-diisopropyltryptamine.

- s. Diethyltryptamine (also known as N, N-Diethyltryptamine; DET).
- t. Dimethyltryptamine (also known as DMT).
- u. Hashish.
- v. Ibogaine (also known as 7-Ethyl-6, 6B, 7, 8, 9, 10, 12, 13-octahydro-2-methoxy-6, 9-methano-5 H-pyrido [1', 2':1,2] azepino (5,4-b) indole; Tabernanthe iboga).
- w. Lysergic acid diethylamide.
- x. Marijuana.
- y. Mescaline.
- z. Parahexyl (also known as 3-Hexyl-1-hydroxy-7,8,9,10-tetrahydro-6,6,9-trimethyl-6H-dibenzo[b,d]pyran; Synhexyl).
- aa. Peyote (all parts of the plant presently classified botanically as *Lophophora williamsii* Lemaire, whether growing or not, the seeds thereof, any extract from any part of such plant, and every compound, manufacture, salts, derivative, mixture, or preparation of such plant, its seeds, or its extracts).
- bb. N-ethyl-3-piperidyl benzilate.
- cc. N-methyl-3-piperidyl benzilate.
- dd. Psilocybin.
- ee. Psilocyn.
- ff. Tetrahydrocannabinols, meaning tetrahydrocannabinols naturally contained in a plant of the genus *Cannabis* (*cannabis* plant), as well as synthetic equivalents of the substances contained in the *cannabis* plant, or in the resinous extractives of such plant, including synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity to those substances contained in the plant, such as the following:
  - (1) Delta-1 cis or trans tetrahydrocannabinol, and their optical isomers.
  - (2) Delta-6 cis or trans tetrahydrocannabinol, and their optical isomers.
  - (3) Delta-3,4 cis or trans tetrahydrocannabinol, and its optical isomers.

(Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions covered.)
- gg. Cannabinoids, synthetic. This subdivision contains the synthetic chemicals which have similar effects on the cannabinoid receptors. It includes the chemicals and chemical groups listed below, including their homologues, salts, isomers, and salts of isomers. The term "isomer" includes the optical, position, and geometric isomers.
  - (1) Naphthoylindoles. Any compound containing a 3-(1-naphthoyl)indole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl or 2-(4-morpholinyl)ethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the naphthyl ring to any extent. Examples include:
    - (a) 1-Pentyl-3-(1-naphthoyl)indole - Other names: JWH-018 and AM-678.
    - (b) 1-Butyl-3-(1-naphthoyl)indole - Other names: JWH-073.
    - (c) 1-Pentyl-3-(4-methoxy-1-naphthoyl)indole - Other names: JWH-081.
    - (d) 1-[2-(4-morpholinyl)ethyl]-3-(1-naphthoyl)indole - Other names: JWH-200.
    - (e) 1-Propyl-2-methyl-3-(1-naphthoyl)indole - Other names: JWH-015.
    - (f) 1-Hexyl-3-(1-naphthoyl)indole - Other names: JWH-019.
    - (g) 1-Pentyl-3-(4-methyl-1-naphthoyl)indole - Other names: JWH-122.
    - (h) 1-Pentyl-3-(4-ethyl-1-naphthoyl)indole - Other names: JWH-210.
    - (i) 1-Pentyl-3-(4-chloro-1-naphthoyl)indole - Other names: JWH-398.
    - (j) 1-(5-fluoropentyl)-3-(1-naphthoyl)indole - Other names: AM-2201.
  - (2) Naphthylmethylindoles. Any compound containing a 1H-indol-3-yl-(1-naphthyl)methane structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl or 2-(4-morpholinyl)ethyl

group whether or not further substituted in the indole ring to any extent and whether or not substituted in the naphthyl ring to any extent. Examples include:

- (a) 1-Pentyl-1H-indol-3-yl-(1-naphthyl)methane - Other names: JWH-175.
- (b) 1-Pentyl-1H-indol-3-yl-(4-methyl-1-naphthyl)methane - Other names: JWH-184.
- (3) Naphthoypyroles. Any compound containing a 3-(1-naphthoyl)pyrrole structure with substitution at the nitrogen atom of the pyrrole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl or 2-(4-morpholinyl)ethyl group whether or not further substituted in the pyrrole ring to any extent, whether or not substituted in the naphthyl ring to any extent. Examples include: (5-(2-fluorophenyl)-1-pentylpyrrol-3-yl)-naphthalen-1-ylmethanone - Other names: JWH-307.
- (4) Naphthylmethylenes. Any compound containing a naphthylideneindene structure with substitution at the 3-position of the indene ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl or 2-(4-morpholinyl)ethyl group whether or not further substituted in the indene ring to any extent, whether or not substituted in the naphthyl ring to any extent. Examples include: E-1-[1-(1-Naphthalenylmethylene)-1H-inden-3-yl]pentane - Other names: JWH-176.
- (5) Phenylacetylindoles. Any compound containing a 3-phenylacetylindole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl or 2-(4-morpholinyl)ethyl group whether or not further substituted in the indole ring to any extent, whether or not substituted in the phenyl ring to any extent. Examples include:
  - (a) 1-(2-cyclohexylethyl)-3-(2-methoxyphenylacetyl)indole - Other names: RCS-8.
  - (b) 1-Pentyl-3-(2-methoxyphenylacetyl)indole - Other names: JWH-250.
  - (c) 1-Pentyl-3-(2-methylphenylacetyl)indole - Other names: JWH-251.
  - (d) 1-Pentyl-3-(2-chlorophenylacetyl)indole - Other names: JWH-203.
- (6) Cyclohexylphenols. Any compound containing a 2-(3-hydroxycyclohexyl)phenol structure with substitution at the 5-position of the phenolic ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl or 2-(4-morpholinyl)ethyl group whether or not substituted in the cyclohexyl ring to any extent. Examples include:
  - (a) 5-(1,1-dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol - Other names: CP 47,497.
  - (b) 5-(1,1-dimethyloctyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol - Other names: Cannabicyclohexanol and CP 47,497 C8 homologue.
  - (c) 5-(1,1-dimethylheptyl)-2-[(1R,2R)-5-hydroxy-2-(3-hydroxypropyl)cyclohexyl]-phenol - Other names: CP 55,940.
- (7) Benzoylindoles. Any compound containing a 3-(benzoyl)indole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl or 2-(4-morpholinyl)ethyl group whether or not further substituted in the indole ring to any extent and whether or not substituted in the phenyl ring to any extent. Examples include:
  - (a) 1-Pentyl-3-(4-methoxybenzoyl)indole - Other names: RCS-4.
  - (b) (1-(5-fluoropentyl)-3-(2-iodobenzoyl)indole) - Other names: AM-694.
  - (c) (4-Methoxyphenyl)-[2-methyl-1-(2-(4-morpholinyl)ethyl)indol-3-yl]methanone - Other names: WIN 48,098 and Pravadoline.
- (8) Others specifically named:

- (a) (6aR,10aR)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol - Other names: HU-210.
- (b) (6aS,10aS)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol - Other names: Dexanabinol and HU-211.
- (c) 2,3-Dihydro-5-methyl-3-(4-morpholinylmethyl)pyrrolo[1,2,3-de]-1,4-benzoxazin-6-yl]-1-naphthalenylmethanone - Other names: WIN 55,212-2.
- hh. Ethylamine analog of phencyclidine (also known as N-ethyl-1-phenylcyclohexylamine, (1-phenylcyclohexyl) ethylamine, N-(1-phenylcyclohexyl) ethylamine, cyclohexamine, PCE).
- ii. Pyrrolidine analog of phencyclidine (also known as 1-(1-phenylcyclohexyl)-pyrrolidine, PCPy, PHP).
- jj. Thiophene analog of phencyclidine (also known as (1-[1-(2-thienyl) cyclohexyl] piperidine; 2-Thienyl analog of phencyclidine; TPCP, TCP).
- kk. 1-[1-(2-thienyl)cyclohexyl]pyrrolidine (also known as TCPy).
- ll. Salvia divinorum, salvinorin A, or any of the active ingredients of salvia divinorum.

6. Depressants. Unless specifically excepted or unless listed in another schedule, any material compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

- a. Flunitrazepam.
- b. Gamma-hydroxybutyric acid.
- c. Mecloqualone.
- d. Methaqualone.

7. Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers:

- a. Aminorex (also known as 2-amino-5-phenyl-2-oxazoline, or 4,5-dihydro-5-phenyl-2-oxazolamine).
- b. Cathinone (also known as 2-amino-1-phenyl-1-propanone, alpha-aminopropiophenone, 2-aminopropiophenone, and norephedrone).
- c. Fenethylline.
- d. Mephedrone (2-methylamino-1-p-tolylpropan-1-one) also known as 4-methylmethcathinone (4-MMC), 4-methylephedrone.
- e. ( $\pm$ )cis-4-methylaminorex (also known as ( $\pm$ )cis-4,5-dihydro-4-methyl-5-phenyl-2-oxazolamine).
- f. 3,4-Methylenedioxypyrovalerone (MDPV).
- g. Methcathinone (also known as (2-methylamino-1-phenylpropan-1-one).
- h. N-Benzylpiperazine (also known as BZP, 1-benzylpiperazine).
- i. N-ethylamphetamine.
- j. N, N-dimethylamphetamine (also known as N,N-alpha-trimethyl-benzeneethanamine; N,N-alpha-trimethylphenethylamine).

#### **19-03.1-06. Schedule II tests.**

The board shall place a substance in schedule II if it finds that:

1. The substance has high potential for abuse;
2. The substance has currently accepted medical use in treatment in the United States or currently accepted medical use with severe restrictions; and
3. The abuse of the substance may lead to severe psychic or physical dependence.

#### **19-03.1-07. Schedule II.**

1. The controlled substances listed in this section are included in schedule II.

2. Schedule II consists of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section.
3. Substances, vegetable origin or chemical synthesis. Unless specifically excepted or unless listed in another schedule, any of the following substances whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:
  - a. Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate, excluding apomorphine, dextrophan, nalbuphine, nalmefene, naloxone, and naltrexone and their respective salts, but including the following:
    - (1) Codeine.
    - (2) Dihydroetorphine.
    - (3) Ethylmorphine.
    - (4) Etorphine hydrochloride.
    - (5) Granulated opium.
    - (6) Hydrocodone.
    - (7) Hydromorphone.
    - (8) Metopon.
    - (9) Morphine.
    - (10) Opium extracts.
    - (11) Opium fluid.
    - (12) Oripavine.
    - (13) Oxycodone.
    - (14) Oxymorphone.
    - (15) Powder opium.
    - (16) Raw opium.
    - (17) Thebaine.
    - (18) Tincture of opium.
  - b. Any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in subdivision a, but not including the isoquinoline alkaloids of opium.
  - c. Opium poppy and poppy straw.
  - d. Coca leaves and any salt, compound, derivative, or preparation of coca leaves, including cocaine and ecgonine and their salts, isomers, derivatives, and salts of isomers and derivatives, and any salt, compound, derivative, or preparation thereof that is chemically equivalent or identical with any of these substances, except that the nondosage substances must include decocainized coca leaves or extractions of coca leaves which do not contain cocaine or ecgonine.
  - e. Concentrate of poppy straw (the crude extract of poppy straw in either liquid, solid, or powder form which contains the phenanthrine alkaloids of the opium poppy).
4. Opiates. Unless specifically excepted or unless in another schedule, any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers whenever the existence of those isomers, esters, ethers, and salts is possible within the specific chemical designation, dextrophan and levopropoxyphene excepted:
  - a. Alfentanil.
  - b. Alphaprodine.
  - c. Anileridine.
  - d. Bezetramide.
  - e. Bulk dextropropoxyphene (nondosage forms).
  - f. Carfentanil.
  - g. Dihydrocodeine.
  - h. Diphenoxylate.
  - i. Fentanyl.

- j. Isomethadone.
- k. Levo-alphaacetylmethadol (LAAM).
- l. Levomethorphan.
- m. Levorphanol.
- n. Metazocine.
- o. Methadone.
- p. Methadone-Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane.
- q. Moramide-Intermediate, 2-methyl-3-morpholino-1, 1-diphenylpropane-carboxylic acid.
- r. Pethidine (also known as meperidine).
- s. Pethidine-Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine.
- t. Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate.
- u. Pethidine-Intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid.
- v. Phenazocine.
- w. Priminodine.
- x. Racemethorphan.
- y. Racemorphan.
- z. Remifentanil.
- aa. Sufentanil.
- bb. Tapentadol.

5. Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system:

- a. Amphetamine, its salts, optical isomers, and salts of its optical isomers.
- b. Lisdexamfetamine, its salts, isomers, and salts of isomers.
- c. Methamphetamine, its salts, isomers, and salts of isomers.
- d. Phenmetrazine and its salts.
- e. Methylphenidate.

6. Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

- a. Amobarbital.
- b. Glutethimide.
- c. Pentobarbital.
- d. Phencyclidine.
- e. Secobarbital.

7. Hallucinogenic substances. Nabilone [another name for nabilone ( $\pm$ )-trans-3-(1, 1-dimethylheptyl)-6, 6a, 7, 8, 10, 10a-hexahydro-1-hydroxy-6, 6-dimethyl-9Hdibenzo [b, d] pyran-9-one].

8. Immediate precursors. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances:

- a. Immediate precursor to amphetamine and methamphetamine: Phenylacetone. Some trade or other names: phenyl-2-propanone; P2P, benzyl methyl ketone; methyl benzyl ketone.
- b. Immediate precursors to phencyclidine (PCP):
  - (1) 1-phenylcyclohexylamine.
  - (2) 1-piperidinocyclohexanecarbonitrile (PCC).
- c. Immediate precursors to fentanyl: 4-anilino-N-phenethyl-4-piperidine (ANPP).

#### **19-03.1-08. Schedule III tests.**

The board shall place a substance in schedule III if it finds that:

1. The substance has a potential for abuse less than the substances listed in schedules I and II;

2. The substance has currently accepted medical use in treatment in the United States; and
3. Abuse of the substance may lead to moderate or low physical dependence or high psychological dependence.

**19-03.1-09. Schedule III.**

1. The controlled substances listed in this section are included in schedule III.
2. Schedule III consists of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section.
3. Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers (whether optical, position, or geometric), and salts of such isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:
  - a. Those compounds, mixtures, or preparations in dosage unit form containing any stimulant substances listed in schedule II and any other drug of the quantitative composition shown in that schedule for those drugs or which is the same except that it contains a lesser quantity of controlled substances.
  - b. Benzphetamine.
  - c. Chlorphentermine.
  - d. Clortermine.
  - e. Phendimetrazine.
4. Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances having a depressant effect on the central nervous system:
  - a. Any compound, mixture, or preparation containing:
    - (1) Amobarbital;
    - (2) Secobarbital;
    - (3) Pentobarbital;or any salt thereof and one or more other active medicinal ingredients which are not listed in any schedule.
  - b. Any suppository dosage form containing:
    - (1) Amobarbital;
    - (2) Secobarbital;
    - (3) Pentobarbital;or any salt of any of these drugs and approved by the food and drug administration for marketing only as a suppository.
  - c. Any substance that contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid, except those substances which are specifically listed in other schedules thereof.
  - d. Chlorhexadol.
  - e. Embutramide.
  - f. Gamma-hydroxybutyric acid in a United States food and drug administration-approved drug product.
  - g. Ketamine.
  - h. Lysergic acid.
  - i. Lysergic acid amide.
  - j. Methyprylon.
  - k. Sulfondiethylmethane.
  - l. Sulfonethylmethane.
  - m. Sulfonmethane.
  - n. Tiletamine and zolazepam or any salt thereof. Some trade or other names for a tiletamine-zolazepam combination product: Telazol. Some trade or other names for tiletamine: 2-(ethylamino)-2-(2-thienyl)-cyclohexanone. Some trade or other

names for zolazepam: 4-2(2-fluorophenyl)-6, 8-dihydro-1,3,8-trimethylpyrazolo-[3,4-e][1,4]-diazepin-7(1H)-one, flupyrazapon.

5. Nalorphine.
6. Narcotic drugs. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation that contains any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below:
  - a. (1) Not more than 1.80 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 1.80 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.
  - (3) Not more than 300 milligrams of hydrocodone per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium.
  - (4) Not more than 300 milligrams of hydrocodone per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.
  - (5) Not more than 1.80 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 with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.
- b. Buprenorphine.
7. Anabolic steroids. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation that contains any of the following anabolic steroids:
  - a. 3beta,17-dihydroxy-5a-androstane;
  - b. 3alpha,17beta-dihydroxy-5a-androstane;
  - c. 5alpha-androstan-3,17-dione;
  - d. 1-androstenediol (3beta,17beta-dihydroxy-5alpha-androst-1-ene);
  - e. 1-androstenediol (3alpha,17beta-dihydroxy-5alpha-androst-1-ene);
  - f. 4-androstenediol (3beta,17beta-dihydroxy-4-ene);
  - g. 5-androstenediol (3beta,17beta-dihydroxy-androst-5-ene);
  - h. 1-androstenedione ([5alpha]-androst-1-en-3,17-dione);
  - i. 4-androstenedione (androst-4-en-3,17-dione);
  - j. 5-androstenedione (androst-5-en-3,17-dione);
  - k. Bolasterone (7alpha,17alpha-dimethyl-17beta-hydroxyandrost-4-en-3-one);
  - l. Boldenone (17beta-hydroxyandrost-1,4,-diene-3-one);
  - m. Boldione (androsta-1,4-diene-3,17-dione);
  - n. Calusterone (7beta,17alpha-dimethyl-17beta-hydroxyandrost-4-en-3-one);
  - o. Clostebol (4-chloro-17beta-hydroxyandrost-4-en-3-one);
  - p. Dehydrochloromethyltestosterone  
(4-chloro-17beta-hydroxy-17alpha-methyl-androst-1,4-dien-3-one);
  - q. Delta-1-dihydrotestosterone (also known as '1-testosterone')  
(17beta-hydroxy-5alpha-androst-1-en-3-one);
  - r. Desoxymethyltestosterone (17a-methyl-5a-androst-2-en-17ol) (also known as madol);

- s. 4-dihydrotestosterone (17beta-hydroxy-androstan-3-one);
- t. Drostanolone (17beta-hydroxy-2alpha-methyl-5alpha-androstan-3-one);
- u. Ethylestrenol (17alpha-ethyl-17beta-hydroxyestr-4-ene);
- v. Fluoxymesterone (9-fluoro-17alpha-methyl-11beta, 17beta-dihydroxyandrost-4-en-3-one);
- w. Formebolone (2-formyl-17alpha-methyl-11alpha, 17beta-dihydroxyandrost-1,4-dien-3-one);
- x. Furazabol (17alpha-methyl-17beta-hydroxyandrostano[2,3-c]-furazan);
- y. 13beta-ethyl-17alpha-hydroxygon-4-en-3-one;
- z. 4-hydroxytestosterone (4,17beta-dihydroxy-androst-4-en-3-one);
- aa. 4-hydroxy-19-nortestosterone (4,17beta-dihydroxy-estr-4-en-3-one);
- bb. Mestanolone (17alpha-methyl-17beta-hydroxy-5-androstan-3-one);
- cc. Mesterolone (1alpha-methyl-17beta-hydroxy-[5alpha]-androstan-3-one);
- dd. Methandienone (17alpha-methyl-17beta-dihydroxyandrost-1,4-dien-3-one);
- ee. Methandriol (17alpha-methyl-3beta,17beta-dihydroxyandrost-5-ene);
- ff. Methenolone (1-methyl-17beta-hydroxy-5alpha-androst-1-en-3-one);
- gg. 17alpha-methyl-3beta,17beta-dihydroxy-5a-androstane;
- hh. 17alpha-methyl-3alpha,17beta-dihydroxy-5a-androstane;
- ii. 17alpha-methyl-3beta,17beta-dihydroxyandrost-4-ene;
- jj. 17alpha-methyl-4-hydroxynandrolone (17alpha-methyl-4-hydroxy-17beta-hydroxyestr-4-en-3-one);
- kk. Methyldienolone (17alpha-methyl-17beta-hydroxyestra-4,9(10)-dien-3-one);
- ll. Methyltrienolone (17alpha-methyl-17beta-hydroxyestra-4,9(11)-trien-3-one);
- mm. Methyltestosterone (17alpha-methyl-17beta-hydroxyandrost-4-en-3-one);
- nn. Mibolerone (7alpha,17alpha-dimethyl-17beta-hydroxyestr-4-en-3-one);
- oo. 17alpha-methyl-delta1-dihydrotestosterone (17bbeta-hydroxy-17alpha-methyl-5alpha-androst-1-en-3-one) (also known as '17-alpha-methyl-1-testosterone');
- pp. Nandrolone (17beta-hydroxyestr-4-en-3-one);
- qq. 19-nor-4-androstenediol (3beta,17beta-dihydroxyestr-4-ene);
- rr. 19-nor-4-androstenediol (3alpha,17beta-dihydroxyestr-4-ene);
- ss. 19-nor-5-androstenediol (3beta,17beta-dihydroxyestr-5-ene);
- tt. 19-nor-5-androstenediol (3alpha,17-beta-dihydroxyester-5-ene);
- uu. 19-nor-4-androstenedione (estr-4-en-3,17-dione);
- vv. 19-nor-4,9(10)-androstadienedione (estra-4,9(10)-diene-3,17-dione);
- ww. 19-nor-5-androstenedione (estr-5-en-3,17-dione);
- xx. Norboletheone (13beta,17alpha-diethyl-17beta-hydroxygon-4-en-3-one);
- yy. Norclostebol (4-chloro-17beta-hydroxyestr-4-en-3-one);
- zz. Norethandrolone (17alpha-ethyl-17beta-hydroxyestr-4-en-3-one);
- aaa. Normethandrolone (17alpha-methyl-17beta-hydroxyestr-4-en-3-one);
- bbb. Oxandrolone (17alpha-methyl-17beta-hydroxy-2-oxa-[5alpha]-androstan-3-one);
- ccc. Oxymesterone (17alpha-methyl-4-17beta-dihydroxyandrost-4-en-3-one);
- ddd. Oxymetholone (17alpha-methyl-2-hydroxymethylene-17beta-hydroxy-[5alpha]-androstan-3-one);
- eee. Stanozolol (17alpha-methyl-17beta-hydroxy[5alpha]-androst-2-eno[3,2-c]-pyrazole);
- fff. Stenbolone (17beta-hydroxy-2-methyl-[5alpha]-androst-1-en-3-one);
- ggg. Testolactone (13-hydroxy-3-oxo-13,17-secoandrosta-1,4-dien-17-oic acid lactone);
- hhh. Testosterone (17beta-hydroxyandrost-4-en-3-one);
- iii. Tetrahydrogestrinone (13beta,17alpha-diethyl-17beta-hydroxygon-4,9,11-trien-3-one);
- jjj. Trenbolone (17beta-hydroxyestr-4,9,11-trien-3-one);
- or any salt, ester, or isomer of a drug or substance described or listed in this subsection, if that salt, ester, or isomer promotes muscle growth.

The term does not include an anabolic steroid that is expressly intended for administration through implants to cattle or other nonhuman species and which has been approved by the secretary of health and human services for administration unless any person prescribes, dispenses, possesses, delivers, or distributes for human use.

8. Hallucinogenic substances.
  - a. Dronabinol (synthetic) [(-)-delta-9-(trans)-tetrahydrocannabinol] in sesame oil and encapsulated in a soft gelatin capsule in a United States food and drug administration-approved drug product.
  - b. Any product in hard or soft gelatin capsule form containing natural dronabinol (derived from the cannabis plant) or synthetic dronabinol (produced from synthetic materials) in sesame oil, for which an abbreviated new drug application has been approved by the food and drug administration under section 505(j) of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 355(j)] which references as its listed drug the drug product referred to in subdivision a.
9. The board may except by rule any compound, mixture, or preparation containing any stimulant or depressant substance listed in subsections 3 and 4 from the application of all or any part of this chapter 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, and if the admixtures are included therein in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances which have a stimulant or depressant effect on the central nervous system.

#### **19-03.1-10. Schedule IV tests.**

The board shall place a substance in schedule IV if it finds that:

1. The substance has a low potential for abuse relative to substances in schedule III;
2. The substance has currently accepted medical use in treatment in the United States; and
3. Abuse of the substance may lead to limited physical dependence or psychological dependence relative to the substances in schedule III.

#### **19-03.1-11. Schedule IV.**

1. The controlled substances listed in this section are included in schedule IV.
2. Schedule IV consists of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section.
3. Narcotic drugs. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any of the following narcotic drugs or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below:
  - a. Not more than 1 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.
  - b. Dextropropoxyphene (also known as alpha-(+)-4-dimethylamino-1,2-diphenyl-3-methyl-2-propionoxybutane).
4. Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any quantity of the following substances, including their salts, isomers, and salts of isomers whenever the existence of those salts, isomers, and salts of isomers is possible within the specific chemical designation:
  - a. Alprazolam.
  - b. Barbital.
  - c. Bromazepam.
  - d. Camazepam.
  - e. Carisoprodol.
  - f. Chloral betaine.

- g. Chloral hydrate.
- h. Chlordiazepoxide.
- i. Clobazam.
- j. Clonazepam.
- k. Clorazepate.
- l. Clotiazepam.
- m. Cloxazolam.
- n. Delorazepam.
- o. Diazepam.
- p. Dichloralphenazone.
- q. Estazolam.
- r. Ethchlorvynol.
- s. Ethinamate.
- t. Ethyl loflazepate.
- u. Fludiazepam.
- v. Flurazepam.
- w. Fospropofol.
- x. Halazepam.
- y. Haloxazolam.
- z. Indiplon.
- aa. Ketazolam.
- bb. Loprazolam.
- cc. Lorazepam.
- dd. Lormetazepam.
- ee. Mebutamate.
- ff. Medazepam.
- gg. Meprobamate.
- hh. Methohexital.
  - ii. Methylphenobarbital (also known as mephobarbital).
  - jj. Midazolam.
- kk. Nimetazepam.
- ll. Nitrazepam.
- mm. Nordiazepam.
- nn. Oxazepam.
- oo. Oxazolam.
- pp. Paraldehyde.
- qq. Petrichloral.
- rr. Phenobarbital.
- ss. Pinazepam.
- tt. Propofol.
- uu. Prazepam.
- vv. Quazepam.
- ww. Temazepam.
- xx. Tetrazepam.
- yy. Triazolam.
- zz. Zaleplon.
- aaa. Zolpidem.
- bbb. Zopiclone.

5. Fenfluramine. Any material, compound, mixture, or preparation which contains any quantity of the following substances, including its salts, isomers (whether optical, position, or geometric), and salts of such isomers, whenever the existence of such salts, isomers, and salts of isomers is possible: Fenfluramine.

6. Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers:

- a. Cathine.
- b. Diethylpropion.
- c. Fencamfamin.
- d. Fenproporex.
- e. Mazindol.
- f. Mefenorex.
- g. Modafinil.
- h. Pemoline (including organometallic complexes and chelates thereof).
- i. Phentermine.
- j. Pipradrol.
- k. Sibutramine.
- l. SPA ((-)-1-dimethylamino-1, 2-diphenylethane).

7. Other substances. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of:

- a. Pentazocine, including its salts.
- b. Butorphanol, including its optical isomers.

8. The board may except by rule any compound, mixture, or preparation containing any depressant substance listed in subsection 2 from the application of all or any part of this chapter if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a depressant effect on the central nervous system, and if the admixtures are included therein in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances which have a depressant effect on the central nervous system.

#### **19-03.1-12. Schedule V tests.**

The board shall place a substance in schedule V if it finds that:

- 1. The substance has low potential for abuse relative to the controlled substances listed in schedule IV;
- 2. The substance has currently accepted medical use in treatment in the United States; and
- 3. The substance has limited physical dependence or psychological dependence liability relative to the controlled substances listed in schedule IV.

#### **19-03.1-13. Schedule V.**

- 1. The controlled substances listed in this section are included in schedule V.
- 2. Schedule V consists of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section.
- 3. Narcotic drugs. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any of the following narcotic drugs and their salts.
- 4. Narcotic drugs containing nonnarcotic active medicinal ingredients. Any compound, mixture, or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below, which includes one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualities other than those possessed by narcotic drugs alone.
  - a. Not more than 200 milligrams of codeine per 100 milliliters or per 100 grams.
  - b. Not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams.
  - c. Not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams.
  - d. Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit.
  - e. Not more than 100 milligrams of opium per 100 milliliters or per 100 grams.

- f. Not more than 0.5 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.
5. Depressants. Unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts:
  - a. Lacosamide [(R)-2-acetoamido-N-benzyl-3-methoxy-propionamide].
  - b. Pregabalin [(S)-3-(aminomethyl)-5-methylhexanoic acid].
6. Stimulants. Unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture, or preparation containing any quantity of the following substances having a stimulant effect on the central nervous system, including their salts, isomers, and salts of isomers: Pyrovalerone.

**19-03.1-14. Republishing of schedules.**

The board shall revise and republish the schedules annually.

**19-03.1-15. Rules.**

The board may adopt rules pursuant to chapter 28-32 and charge reasonable fees relating to the registration and control of the manufacture, distribution, and dispensing of controlled substances within this state.

**19-03.1-16. Registration requirements.**

1. Every person who manufactures, distributes, or dispenses any controlled substance within this state or who proposes to engage in the manufacture, distribution, or dispensing of any controlled substance within this state shall obtain annually a registration issued by the board in accordance with its rules.
2. Persons registered by the board under this chapter to manufacture, distribute, dispense, or conduct research with controlled substances may possess, manufacture, distribute, dispense, or conduct research with those substances to the extent authorized by their registration and in conformity with the other provisions of this chapter.
3. The following persons need not register and may lawfully possess controlled substances under this chapter:
  - a. An agent or employee of any registered manufacturer, distributor, or dispenser of any controlled substance if an agent or employee is acting in the usual course of an agent's or employee's business or employment.
  - b. A common or contract carrier or warehouseman, or an employee thereof, whose possession of any controlled substance is in the usual course of business or employment.
  - c. 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.
4. The board may waive by rule the requirement for registration of certain manufacturers, distributors, or dispensers if it finds it consistent with the public health and safety.
5. A separate registration is required at each principal place of business or professional practice where the applicant manufactures, distributes, or dispenses controlled substances.
6. The board may inspect the establishment of a registrant or applicant for registration in accordance with the rules of the board.

**19-03.1-17. Registration.**

1. The board shall register an applicant to manufacture or distribute controlled substances included in sections 19-03.1-05, 19-03.1-07, 19-03.1-09, 19-03.1-11, and 19-03.1-13 unless it determines that the issuance of that registration would be

inconsistent with the public interest. In determining the public interest, the board shall consider the following factors:

- a. Maintenance of effective controls against diversion of controlled substances into other than legitimate medical, scientific, or industrial channels;
- b. Compliance with applicable state and local laws;
- c. Any convictions of the applicant under any federal and state laws relating to any controlled substance;
- d. Past experience in the manufacture or distribution of controlled substances and the existence in the applicant's establishment of effective controls against diversion;
- e. Furnishing by the applicant of false or fraudulent material in any application filed under this chapter;
- f. Suspension or revocation of the applicant's federal registration to manufacture, distribute, or dispense controlled substances as authorized by federal law; and
- g. Any other factors relevant to and consistent with the public health and safety.

2. Registration under subsection 1 does not entitle a registrant to manufacture and distribute controlled substances in schedule I or II other than those specified in the registration.
3. Practitioners must be registered to dispense any controlled substances or to conduct research with controlled substances in schedules II through V if they are authorized to dispense or conduct research under the laws of this state. The board need not require separate registration under this chapter for practitioners engaging in research with nonnarcotic controlled substances in schedules II through V where the registrant is already registered under this chapter in another capacity. Practitioners registered under federal law to conduct research with schedule I substances may conduct research with schedule I substances within this state upon furnishing the state department of health evidence of that federal registration.
4. Compliance by manufacturers and distributors with the provisions of the federal law respecting registration (excluding fees) entitles them to be registered under this chapter.

#### **19-03.1-17.1. Criminal history record checks.**

The board may require an applicant for registration or a registrant whose registration is subject to revocation or suspension or employees or officers of an applicant or registrant to submit to a statewide and nationwide criminal history record check. The nationwide criminal history record check must be conducted in the manner provided by section 12-60-24. All costs associated with obtaining a background check are the responsibility of the applicant or registrant.

#### **19-03.1-18. Revocation and suspension of registration.**

1. A registration under section 19-03.1-17 to manufacture, distribute, or dispense a controlled substance may be suspended or revoked by the board upon a finding that the registrant:
  - a. Has furnished false or fraudulent material information in any application filed under this chapter;
  - b. Has been convicted of a felony under any state or federal law relating to any controlled substance; or
  - c. Has had the registrant's federal registration suspended or revoked to manufacture, distribute, or dispense controlled substances.
2. The board may limit revocation or suspension of a registration to the particular controlled substance with respect to which grounds for revocation or suspension exist.
3. If the board suspends or revokes a registration, all controlled substances owned or possessed by the registrant at the time of suspension or the effective date of the revocation order may be placed under seal. No disposition may be made of substances under seal until the time for taking an appeal has elapsed or until all appeals have been concluded unless a court, upon application therefor, orders the

sale of perishable substances and the deposit of the proceeds of the sale with the court. Upon a revocation order becoming final, all controlled substances may be forfeited to the state.

4. The board shall promptly notify the bureau of all orders suspending or revoking registration and all forfeitures of controlled substances.

**19-03.1-19. Order to show cause.**

1. Before denying, suspending, or revoking a registration, or refusing a renewal of registration, the board shall serve upon the applicant or registrant an order to show cause why registration should not be denied, revoked, or suspended, or why the renewal should not be refused. The order to show cause must contain a statement of the basis therefor and must call upon the applicant or registrant to appear before the board at a time and place not less than thirty days after the date of service of the order, but in the case of a denial or renewal of registration the show cause order must be served not later than thirty days before the expiration of the registration. These proceedings must be conducted in accordance with chapter 28-32 without regard to any criminal prosecution or other proceeding. Proceedings to refuse renewal of registration do not abate the existing registration which remains in effect pending the outcome of the administrative hearing.
2. The board may suspend, without an order to show cause, any registration simultaneously with the institution of proceedings under section 19-03.1-18, or where renewal of registration is refused, if it finds that there is an imminent danger to the public health or safety which warrants this action. The suspension continues in effect until the conclusion of the proceedings, including judicial review thereof, unless sooner withdrawn by the board or dissolved by a court of competent jurisdiction.

**19-03.1-20. Records of registrants.**

Persons registered to manufacture, distribute, or dispense controlled substances under this chapter shall keep records and maintain inventories in conformance with the recordkeeping and inventory requirements of federal law and with any additional rules the board issues.

**19-03.1-20.1. Report of any theft or loss.**

The registrant shall immediately, within one business day, notify the state board of pharmacy of any theft or significant loss of controlled substances. This report may be telephoned, faxed, or e-mailed to the state board of pharmacy. In addition, significant loss has been further defined to include a list of factors that are relevant in deciding whether a loss was significant. This list is as follows:

1. The actual quantity of controlled substances lost in relation to the type of business;
2. The specific controlled substances lost;
3. Whether the loss of the controlled substances can be associated with access to those controlled substances by specific individuals, or whether the loss can be attributed to unique activities that may take place involving the controlled substances;
4. A pattern of losses over a specific time period, whether the losses appear to be random, and the results of efforts taken to resolve the losses; and, if known
5. Whether specific controlled substances are likely candidates for diversion; and
6. Local trends and other indicators of the diversion potential of the missing controlled substance.

**19-03.1-21. Order forms.**

Controlled substances in schedules I and II must be distributed by a registrant to another registrant only pursuant to an order form. Compliance with the provisions of federal law respecting order forms must be deemed compliance with this section.

### **19-03.1-22. Prescriptions.**

1. Except when dispensed directly by a practitioner, other than a pharmacy, to an ultimate user, no controlled substance in schedule II may be dispensed without the written prescription of a practitioner. When the patient is a hospice patient or resides in a licensed long-term care facility and the prescription has been signed by the practitioner before faxing, the facsimile may serve as the original prescription without another signature. The prescription may not be filled more than six months after the date it was written.
2. In emergency situations, as defined by rule of the board, schedule II drugs may be dispensed upon oral prescription of a practitioner, reduced promptly to writing, and filed by the pharmacy. Prescriptions must be retained in conformity with the requirements of section 19-03.1-20. No prescription for a schedule II substance may be refilled.
3. Except when dispensed directly by a practitioner, other than a pharmacy, to an ultimate user, a controlled substance included in schedule III or IV, which is a prescription drug as determined under this chapter or chapter 19-02.1, may not be dispensed without a written or oral prescription of a practitioner. The prescription may not be filled or refilled more than six months after the date thereof or be refilled more than five times, unless renewed by the practitioner. Any oral prescription for such drugs must be promptly reduced to writing by the pharmacist, intern, or technician on a new prescription blank. When the patient is a hospice patient or resides in a licensed long-term care facility and the prescription has been signed by the practitioner before faxing, the facsimile may serve as the original prescription without another signature.
4. Except when dispensed directly by a practitioner, other than a pharmacy, to an ultimate user, no controlled substance included in schedule V must be dispensed without the written or oral prescription of a practitioner. The prescription may not be filled or refilled more than six months after the date thereof or be refilled more than five times unless renewed by the practitioner. Any oral prescription for such compound, mixture, or preparation must be promptly reduced to writing by the pharmacist, intern, or technician on a new prescription blank. When the patient is a hospice patient or resides in a licensed long-term care facility and the prescription has been signed by the practitioner before faxing, the facsimile may serve as the original prescription without another signature.

#### **19-03.1-22.1. Volatile chemicals - Inhalation of vapors prohibited - Definitions - Penalty.**

An individual is guilty of a class B misdemeanor if that individual intentionally inhales the vapors of a volatile chemical in a manner designed to affect the individual's central nervous system; to create or induce a condition of intoxication, hallucination, or elation; or to distort, disturb, or change the individual's eyesight, thinking processes, balance, or coordination. This section does not apply to inhalations specifically prescribed for medical, dental, or optometric treatment purposes or to controlled substances described in this chapter. For the purposes of this section, "volatile chemical" includes the following chemicals or their isomers:

1. Acetone.
2. Aliphatic hydrocarbons.
3. Amyl nitrite.
4. Butane.
5. Butyl nitrite.
6. Carbon tetrachloride.
7. Chlorinated hydrocarbons.
8. Chlorofluorocarbons.
9. Chloroform.
10. Cyclohexane.
11. Diethyl ether.
12. Ethyl acetate.
13. Fluorocarbon.

14. Glycol ether inter solvent.
15. Glycol ether solvent.
16. Hexane.
17. Ketone solvent.
18. Methanol.
19. Methyl cellosolve acetate.
20. Methyl ethyl ketone.
21. Methyl isobutyl ketone.
22. Nitrous oxide.
23. Petroleum distillate.
24. Toluene.
25. Trichloroethane.
26. Trichloroethylene.
27. Xylool or xylene.

**19-03.1-22.2. Endangerment of child or vulnerable adult.**

1. For purposes of this section:
  - a. "Chemical substance" means a substance intended to be used as a precursor in the manufacture of a controlled substance or any other chemical intended to be used in the manufacture of a controlled substance. Intent under this subsection may be demonstrated by the substance's use, quantity, manner of storage, or proximity to other precursors or to manufacturing equipment.
  - b. "Child" means an individual who is under the age of eighteen years.
  - c. "Controlled substance" means the same as that term is defined in section 19-03.1-01, except the term does not include less than one-half ounce of marijuana.
  - d. "Drug paraphernalia" means the same as that term is defined in section 19-03.4-01.
  - e. "Prescription" means the same as that term is described in section 19-03.1-22.
  - f. "Vulnerable adult" means either a disabled adult or vulnerable elderly adult as those terms are defined in section 12.1-31-07.
2. Unless a greater penalty is otherwise provided by law, a person who knowingly or intentionally causes or permits a child or vulnerable adult to be exposed to, to ingest or inhale, or to have contact with a controlled substance, chemical substance, or drug paraphernalia as defined in subsection 1, is guilty of a class C felony.
3. Unless a greater penalty is otherwise provided by law, a person who violates subsection 2, and a child or vulnerable adult actually suffers bodily injury by exposure to, ingestion of, inhalation of, or contact with a controlled substance, chemical substance, or drug paraphernalia, is guilty of a class B felony unless the exposure, ingestion, inhalation, or contact results in the death of the child or vulnerable adult, in which case the person is guilty of a class A felony.
4. It is an affirmative defense to a violation of this section that the controlled substance was provided by lawful prescription for the child or vulnerable adult and that it was administered to the child or vulnerable adult in accordance with the prescription instructions provided with the controlled substance.

**19-03.1-22.3. Ingesting a controlled substance - Venue for violation - Penalty.**

A person who intentionally ingests, inhales, or otherwise takes into the body a controlled substance, unless the substance was obtained directly from a practitioner or pursuant to a valid prescription or order of a practitioner while acting in the course of the practitioner's professional practice, is guilty of a class A misdemeanor. The venue for a violation of this section exists in either the jurisdiction in which the controlled substance was ingested, inhaled, or otherwise taken into the body or the jurisdiction in which the controlled substance was detected in the body of the accused.

#### **19-03.1-22.4. Controlled substances dispensed by means of the internet.**

1. As used in this section:
  - a. "Covering practitioner" means, with respect to a patient, a practitioner who conducts a medical evaluation, other than an in-person medical evaluation, at the request of a practitioner who:
    - (1) Has conducted at least one in-person medical evaluation of the patient or an evaluation of the patient through the practice of telemedicine, within the previous twenty-four months; and
    - (2) Is temporarily unavailable to conduct the evaluation of the patient.
  - b. "Deliver, distribute, or dispense by means of the internet" refers, respectively, to delivery, distribution, or dispensing of a controlled substance that is caused or facilitated by means of the internet.
  - c. "In-person medical evaluation" means a medical evaluation that is conducted with the patient in the physical presence of the practitioner, without regard to whether portions of the evaluation are conducted by other health professionals.
  - d. "Internet" and "practice of telemedicine" have the meanings set forth in the Ryan Haight Online Pharmacy Consumer Protection Act of 2008 [Pub. L. 110-425; 21 U.S.C. 802-803].
  - e. "Valid prescription" means a prescription that is issued for a legitimate medical purpose in the usual course of professional practice by a:
    - (1) Practitioner who has conducted at least one in-person medical evaluation of the patient; or
    - (2) Covering practitioner.
2. A controlled substance that is a prescription drug may not be delivered, distributed, or dispensed by means of the internet without a valid prescription, but nothing in this subsection may be construed to imply that one in-person medical evaluation by itself demonstrates that a prescription has been validly issued for a legitimate medical purpose within the usual course of professional practice.
3. This section applies to the delivery, distribution, and dispensing of a controlled substance by means of the internet from a location whether within or outside this state to a person or an address in this state.
4. Nothing in this section applies to the delivery, distribution, or dispensing of a controlled substance by a practitioner engaged in the practice of telemedicine in accordance with applicable federal and state laws.
5. Nothing in this section may be construed as authorizing, prohibiting, or limiting the use of electronic prescriptions for controlled substances.

#### **19-03.1-23. Prohibited acts A - Mandatory terms of imprisonment and fines - Unclassified offenses - Penalties.**

1. Except as authorized by this chapter, it is unlawful for any person to willfully, as defined in section 12.1-02-02, manufacture, deliver, or possess with intent to manufacture or deliver, a controlled substance, or to deliver, distribute, or dispense a controlled substance by means of the internet, but any person who violates section 12-46-24 or 12-47-21 may not be prosecuted under this subsection. Any person who violates this subsection with respect to:
  - a. A controlled substance classified in schedule I or II which is a narcotic drug, or methamphetamine, is guilty of a class A felony and must be sentenced:
    - (1) For a second offense, to imprisonment for at least five years.
    - (2) For a third or subsequent offense, to imprisonment for twenty years.
  - b. Any other controlled substance classified in schedule I, II, or III, is guilty of a class B felony. Except for a person who manufactures, delivers, or possesses with the intent to manufacture or deliver marijuana, any person found guilty under this subdivision must be sentenced:
    - (1) For a second offense, to imprisonment for at least three years.
    - (2) For a third or subsequent offense, to imprisonment for ten years.

- c. A substance classified in schedule IV, is guilty of a class C felony and must be sentenced:
    - (1) For a second offense, to imprisonment for at least six months.
    - (2) For a third offense, to imprisonment for at least one year.
    - (3) For a fourth or subsequent offense, to imprisonment for five years.
  - d. A substance classified in schedule V, is guilty of a class A misdemeanor.
2. Except as authorized by this chapter, it is unlawful for any person to willfully, as defined in section 12.1-02-02, create, deliver, distribute, or dispense a counterfeit substance by means of the internet or any other means, or possess with intent to deliver, a counterfeit substance by means of the internet or any other means, but any person who violates section 12-46-24 or 12-47-21 may not be prosecuted under this subsection. Any person who violates this subsection with respect to:
  - a. A counterfeit substance classified in schedule I or II which is a narcotic drug, is guilty of a class A felony.
  - b. Any other counterfeit substance classified in schedule I, II, or III, is guilty of a class B felony.
  - c. A counterfeit substance classified in schedule IV, is guilty of a class C felony.
  - d. A counterfeit substance classified in schedule V, is guilty of a class A misdemeanor.
3. For second or subsequent offenders, in addition to any other penalty imposed under this section, a person who violates this chapter, except a person who manufactures, delivers, or possesses with the intent to manufacture or deliver marijuana, is subject to, and the court shall impose, the following penalties to run consecutively to any other sentence imposed:
  - a. Any person, eighteen years of age or older, who violates this section by willfully manufacturing, delivering, or possessing with intent to manufacture or deliver a controlled substance in or on, or within one thousand feet [300.48 meters] of the real property comprising a public or private elementary or secondary school or a public career and technical education school is subject to an eight-year term of imprisonment.
  - b. If the defendant was at least twenty-one years of age at the time of the offense, and delivered a controlled substance to a person under the age of eighteen, the defendant must be sentenced to imprisonment for at least eight years. It is not a defense that the defendant did not know the age of a person protected under this subdivision.
4. A person at least eighteen years of age who solicits, induces, intimidates, employs, hires, or uses a person under eighteen years of age to aid or assist in the manufacture, delivery, or possession with intent to manufacture or deliver a controlled substance for the purpose of receiving consideration or payment for the manufacture or delivery of any controlled substance is guilty of a class B felony and must be sentenced:
  - a. For a second or subsequent offense, to imprisonment for at least five years.
  - b. It is not a defense to a violation of this subsection that the defendant did not know the age of a person protected under this subsection.
5. A violation of this chapter or a law of another state or the federal government which is equivalent to an offense under this chapter committed while the offender was an adult and which resulted in a plea or finding of guilt must be considered a prior offense under subsections 1, 3, and 4. The prior offense must be alleged in the complaint, information, or indictment. The plea or finding of guilt for the prior offense must have occurred before the date of the commission of the offense or offenses charged in the complaint, information, or indictment.
6. It is unlawful for a person to willfully, as defined in section 12.1-02-02:
  - a. Serve as an agent, intermediary, or other entity that causes the internet to be used to bring together a buyer and seller to engage in the delivery, distribution, or dispensing of a controlled substance in a manner not authorized by this chapter; or

- b. Offer to fill or refill a prescription for a controlled substance based solely on a consumer's completion of an online medical questionnaire.

A person who violates this subsection is guilty of a class C felony.

- 7. It is unlawful for any person to willfully, as defined in section 12.1-02-02, possess a controlled substance unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of the practitioner's professional practice, or except as otherwise authorized by this chapter, but any person who violates section 12-46-24 or 12-47-21 may not be prosecuted under this subsection. Except as provided in this subsection, any person who violates this subsection is guilty of a class C felony. If the person is in or on, or within one thousand feet [300.48 meters] of the real property comprising a public or private elementary or secondary school or a public career and technical education school, the person is guilty of a class B felony. Any person who violates this subsection regarding possession of one-half ounce [14.175 grams] to one ounce [28.35 grams] of marijuana is guilty of a class A misdemeanor. Any person, except a person operating a motor vehicle, who violates this subsection regarding possession of less than one-half ounce [14.175 grams] of marijuana is guilty of a class B misdemeanor. Any person who violates this subsection regarding possession of less than one-half ounce [14.175 grams] of marijuana while operating a motor vehicle is guilty of a class A misdemeanor.
- 8. Except as provided by section 19-03.1-45, a court may order a person who violates this chapter or chapter 19-03.4 to undergo a drug addiction evaluation by a licensed addiction counselor. The evaluation must indicate the prospects for rehabilitation and whether addiction treatment is required. If ordered, the evaluation must be submitted to the court before imposing punishment for a felony violation or a misdemeanor violation.
- 9. When a person pleads guilty or is found guilty of a first offense regarding possession of one ounce [28.35 grams] or less of marijuana and a judgment of guilt is entered, a court, upon motion, shall seal the court record of that conviction if the person is not subsequently convicted within two years of a further violation of this chapter and has not been convicted of any other criminal offense. Once sealed, the court record may not be opened even by order of the court.

#### **19-03.1-23.1. Increased penalties for aggravating factors in drug offenses.**

- 1. A person who violates section 19-03.1-23 is subject to the penalties provided in subsection 2 if:
  - a. The offense involved the manufacture, delivery, or possession, with intent to manufacture or deliver a controlled substance in or on, or within one thousand feet [300.48 meters] of, the real property comprising a child care or preschool facility, public or private elementary or secondary school, public career and technical education school, or a public or private college or university;
  - b. The defendant was at least sixteen years of age at the time of the offense and the offense involved the delivery of a controlled substance to a minor;
  - c. The offense involved:
    - (1) Fifty grams or more of a mixture or substance containing a detectable amount of heroin;
    - (2) Fifty grams or more of a mixture or substance containing a detectable amount of:
      - (a) Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;
      - (b) Cocaine, its salts, optical and geometric isomers, and salts of isomers;
      - (c) Ecgonine, its derivatives, their salts, isomers, and salts of isomers; or
      - (d) Any compound, mixture, or preparation that contains any quantity of any of the substance referred to in subparagraphs a through c;

- (3) Five grams or more of a mixture or substance described in paragraph 2 which contains cocaine base;
- (4) Ten grams or more of phencyclidine or one hundred grams or more of a mixture or substance containing a detectable amount of phencyclidine;
- (5) One gram, one hundred dosage units, or one-half liquid ounce or more of a mixture or substance containing a detectable amount of lysergic acid diethylamide;
- (6) Forty grams or more of a mixture or substance containing a detectable amount of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide or ten grams or more of a mixture or substance containing a detectable amount of any analog of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide;
- (7) Fifty grams or more of a mixture or substance containing a detectable amount of methamphetamine;
- (8) Ten grams, one hundred dosage units, or one-half liquid ounce or more of a mixture or substance containing a detectable amount of 3,4-methylenedioxy-N-methylamphetamine, C<sub>11</sub>H<sub>15</sub>NO<sub>2</sub>;
- (9) One hundred dosage units or one-half liquid ounce of a mixture or substance containing a detectable amount of gamma-hydroxybutyrate or gamma-butyrolactone or 1,4 butanediol or any substance that is an analog of gamma-hydroxybutyrate;
- (10) One hundred dosage units or one-half liquid ounce of a mixture or substance containing a detectable amount of flunitrazepam; or
- (11) Five hundred grams or more of marijuana; or

- d. The defendant had a firearm in the defendant's actual possession at the time of the offense.

2. The offense is:
  - a. A class AA felony if the violation of section 19-03.1-23 is designated as a class A felony.
  - b. A class A felony if the violation of section 19-03.1-23 is designated as a class B felony.
  - c. A class B felony if the violation of section 19-03.1-23 is designated as a class C felony.
  - d. A class C felony if the violation of section 19-03.1-23 is designated as a class A misdemeanor.

**19-03.1-23.2. Mandatory terms of imprisonment - Deferred or suspended sentence limited.**

Whenever a mandatory term of imprisonment is prescribed as a penalty for violation of this chapter, the court may not defer imposition of sentence, nor may the court suspend any part of a specified mandatory term, either at the time of or after the imposition of the sentence, unless the court first finds that the offense was the defendant's first violation of this chapter, chapter 19-03.2, or chapter 19-03.4 and that extenuating or mitigating circumstances exist which justify a suspension. The court shall announce the circumstances that justify a suspension in open court when sentence is imposed and recite these circumstances in the sentence or order suspending part of the sentence.

**19-03.1-23.3. Drug currency forfeiture.**

1. There is a presumption of forfeiture for money, coin, currency, and everything of value, furnished or intended to be furnished, in exchange for a controlled substance in violation of chapter 19-03.1 or imitation controlled substance in violation of chapter 19-03.2, if the state offers a reasonable basis to believe, based on the following circumstances, that there is a substantial connection between the property and an offense listed in chapter 19-03.1 or 19-03.2:
  - a. The property at issue is currency in excess of ten thousand dollars which, at the time of seizure, was being transported through an airport, on a highway, or at a port-of-entry, and the property was packaged or concealed in a highly unusual

manner, the person transporting the property provided false information to any law enforcement officer who lawfully stopped the person for investigative purposes, the property was found in close proximity to a measurable quantity of any controlled substance, or the property was the subject of a positive alert by a properly trained dog;

- b. The property at issue was acquired during a period of time when the person who acquired the property was engaged in an offense under chapter 19-03.1 or 19-03.2 or within a reasonable time after the period, and there is no likely source for the property other than that offense;
- c. The property at issue was, or was intended to be, transported, transmitted, or transferred to or from a major drug-transit country, a major illicit drug-producing country, or a major money-laundering country, and the transaction giving rise to the forfeiture:
  - (1) Occurred in part in a state or foreign country whose bank secrecy laws render this state unable to obtain records relating to the transaction; or
  - (2) Was conducted by, to, or through a corporation that does not conduct any ongoing and significant commercial or manufacturing business or any other form of commercial operation which was not engaged in any legitimate business activity; or
- d. A person involved in the transaction giving rise to the forfeiture action has been convicted in a federal, state, or foreign jurisdiction of an offense equivalent to an offense under chapter 19-03.1 or 19-03.2 or a felony involving money laundering, or is a fugitive from prosecution for any of these offenses.

2. The presumption in this section does not preclude the use of other presumptions or the establishment of probable cause based on criteria other than those set forth in this section.

**19-03.1-24. Prohibited acts B - Penalties.**

1. It is unlawful for any person:
  - a. Who is subject to the provisions of sections 19-03.1-15 through 19-03.1-22 to distribute or dispense a controlled substance in violation of section 19-03.1-22;
  - b. Who is a registrant, to manufacture a controlled substance not authorized by their registration, or to distribute or dispense a controlled substance not authorized by their registration to another registrant or other authorized person;
  - c. To refuse or fail to make, keep, or furnish any record, notification, order form, statement, invoice, or information required under this chapter;
  - d. To refuse an entry into any premises for any inspection authorized by this chapter; or
  - e. Knowingly to keep or maintain any store, shop, warehouse, dwelling, building, vehicle, boat, aircraft, or other structure or place, which is resorted to by persons using controlled substances in violation of this chapter for the purpose of using these substances, or which is used for keeping or selling them in violation of this chapter.
2. Any person who violates this section is guilty of a class C felony.

**19-03.1-25. Prohibited acts C - Penalties.**

1. It is unlawful for any person:
  - a. To distribute as a registrant a controlled substance classified in schedule I or II, except pursuant to an order form as required by section 19-03.1-21;
  - b. To use in the course of the manufacture or distribution of a controlled substance a registration number which is fictitious, revoked, suspended, or issued to another person;
  - c. To acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception, or subterfuge;

- d. To furnish false or fraudulent material information in, or omit any material information from, any application, report, or other document required to be kept or filed under this chapter, or any record required to be kept by this chapter; or
- e. To make, distribute, or possess any punch, die, plate, stone, or other thing designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device 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.

2. Any person who violates this section is guilty of a class C felony.

**19-03.1-26. Disposing of needles and paraphernalia - Penalty.**

Any registrant who shall use, administer, or dispense or cause to be used, administered, or dispensed any drug or controlled substance in a manner requiring the use of any type of syringe, needle, eyedropper, or other similar paraphernalia shall destroy and dispose of said syringe, needle, eyedropper, or other similar paraphernalia in a manner that will prevent its reuse by any person other than the registrant. The board may adopt rules pursuant to chapter 28-32 setting out the specific manner in which the provisions of this section must be carried out. Any registrant who violates the provisions of this section is guilty of a class A misdemeanor.

**19-03.1-27. Penalties under other laws.**

Any penalty imposed for violation of this chapter is in addition to, and not in lieu of, any civil or administrative penalty or sanction otherwise authorized by law.

**19-03.1-28. Bar to prosecution.**

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

**19-03.1-29. Distribution to persons under age eighteen.**

Repealed by S.L. 1975, ch. 106, § 673.

**19-03.1-30. Conditional discharge for possession as first offense.**

Repealed by S.L. 2005, ch. 196, § 4.

**19-03.1-31. Second or subsequent offenses.**

Repealed by S.L. 1975, ch. 106, § 673.

**19-03.1-32. Powers of enforcement personnel - Search warrants.**

1. Any officer of the bureau of criminal investigation designated by the attorney general of this state may:
  - a. Carry firearms in the performance of official duties.
  - b. Execute and serve search warrants, arrest warrants, administrative inspection warrants, subpoenas, and summonses issued under the authority of this state.
  - c. Make arrests without warrant for any offense under this chapter committed in the officer's presence, or if the officer has probable cause to believe that the person to be arrested has committed or is committing a violation of this chapter which may constitute a felony.
  - d. Make seizures of property pursuant to this chapter.
  - e. Perform other law enforcement duties as the attorney general designates.
2. A search warrant relating to offenses involving controlled substances may be issued and executed at any time of the day or night, if the judge or magistrate issuing the warrant so specifies in the warrant.
3. Any officer authorized to execute a search warrant, without notice of the officer's authority and purpose, may break open an outer or inner door or window of a building, or any part of the building, or anything therein, if the judge or magistrate issuing the

warrant has probable cause to believe that if such notice were to be given the property sought in the case may be easily and quickly destroyed or disposed of, or that danger to the life or limb of the officer or another may result, and has included in the warrant a direction that the officer executing it is not required to give such notice. Any officers acting under such warrant, as soon as practicable after entering the premises, shall identify themselves and state the purpose of entering the premises and the authority for doing so.

**19-03.1-33. Administrative inspections and warrants.**

1. Issuance and execution of administrative inspection warrants must be as follows:
  - a. A district judge within a district judge's jurisdiction, and upon proper oath or affirmation showing probable cause, may issue warrants for the purpose of conducting administrative inspections authorized by this chapter or rules hereunder and seizures of property appropriate to the inspections. For purposes of the issuance of administrative inspection warrants, probable cause exists upon showing a valid public interest in the effective enforcement of this chapter or rules thereunder, sufficient to justify administrative inspection of the area, premises, building, or conveyance in the circumstances specified in the application for the warrant.
  - b. A warrant may issue only upon an affidavit of a designated officer or employee having knowledge of the facts alleged, sworn to before the judge or magistrate and establishing the grounds for issuing the warrant. If the judge or magistrate is satisfied that grounds for the application exist or that there is probable cause to believe they exist, the judge or magistrate shall issue a warrant identifying the area, premises, building, or conveyance to be inspected, the purpose of the inspection, and, if appropriate, the type of property to be inspected, if any. The warrant must:
    - (1) State the grounds for its issuance and the name of each person whose affidavit has been taken in support thereof;
    - (2) Be directed to a person authorized to execute it;
    - (3) Command the person to whom it is directed to inspect the area, premises, building, or conveyance identified for the purpose specified and, if appropriate, direct the seizure of the property specified;
    - (4) Identify the item or types of property to be seized, if any; and
    - (5) Direct that it be served during normal business hours and designate the judge or magistrate to whom it shall be returned.
  - c. A warrant issued pursuant to this section must be executed and returned within ten days of its date unless, upon a showing of a need for additional time, the court orders otherwise. If property is seized pursuant to a warrant, a copy must be given to the person from whom or from whose premises the property is taken, together with a receipt for the property taken. The return of the warrant must be made promptly, accompanied by a written inventory of any property taken. The inventory must 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 present, or in the presence of at least one credible person other than the person executing the warrant. A copy of the inventory must be delivered to the person from whom or from whose premises the property was taken and to the applicant for the warrant.
  - d. The judge or magistrate who has issued a warrant shall attach thereto a copy of the return and all papers returnable in connection therewith and file them with the clerk of the district court for the county in which the inspection was made.
2. The board may make administrative inspections of controlled premises in accordance with the following provisions:
  - a. For purposes of this section only, "controlled premises" means:
    - (1) Places where persons registered or exempted from registration requirements under this chapter are required to keep records; and

- (2) Places, including factories, warehouses, establishments, and conveyances in which persons registered or exempted from registration requirements under this chapter are permitted to hold, manufacture, compound, process, sell, deliver, or otherwise dispose of any controlled substance.
- b. When authorized by an administrative inspection warrant issued pursuant to subsection 1, an officer or employee designated by the board, upon presenting the warrant and appropriate credentials to the owner, operator, or agent in charge, may enter controlled premises for the purpose of conducting an administrative inspection.
- c. When authorized by an administrative inspection warrant, an officer or employee designated by the board may:
  - (1) Inspect and copy records required by this chapter to be kept;
  - (2) Inspect, within reasonable limits and in a reasonable manner, controlled premises and all pertinent equipment, finished and unfinished material, containers and labeling found therein, and, except as provided in subdivision e, all other things therein, including records, files, papers, processes, controls, and facilities bearing on violation of this chapter; and
  - (3) Inventory any stock of any controlled substance therein and obtain samples thereof.
- d. This section does not prevent the inspection without a warrant of books and records pursuant to an administrative subpoena issued in accordance with section 28-32-33, nor does it prevent entries and administrative inspections, including seizures of property, without a warrant:
  - (1) If the owner, operator, or agent in charge of the controlled premises consents;
  - (2) In situations presenting imminent danger to health or safety;
  - (3) In situations involving inspection of conveyances if there is reasonable cause to believe that the mobility of the conveyance makes it impracticable to obtain a warrant;
  - (4) In any other exceptional emergency circumstances in which time or opportunity to apply for a warrant is lacking; or
  - (5) In all other situations in which a warrant is not constitutionally required.
- e. An inspection authorized by this section may not extend to financial data, sales data, other than shipment data, or pricing data unless the owner, operator, or agent in charge of the controlled premises consents in writing.

**19-03.1-34. Injunctions.**

1. The district courts of this state shall have jurisdiction to restrain or enjoin violations of this chapter.
2. The defendant may demand trial by jury for an alleged violation of an injunction or restraining order under this section.

**19-03.1-35. Cooperative arrangements and confidentiality.**

1. The board shall cooperate with federal and other state agencies in discharging its responsibilities concerning traffic in controlled substances and in suppressing the abuse of controlled substances. To this end, it may:
  - a. Arrange for exchange of information among governmental officials concerning the use and abuse of controlled substances.
  - b. Coordinate and cooperate in training programs concerning controlled substance law enforcement at local and state levels.
  - c. Cooperate with the bureau by establishing a centralized unit to accept, catalog, file, and collect statistics, including records of drug-dependent persons and other controlled substance law offenders within the state, and make the information available for federal, state, and local law enforcement purposes. It may not furnish the name or identity of a patient or research subject whose identity could not be obtained under subsection 3.

- d. Conduct programs of eradication aimed at destroying wild or illicit growth of plant species from which controlled substances may be extracted.
- 2. Results, information, and evidence received from the bureau relating to regulatory functions of this chapter, including results of inspections conducted by it, may be relied and acted upon by the board in the exercise of its regulatory functions under this chapter.
- 3. A practitioner engaged in medical practice or research is not required or compelled to furnish the name or identity of a patient or research subject to the board nor may the practitioner be compelled in any state or local civil, criminal, administrative, legislative, or other proceedings to furnish the name or identity of an individual that the practitioner is obligated to keep confidential.

**19-03.1-36. Forfeitures.**

- 1. The following are subject to forfeiture:
  - a. All controlled substances which have been manufactured, distributed, dispensed, or acquired in violation of this chapter.
  - b. All imitation controlled substances as defined by sections 19-03.2-01 and 19-03.2-02.
  - c. All raw materials, products, and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting any controlled substance in violation of this chapter.
  - d. All property which is used, or intended for use, as a container for property described in subdivision a, b, or c.
  - e. All conveyances, including aircraft, vehicles, or vessels, which are used, or intended for use, to transport, or in any manner to facilitate the transportation, for the purpose of sale or receipt of property described in subdivision a, b, or c, but:
    - (1) No conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this chapter.
    - (2) No conveyance is subject to forfeiture under this section by reason of any act or omission established by the owner thereof to have been committed or omitted without the owner's knowledge or consent.
    - (3) A conveyance is not subject to forfeiture for a violation of subsection 7 of section 19-03.1-23 or subsection 3 of section 19-03.2-03.
    - (4) A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if the secured party neither had knowledge of nor consented to the act or omission.
  - f. All books, records, and research products and materials, including formulas, microfilm, tapes, and data which are used, or intended for use, in violation of this chapter.
  - g. All drug paraphernalia as defined in chapter 19-03.4.
  - h. All money, coin, currency, and everything of value furnished, or intended to be furnished, in exchange for a controlled substance in violation of this chapter or an imitation controlled substance in violation of chapter 19-03.2, and all real and personal property, assets, profits, income, proceeds, or an interest therein, acquired or derived from the unlawful purchase, attempted purchase, delivery, attempted delivery, manufacturing, or attempted manufacturing of any controlled substance or imitation controlled substance.
- 2. Property subject to forfeiture under this chapter, except conveyances, may be seized by the board upon process issued by any district court having jurisdiction over the property. A conveyance subject to forfeiture under this chapter may be seized by a state, county, or city law enforcement agency upon process issued by any district court having jurisdiction over the conveyance. Seizure without process may be made if:
  - a. The seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant.

- b. The property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceedings based upon this chapter.
  - c. The board or a law enforcement agency has probable cause to believe that the property is directly or indirectly dangerous to health or safety.
  - d. The board or a law enforcement agency has probable cause to believe that the property was used or is intended to be used in violation of this chapter.
- 3. In the event of seizure pursuant to subsection 2, proceedings under subsection 4 must be instituted promptly.
- 4. Property taken or detained under this section is not subject to replevin, but is deemed to be in custody of the board or a law enforcement agency subject only to the orders and decrees of the district court having jurisdiction over the forfeiture proceedings as set out in subsection 2. When property is seized under this chapter, the board or a law enforcement agency may:
  - a. Place the property under seal.
  - b. Remove the property to a place designated by it.
  - c. Require the attorney general to take custody of the property and remove it to an appropriate location for disposition in accordance with law.
- 5. When property is forfeited under this chapter, the board or a law enforcement agency may:
  - a. Retain it for official use or transfer the custody or ownership of any forfeited property to any federal, state, or local agency. The board shall ensure the equitable transfer of any forfeited property to the appropriate federal, state, or local law enforcement agency so as to reflect generally the contribution of that agency participating directly in any of the acts that led to the seizure or forfeiture of the property. A decision to transfer the property is not subject to review.
  - b. Sell that which is not required to be destroyed by law and which is not harmful to the public. The proceeds must be used for payment of all proper expenses of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising, and court costs, with any remaining proceeds to be deposited, subject to section 54-12-14, in the appropriate state, county, or city general fund. When two or more law enforcement agencies are involved in seizing a conveyance, the remaining proceeds may be divided proportionately.
  - c. Require the attorney general to take custody of property and remove it for disposition in accordance with law.
  - d. Forward it to the bureau for disposition.
  - e. Use the property, including controlled substances, imitation controlled substances, and plants forfeited under subsections 6 and 7, in enforcement of this chapter. However, in a case involving the delivery of a forfeited controlled substance by a law enforcement officer or a person acting as an agent of a law enforcement officer, no prosecution or conviction for simple possession of a controlled substance under subsection 6 of section 19-03.1-23 may be based upon the forfeited controlled substances supplied by the law enforcement officer or the officer's agent.
- 6. Controlled substances as defined in this chapter and imitation controlled substances as defined in chapter 19-03.2 that are possessed, transferred, sold, or offered for sale in violation of this chapter and drug paraphernalia as defined in chapter 19-03.4 are contraband and must be seized and summarily forfeited to the state. Controlled substances as defined in this chapter and imitation controlled substances as defined in chapter 19-03.2, which are seized or come into the possession of the state and drug paraphernalia as defined in chapter 19-03.4, the owners of which are unknown, are contraband and must be summarily forfeited to the state.
- 7. Species of plants from which controlled substances in schedules I and II may be derived which have been planted or cultivated in violation of this chapter, or of which the owners or cultivators are unknown, or which are wild growths, may be seized and summarily forfeited to the state.

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

#### **19-03.1-36.1. Manner of forfeiture.**

Property subject to forfeiture under this chapter, other than property that may be summarily forfeited, may be forfeited by order of a district court only after:

1. A written consent to forfeiture executed by the owner of the property and all persons with a legal interest in the property to be forfeited has been filed with the court; or
2. Commencement of forfeiture proceedings.

#### **19-03.1-36.2. Forfeiture proceeding as civil action - Standard of proof.**

Forfeiture proceedings are civil actions against the property to be forfeited and the standard of proof is a preponderance of the evidence.

#### **19-03.1-36.3. Summons and complaint for forfeiture of property - Contents of complaint - Notice.**

When property described in subsection 1 of section 19-03.1-36 is to be forfeited, other than property described in subsection 6 of section 19-03.1-36, and in the absence of a written consent to forfeiture, forfeiture proceedings must be commenced by the filing of a summons and complaint for forfeiture of the property in the district court of the county in which the property was seized, is being held, or is located. In the case of real property, the summons and complaint must be filed in the county in which the real property, or some part of the real property, is located. The proceedings must be brought in the name of the state. The complaint must describe the property, state its location, state its present custodian, state the name of each owner if known, state the name of each party with a legal interest in the property if known or of legal record, allege the essential elements of the violation that is claimed to exist, and must conclude with a prayer to enforce the forfeiture. Notice of the forfeiture proceedings must be given to each known owner and known person with a legal interest in the property to be forfeited by serving a copy of the summons and complaint in accordance with the North Dakota Rules of Civil Procedure. The procedure governing the proceedings, except as otherwise provided in this chapter, is the same as that prescribed for civil proceedings.

#### **19-03.1-36.4. Answer by claimant of property - Time for filing.**

Within twenty days after the service of the summons and complaint for forfeiture, the owner of the property to be forfeited and any other person with a legal interest in the property may file an answer claiming an interest in that property and claiming that person's interest is not subject to forfeiture under this chapter.

#### **19-03.1-36.5. Disposition of property if no answer filed.**

If at the end of twenty days after the summons and complaint have been served there is no answer filed with the court against the complaint for forfeiture, the court shall order the forfeiture and disposition of the property as prayed for in the complaint.

#### **19-03.1-36.6. Hearing on contested forfeiture - Order releasing or forfeiting property.**

If an answer is filed within the time limits in this chapter, the forfeiture proceedings must be set for hearing before the court. At the hearing, the state shall establish probable cause for instituting the forfeiture action following which any owner or person with a legal interest in the property to be forfeited who has filed an answer to the complaint has the burden of proving that the property to be forfeited is not subject to forfeiture under this chapter. If the court finds that the property is not subject to forfeiture under this chapter, the court shall order the property released to the owner or other person with a legal interest in the property as that person's right, title, or interest appears. The court shall order the property forfeited if it determines that such property or an interest therein is subject to forfeiture.

**19-03.1-36.7. Legal interest in property.**

A person alleging a bona fide legal interest in property to be forfeited must establish by a preponderance of the evidence that such legal interest existed at the time of seizure or taking of custody of the property. In the case of a claimed bona fide security interest in the property, the person claiming such interest must establish by a preponderance of the evidence that the security interest in the property to be forfeited existed or was of public record at the time of seizure or taking of custody of the property.

**19-03.1-37. Burden of proof - Liabilities.**

1. It is not necessary for the state to negate any exemption or exception in this chapter in any complaint, information, indictment, or other pleading or in any trial, hearing, or other proceeding under this chapter. The burden of proof of any exemption or exception is upon the person claiming it.
2. In the absence of proof that a person is the duly authorized holder of an appropriate registration or order form issued under this chapter, the person is presumed not to be the holder of the registration or form. The burden of proof is upon the person to rebut the presumption.
3. No liability is imposed by this chapter upon any authorized state, county, or municipal officer engaged in the lawful performance of the officer's duties.
4. In all prosecutions under this chapter, chapter 19-03.2, or chapter 19-03.4 involving the analysis of a substance or sample thereof, a certified copy of the analytical report signed by the director of the state crime laboratory or the director's designee must be accepted as *prima facie* evidence of the results of the analytical findings.
5. Notwithstanding any statute or rule to the contrary, a defendant who has been found to be indigent by the court in the criminal proceeding at issue may subpoena the director or an employee of the state crime laboratory to testify at the preliminary hearing and trial of the issue at no cost to the defendant. If the director or an employee of the state crime laboratory is subpoenaed to testify by a defendant who is not indigent and the defendant does not call the witness to establish relevant evidence, the court shall order the defendant to pay costs to the witness as provided in section 31-01-16.
6. In all cases of conspiracy to violate chapter 19-03.1, 19-03.2, or 19-03.4, the state is not required to prove or establish that a conspirator knew the other person to the agreement intended to deliver or possess with intent to deliver a controlled substance, an imitation controlled substance, or drug paraphernalia to a third person.

**19-03.1-38. Judicial review.**

All final determinations, findings, and conclusions of the board under this chapter are final and conclusive decisions of the matters involved. Any person aggrieved by the decision may obtain review of the decision in the district court. Findings of fact by the board, if supported by substantial evidence, are conclusive.

**19-03.1-39. Education and research.**

1. The board shall carry out educational programs designed to prevent and deter misuse of controlled substances. In connection with these programs it may:
  - a. Promote better recognition of the problems of misuse and abuse of controlled substances within the regulated industry and among interested groups and organizations.
  - b. Assist the regulated industry and interested groups and organizations in contributing to the reduction of misuse and abuse of controlled substances.
  - c. Consult with interested groups and organizations to aid them in solving administrative and organizational problems.
  - d. Evaluate procedures, projects, techniques, and controls conducted or proposed as part of educational programs on misuse and abuse of controlled substances.

- e. Disseminate the results of research on misuse and abuse of controlled substances to promote a better public understanding of what problems exist and what can be done to combat them.
- f. Assist in the education and training of state and local law enforcement officials in their efforts to control misuse and abuse of controlled substances.
2. The board shall encourage research on misuse and abuse of controlled substances. In connection with the research, and in furtherance of the enforcement of this chapter, it may:
  - a. Establish methods to assess accurately the effects of controlled substances and identify and characterize those with potential for abuse.
  - b. Make studies and undertake programs of research to:
    - (1) Develop new or improved approaches, techniques, systems, equipment, and devices to strengthen the enforcement of this chapter.
    - (2) Determine patterns of misuse and abuse of controlled substances and the social effects thereof.
    - (3) Improve methods for preventing, predicting, understanding, and dealing with the misuse and abuse of controlled substances.
  - c. Enter contracts with public agencies, institutions of higher education, and private organizations or individuals for the purpose of conducting research, demonstrations, or special projects which bear directly on misuse and abuse of controlled substances.
3. The board may enter into contracts for educational and research activities without performance bonds and without regard to statutory provisions affecting such contracts.
4. The board may authorize persons engaged in research on the use and effects of controlled substances to withhold the names and other identifying characteristics of individuals who are the subjects of the research. Persons who obtain this authorization are not compelled in any civil, criminal, administrative, legislative, or other proceeding to identify the individuals who are the subjects of research for which the authorization was obtained.
5. The board may authorize the possession and distribution of controlled substances by persons engaged in research. Persons who obtain this authorization are exempt from state prosecution for possession and distribution of controlled substances to the extent of the authorization.

**19-03.1-40. Pending proceedings.**

Repealed by S.L. 1985, ch. 262, § 27.

**19-03.1-41. Continuation of rules.**

Any orders and rules promulgated under any law affected by this chapter in effect on July 1, 1971, and not in conflict with it continue in effect until modified, superseded, or repealed.

**19-03.1-42. Uniformity of interpretation.**

Repealed by S.L. 1983, ch. 82, § 154.

**19-03.1-43. Short title.**

This chapter may be cited as the Uniform Controlled Substances Act.

**19-03.1-44. Comprehensive status and trends report.**

On or before July first of each even-numbered year, the attorney general, or designee of the attorney general, shall report the current status and trends of unlawful drug use and abuse and drug control and enforcement efforts in this state. This report must be made to an interim legislative committee and must include the following information:

1. The superintendent of public instruction shall provide the results of the most recent survey of the state's young people regarding drug usage. This survey must include information regarding the accessibility of gateway and other illicit drugs, the

prevalence of gateway and other illicit drugs in schools or on school property, and the types and frequency of gateway and other illicit drugs used by young people.

2. The state crime laboratory shall provide a report that includes the type of each controlled substance tested and the number of times tests were run for each controlled substance.
3. The department of human services shall provide a current status of the number of people who were treated in the state. The report must include information about the variety of drugs, legal and illegal, for which people were treated.
4. The department of corrections and rehabilitation shall provide the current status of the number of people incarcerated or on probation in the state correctional system for violation of title 19. This report must specify the average length of sentence including probation, average length of incarceration ordered by a court to be served, and average actual time incarcerated for drug offenders sentenced to the custody of the department. The report also must identify the number of people referred to treatment and treated as a condition of sentencing, probation, or parole.
5. The attorney general shall provide the current status of the number of arrests for violation of title 19 and the current enforcement efforts to combat unlawful drug trafficking and usage.

**19-03.1-45. Drug abuse assessment and treatment - Presentence investigation - Certified drug abuse treatment programs.**

1. If a person has pled guilty or has been found guilty of a felony violation of subsection 7 of section 19-03.1-23, if that person has not previously pled guilty or been found guilty of any offense involving the use, possession, manufacture, or delivery of a controlled substance or of any other felony offense of this or another state or the federal government, and if the court imposes probation, the court shall impose a period of probation of not less than eighteen months in conjunction with a suspended execution of a sentence of imprisonment, a sentence to probation, or an order deferring imposition of sentence.
2. Upon a plea or finding of guilt of a person subject to the provisions of subsection 1, the court shall order a presentence investigation to be conducted by the department. The presentence investigation shall include a drug and alcohol evaluation conducted by a licensed addiction counselor.
3. If the licensed addiction counselor recommends treatment, the court shall require the person to participate in an addiction program licensed by the department of human services as a condition of the probation. The court shall commit the person to treatment through a licensed addiction program until determined suitable for discharge by the court. The term of treatment shall not exceed eighteen months and may include an aftercare plan. During the commitment and while subject to probation, the person shall be supervised by the department.
4. If the person fails to participate in, or has a pattern of intentional conduct that demonstrates the person's refusal to comply with or participate in the treatment program, as established by judicial finding, the person shall be subject to revocation of the probation. Notwithstanding subsection 2 of section 12.1-32-02, the amount of time participating in the treatment program under this section is not "time spent in custody" and will not be a credit against any sentence to term of imprisonment.
5. In this section:
  - a. "Department" means the department of corrections and rehabilitation; and
  - b. "Licensed addiction counselor" is a person licensed pursuant to section 43-45-05.1.

**19-03.1-46. Bail - Additional conditions of release.**

A court shall impose as a condition of release or bail that an individual who has been arrested upon a felony violation of this chapter or chapter 19-03.4 not use a controlled substance without a valid prescription from a licensed medical practitioner and that the individual submit to a medical examination or other reasonable random testing for the purpose

of determining the person's use of a controlled substance. The court shall order the frequency of the random testing and the location at which random testing must occur. The court shall provide notice to the selected provider of the required examination or testing. The provider shall notify the court if the individual fails to appear for the examination or testing. The testing must be at the individual's own cost. Submission of an individual to a medical examination or other reasonable random testing as a condition for release is not required if the court makes a specific finding on the record that:

1. The individual has not been arrested for a felony offense relating to the use, possession, manufacture, or delivery of methamphetamine;
2. The individual will appear as required by the court and will comply with all conditions of release without submission to an examination or testing; and
3. Not imposing examination or testing as a condition of release will pose no danger to the individual or to the community.