

# A SUMMARY OF CALIFORNIA'S ALCOHOL AND DRUG ABUSE LAWS

Prepared pursuant to SB 2599 (Seymour),  
(Chapter 983, Statutes of 1988)



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Prepared by:  
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June 30, 1989

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June 30, 1989

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## SENATE SELECT COMMITTEE ON SUBSTANCE ABUSE

JOHN SEYMOUR  
CHAIRMAN

December 19, 1989

As Chairman of the Senate Select Committee on Substance Abuse, I am pleased to participate with the Senate Office of Research in the release of A Summary of California's Alcohol and Drug Abuse Laws.

In 1988, recognizing that substance abuse was reaching epidemic proportions I carried legislation (SB 2599) which established a Five-Year Master Plan to Reduce Drug and Alcohol Abuse in California.

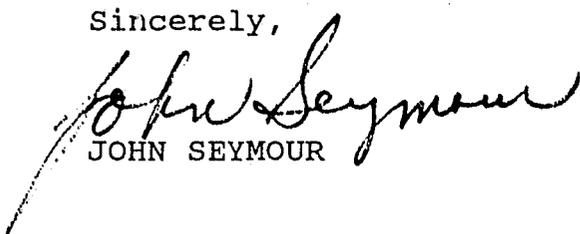
One of the goals of the Master Plan was to set forth a compilation and consolidated overview of California laws pertaining to drug and alcohol abuse. This report is an effort to achieve that goal.

Over the next six months it is the intent of the Senate Select Committee and the Senate Office of Research to work jointly in publishing manuals which will further address specific topics such as California laws relating to drunk driving, or drug and alcohol education and prevention efforts

Just as there is no single reason why people become involved with drugs and alcohol, there also, is no single solution to the problem. It is my hope that this summary and those to follow, as part of the Master Plan directive, will go a long way toward the fight against the cancerous disease known as substance abuse.

In closing, the Select Committee and Senate Office of Research would like to thank and gratefully acknowledge the efforts of all the appropriate state agency directors, chief counsels and other department personnel who helped in reviewing and providing additional assistance for this summary.

Sincerely,

  
JOHN SEYMOUR

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- Appendix I: Senate Bill 2599, Chapter 983, Statutes of 1988
- Appendix II: California Codes Used: Abbreviations
- Appendix III: Standards and Schedules: Control Substances

## I. INTRODUCTION

Substance abuse, defined to include alcohol and drugs (licit and illicit), is one of the nation's most serious health and social problems. According to a 1987 report by the U.S. Alcohol, Drug Abuse and Mental Health Administration, an estimated 18 million adults experience problems as a result of alcohol use, and of these, 10.6 million suffer from alcoholism. Seventy million persons, or 37 percent of the United States' population age 12 and above, have used marijuana, cocaine or another illicit drug at some time in their lives, and 23 million, or 12 percent, were users at the time of the survey.<sup>1</sup> The direct economic cost of drug abuse alone was estimated in 1984 to be \$59.7 billion, with half of the cost related to lost productivity of drug users and one-third related to criminal activity.<sup>2</sup> Social welfare and health care service expenditures resulting from drug abuse were estimated at an additional \$215 million.<sup>3</sup>

In California, the problem of alcohol and drug abuse is extremely severe. A recent report by the California Department of Alcohol and Drug Programs indicates that approximately 2.2 million persons have a problem with alcohol abuse and 2.1 million persons in the state use illicit drugs or use drugs inappropriately.<sup>4</sup> During 1987, 2,488 people died in California as a direct result of alcohol abuse and 2,000 died as a result of drug abuse.<sup>5</sup> Problems caused by this abuse cost the state approximately \$17.7 billion per year in lost worker productivity, health and medical costs, motor vehicle accidents, violent crimes, social responses and fire losses.

In response to the severity of the problem, the California Legislature has provided sanctions for abuse coupled with programs of education and treatment. Moreover, the Legislature passed Senate Bill 2599, Chapter 983, Statutes of 1988 as a measure designed to increase existing efforts to combat drug and alcohol abuse in the state. As part of a comprehensive approach to the problem, the Legislature requested the Senate Office of Research to prepare a summary of all current California laws pertaining to alcohol and drug abuse.<sup>6</sup> The text of this law is contained in the Appendix I.

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<sup>1</sup> 1985 National Household Survey of Drug Abuse

<sup>2</sup> H. Harwood, D. Napolitano, P. Kristiansen and J. Collins, *Economic Cost to Society of Alcohol and Drug Abuse and Mental Illness: 1980* (Research Triangle Park, North Carolina: Research Triangle Institute, June 1984).

<sup>3</sup> U.S. Bureau of Justice Statistics, *Report to the Nation on Crime and Justice*, 2nd ed. (Washington D. C.: U. S. Department of Justice, U.S. Government Printing Office, 1988) p. 114.

<sup>4</sup> Statistics and Analytical Studies Section, "Indicators of Alcohol and Drug Abuse Trends", *Five Year Master Plan to Reduce Drug and Alcohol Abuse: Year One*, (Sacramento, California: California Department of Alcohol and Drug Programs, 1989) p.2.

<sup>5</sup> *Ibid.*, p. 15.

<sup>6</sup> Senate Bill 2599, Chapter 983, Statutes of 1988.

This report, *A Summary of California's Alcohol and Drug Abuse Laws*, presents an overview of California's drug and alcohol abuse laws in non-technical language through the use of brief summaries of the applicable statutes. It is intended to be a introduction to these statutes and the reader is advised that handbooks and other guides are available for reference.

Although the Senate Office of Research has taken many steps to ensure that the information in this summary is correct and up-to-date, readers should note that the codes are frequently amended and the courts from time to time interpret their provisions. When necessary, readers should consult the official codes and handbooks cited above or procure the services of an attorney.

### RESEARCH METHODOLOGY

In compiling the summaries, the Senate Office of Research first requested an electronic legal search to identify all references to alcohol and drugs. This search was conducted by the office of the Legislative Counsel of California. Working in conjunction with the Legislative Counsel, the Senate Office of Research selected the search criteria: search terms were *alcohol*, *narcotic*, *controlled substance*, and *drug*.

Using the automated LEXIS information retrieval system, the Legislative Counsel searched the complete set of statutes as set forth in the *Deerings California Annotated Codes, Constitution, and Rules of Court*. The statutes and Constitution were current through the 1988 portion of the 1987-1988 Regular Session of the Legislature and the November 8, 1988 General Election.

The search produced a list of over 2,800 titled citations in which the search terms were found. The Senate Office of Research then reviewed this list to determine which of the citations pertained to drug and alcohol abuse. Working from this refined list, the Senate Office of Research checked every LEXIS citation against the hard copy of the corresponding statute to further determine the applicability of each statute to the subject of the summary. All pertinent statutes were then summarized in simple language, avoiding as much legal and technical terminology as possible.

The citations selected for inclusion in this report represent alcohol and drug abuse statutes contained in 23 California Codes. The list of Codes from which the statutes were gathered and selected and the abbreviations used throughout the report are listed in the Appendix II. Key reference materials supplemented the statutory research.<sup>7</sup>

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<sup>7</sup> Ken Byers, *Licensing and Regulation of the Alcoholic Beverage Industry* (New York: Matthew Bender and Company, 1988); *California Department of Beverage Control Questions and Answers Concerning Alcoholic Beverage Control and Related Constitutional Provisions* (Sacramento, California, 1989); and Johan Klehs, *Revenue and Taxation Reference Book* (Sacramento, California).

In this report, the summarized statutes are divided into 10 major categories to enable readers to quickly identify and locate subjects of interest. Efforts were made to organize the material into functional categories, but as law is often constructed on a piecemeal basis in response to the needs and desires of the electorate, statutes do not always fall neatly into prearranged groupings. Thus, as will be explained in the following section, some citations are listed in more than one category, and the categories themselves reflect the disparity of the law.

It should be noted that the report does not attempt to include every code section of the law related to alcohol and drugs. To do so would be to replicate the code books themselves; the result would be a voluminous and unworkable document. Instead, the research process used by the SOR was directed at determining the relevance of each citation to abuses of drugs and alcohol. The entries summarize statutes that are frequently several pages in length, and readers are therefore advised to use the listed citation to locate the full statute in the appropriate California Code book. Copies of the California Codes can be found in the State Library, each county's law library, and any law school library.

Sections of the draft report were sent to the appropriate state agency directors, chief counsels and other department personnel to be checked for accuracy and completeness.

## ORGANIZATION

### *Definitions*

The report includes a variety of drug and alcohol abuse laws, some of which are broad or general in nature, and others which address specific substances or actions. The terms *alcohol*, *drugs*, *controlled substances*, *prescription drugs*, *narcotics*, and *dangerous drugs* are found throughout the statutes and, depending upon the context, these terms may be defined differently within different statutes. For example, alcohol is traditionally considered separate from drugs and it is not explicitly defined as a drug in the California statutes. But today, in law, the health professions, and the general population, there is a recognition that both alcohol and drug abuse cause, exacerbate and accompany a wide array of similar social problems, and have many areas of common concern. Accordingly, the U. S. Department of Labor considers alcohol to be a mood-altering substance which tops the list of drugs responsible for adversely affecting health, productivity and public safety.<sup>9</sup> Thus, although many of California's statutes are specific to either drugs (in the traditional sense of controlled substances) or alcohol, a number of others address both types of abuses.

An understanding of the definitions of the substances included in the report and their distinctions may be useful before turning to the summaries.

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<sup>9</sup> U.S. Department of Labor, *What Works: Workplaces Without Drugs* (Washington D.C.: U.S. Government Printing Office) p.1.

### Alcohol

The Business and Professions Code defines *alcohol* to mean "ethyl alcohol, hydrated oxide of ethyl, or spirits of wine" (Bus.& Prof. C. 23003) and under *alcoholic beverage* includes alcohol, spirits, wine, beer, and every liquid or solid containing such substances as well as one-half of one percent or more of alcohol by volume (Bus.& Prof. C. 23004). The Code then proceeds to explicitly define beer, wine and distilled spirits.

### Drugs

A drug, as defined in the Health and Safety Code, means:

- Any substance recognized as a drug in an official compendium, such as the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or the official National Formulary;
- Substances intended to be used in diagnosing, curing, treating or preventing a disease; and
- Substances other than food intended to affect the structure or function of the body (Health & S.C. 11014, 26010). This definition does not include any devices or components.

Under this general definition, there are several broad categories of drugs, as well as specific, individual drugs.<sup>10</sup> The term *drug* may include narcotics, controlled substances, hypnotics, restricted dangerous drugs, marijuana, and prescription drugs. The major categories of controlled substances are listed and classified in five Schedules in the Health and Safety Code in the following manner:

- *Marijuana* — all parts of the plant *Cannabis sativa* L. (Health & S.C. 11018).
- *Narcotic Drugs* — including synthetic narcotics:
  1. opium and opiates, and any salt, compound, derivative or preparation thereof;

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<sup>10</sup> See Health and Safety Code § 11054-§ 11058.

2. opium poppy and poppy straw;
  3. coca leaves, and any salt, compound, derivative or preparation thereof;
  4. cocaine, and any salt, isomer, derivative or preparation thereof;
  5. Ecgoninine, and any salt, isomer, derivative or preparation thereof; and
  6. Acetylfentanyl, the thiophene analog thereof, derivatives of either, and any salt, compound, isomer, or preparation thereof (Health & S.C. 11019).
- *Controlled Substances*, including:
    1. opium or opiates;
    2. hallucinogenic substances, including marijuana, mescaline, lysergic acid diethylamid (LSD) and peyote;
    3. depressants;
    4. stimulants;
    5. any other drug or substance listed in the schedules in Health and Safety Code § 11054-11058.

The nomenclature of drugs varies from Code to Code. For example, the terms *narcotic* and *restricted dangerous drug* are found in different codes, but both can be defined as controlled substances.

### *Categories*

To assist the reader in easily locating particular types of statutes pertaining to alcohol and drug abuse, the statutes are grouped into 10 major categories:

Statutory Authority for Regulating Alcohol and Drugs  
 Use, Possession, and Solicitation  
 Sale, Dispensing, and Administering  
 Adulterating and Poisoning  
 Labeling and Advertising  
 Professions and Employers  
 Education  
 The Administration of Justice  
 Treatment and Prevention  
 Licensing and Taxation

Each category includes a general introduction that explains the types of laws reviewed and the citations enabling the reader to find the law in the appropriate State Code. Laws concerning alcohol and drug abuse were not separated because of the number of statutes that addressed both alcohol and controlled substances. However, where the law applies specifically to one or the other, it is so listed.

The categories are designed to provide the reader with an overview of the statutes that regulate alcohol and drugs in the state, followed by specific sections of individual statutes broadly grouped by types of activity that an individual may be engaged in (selling, purchasing, administering, driving under the influence, etc.), by components of society that are regulated (professions, employers, schools), by types of programs and services available (treatment, prevention), or by licensing and taxation considerations. Within each of these general categories, individual statutes are labeled and arranged in alphabetical order, and the intent and provisions of the laws are summarized.

Where a law is directly related to more than one category, the law was repeated in appropriate sections to assist the reader in locating particular statutes. This is most notable concerning offenses and sanctions related to driving under the influence (DUI). Driving while intoxicated or under the influence of other drugs has been defined as a crime because of acute public concern with traffic safety. Accordingly, it merits a category of its own — "Laws Related to Driving Under the Influence." However, since individual driving under the influence statutes are also related to other categories in the report, such as the Administration of Justice or Treatment and Prevention, they are repeated in those sections.

## APPENDICES

Following the summary of state laws are appendices which includes:

- Appendix I: Senate Bill 2599, Chapter 983, Statutes of 1988
- Appendix II: California Codes Used: Abbreviations
- Appendix III: Standards and Schedules: Controlled Substances

## II. STATUTORY AUTHORITY FOR THE REGULATION OF ALCOHOL AND DRUGS

### INTRODUCTION

This section of the report provides a summary of the drug and alcohol laws relating to the statutory authority empowering the State of California to regulate the manufacture, possession, sale, use and transportation of alcohol and controlled substances and to enforce violations of the laws governing alcohol and controlled substances.

The six major acts that provide the statutory authority governing the regulation and enforcement of alcohol and controlled substances are:

#### **Alcoholic Beverage Control Act**

The State of California, subject to the internal revenue laws of the United States, has the exclusive right and power to license and regulate the manufacture, sale, purchase, possession, and transportation of alcoholic beverages within the state subject to the laws of the United States that regulate commerce (Const. Art. XX, Sec. 22). The Alcoholic Beverage Control Act was enacted in 1953. This Act is intended to protect the safety, welfare, health, peace, and morals of Californians, eliminate the unlicensed and unlawful manufacture, sale and disposal of alcoholic beverages, and promote temperance in the consumption and use of alcoholic beverages (Bus. & Prof.C. 23001).

The Department of Alcoholic Beverage Control was created by constitutional amendment and is a part of the Business, Transportation and Housing Agency. Effective January 1, 1955, this independent department has the exclusive power to license and regulate the manufacture, importation and sale of alcoholic beverages in California. It also has the power to deny, suspend or revoke any specific alcoholic beverage license. Provisions of this act will be enforced by every peace officer or district attorney in the state (Sect.22 of Article XX, CA Const.), (Bus. & Prof.C. 23050, Bus. & Prof.C. 25619). For more information on the administration of the department, including prohibited activity, the Alcoholic Beverages Control Appeals Board, judicial review and stays of suspension see Bus. & Prof.C. 23050-23098. For definitions relating to administration of the Alcoholic Beverage Control Act see Bus. & Prof.C. 23002-23047.

The director of the department and persons employed by the department to administer and enforce the Alcoholic Beverage Control Act are peace officers (Bus. & Prof.C. 25755), (Pen.C. 830.3).

All illegal alcoholic beverages or other properties are subject to seizure and forfeiture proceedings. Anyone possessing these items or properties is guilty of a misdemeanor. The department may dispose of the beverage or property, with the exception of automobiles. Any person who has had alcoholic

beverages and/or property seized may petition for the return of the property (Bus. & Prof.C. 25350-25374, 25606, 25607).

A person convicted of a violation of the Alcohol and Beverage Control Act is guilty of a misdemeanor or felony depending on the violation.

Misdemeanors, unless otherwise specified, are punishable by a fine of not more than \$1,000 or by imprisonment for not more than 6 months, or both. Punishment for a felony, unless otherwise specified, is by a fine of \$10,000 or imprisonment for not less than a year nor more than 5 years, or both (Bus. & Prof.C. 25600-25630).

#### **Uniform Controlled Substances Act**

The Uniform Controlled Substances Act may be found in the Health & S.C. Section 11000 - 11651. This Act is the result of a growing concern over the abuse of controlled substances. Definitions relevant to this Act may be found in Sections 11000 - 11033. For the text, variation notes, and annotation materials for adopting jurisdictions, see Uniform Laws Annotated, Master Edition, Volumes 9, 9A. The drugs that are regulated under this Act are divided into five schedules (Health & S.C. 11054-11058). See "Standards and Schedules: Controlled Substances" in the Appendix III for the drugs in each schedule.

The Attorney General has the authority to hire the employees that are needed to carry out the duties of enforcing matters related to abuse of controlled substances. For example, the Department of Justice may employ physicians to interview and examine any patient who uses a controlled substance (Health & S.C. 11450-11454). In addition to authorization for actions by city attorneys or city prosecutors provided in this Act (Health & S.C. 11570-11587), procedures for the seizing a person's property, drugs, instruments and other paraphernalia associated with controlled substances, and procedures for hearings relating to seizures may be found in Health & S.C. 11500-11509.

#### **California Control of Profits of Organized Crime Act**

The California Control of Profits of Organized Crime Act (Pen.C. 186-186.8) prohibits trafficking in controlled substances through the possession or purchase for sale, transportation, or using a minor for such trafficking of controlled substances. Moreover, section 11375-11392 of the Health & S.C. delineates the law regarding the unauthorized possession, sale, transportation and punishment of specified controlled substances including PCP and mushrooms.

#### **California Major Narcotic Vendors Prosecution Law**

In recognition of the substantial and disproportionate amount of serious crime associated with the cultivation, processing, manufacturing and sale of narcotics, the Legislature has enacted the California Major Narcotic Vendors Prosecution Law. This is an effort to support intensified efforts by district attorneys' offices to prosecute drug producers and sellers through

organizational and operational techniques that have been proven effective in selected jurisdictions in this and other states (Pen.C. 13880, 13881, 13882, 13883, 13884).

#### **California Imitation Controlled Substance Act**

Early in 1980, distributors began flooding the nation with capsules and tablets known as "imitation controlled substances." These substances were carefully designed to resemble or duplicate the appearance of brand name amphetamines, barbiturates, tranquilizers, and narcotic pain killers. Yet the drugs contained no controlled substances and usually contained legal over-the-counter drugs. In many places, imitation controlled substances have become a part of the drug culture. In addition, the imitation controlled substances themselves can have serious damaging effects, especially in combination with alcohol or other drugs. Although trafficking in imitation controlled substances is not prohibited by the federal Controlled Substances Act, the U.S. Drug Enforcement Administration considers the distribution and sale of imitation controlled substances to encourage and contribute to drug abuse and drug profiteering. The provisions of this Act may be found in Health & S.C. Sections 11670-11683.

#### **Sherman Food, Drug and Cosmetic Law**

The Sherman Food, Drug, and Cosmetic Law relates to the selling of any food, drug, device or cosmetic. These sales must be in general compliance with the rules and regulations of the Fair Packaging and Labeling Act, the United States Treasury Department, the Secretary of Health, Education and Welfare, or the Federal Trade Commission (Bus. & Prof.C. 12610-12612).

The Department of Health Services administers and enforces this law, and also issues licenses for drug manufacturing (Health & S.C. 26685). The department may distribute information considered necessary for the protection of the health and safety of the consumer or for his/her protection from fraud. Additionally, the department may collect, report, or illustrate the results of any investigation relating to this Act.

The food and drug inspector or any authorized agent of the Bureau of Food and Drug has the power of enforcing the Food, Drug and Cosmetic Law (Health & S.C. 26014). Upon presenting appropriate credentials and at a reasonable time, an agent may enter any factory, warehouse, vehicle, or establishment in which drug is manufactured, packed or held or suspected of being held (Health & S.C. 26230). The agent may secure any sample or specimen at that time (Health & S.C. 26232). Additionally, the agent of the department has access to all records of carriers of the products (Health & S.C. 26233.) It is unlawful for any person to refuse to permit entry, inspection, the taking of samples or withhold any evidence asked for (Health & S.C. 26234, 26503), (Health & S.C. 26801-26851).

### III. LAWS RELATING TO USE, POSSESSION, AND SOLICITING

#### INTRODUCTION

This section of the report provides a summary of the drug and alcohol laws related to the use, possession, and solicitation of alcohol and controlled substances. The primary focus is on violations of individuals and their behaviors related to the possession of, or being under the influence of, alcohol or controlled substances.

The Legislature has used its authority to enact provisions making it unlawful to consume excessive amounts of alcohol and become intoxicated or to possess and use certain controlled substances. Moreover, there is a recognition that a relationship exists between alcohol, drug use, and crime. There is evidence that approximately 50 percent of prison inmates were under the influence of drugs or alcohol in the commission of a crime, and that the high cost of certain drugs, such as heroin, motivate users to commit crime to support their addiction.

Because of the seriousness and prevalence of individuals driving under the influence of alcohol, as well as controlled substances, a major emphasis is given to this subject in this section. According to the California Department of Alcohol and Drug Programs, there were 45,533 alcohol-related motor vehicle accidents in 1987 involving 71,570 people, of which 2,754 were killed and 68,816 were injured.

To prevent and deter drunk driving, the California Legislature has used its authority to enact laws providing for education and rehabilitation programs, testing of the blood alcohol level of persons driving under the influence, and invoking criminal sanctions for violations. Driving under the influence is regulated by restrictions placed on the driver's license, including suspension and revocation of the license. Laws associated with driving under the influence are repeated in other sections of the report, as appropriate.

Regulatory authority is also imposed administratively through the licensing of those who sell or otherwise distribute alcohol. For example, owners of liquor stores and taverns can lose their licenses if they furnish alcohol to minors.

#### GENERAL

##### **Abortion — soliciting medicine or drugs for**

Any person who provides, supplies, or administers to any woman any medicine, or any woman who solicits any medicine or drug, with the intent to cause a miscarriage except as allowed in the Therapeutic Abortion Act is punishable by imprisonment in state prison (Pen.C. 274, 275).

**Abuse by caretakers for the elderly/dependent adults**

In authorizing protective services for elders and dependent adults the Legislature recognizes alcohol and drug abuse on the part of some caretakers (Welf. & Inst.C. 15600).

**Felony — drug use in the commission of**

The administration or use of controlled substance, anesthetic, or intoxicant to aid in a felony is a felony (Pen.C. 222) (Pen.C. 12022.75). The felonies included under the statute are rape (Pen.C. 261), sodomy (Pen.C. 286), oral copulation (Pen.C. 288a), and anal or genital penetration by a foreign object (Pen.C. 289).

**Firearms — possession by addicts**

Any person convicted of a felony who is addicted to the use of any narcotic drug is prohibited from possessing, purchasing, or controlling any type of firearm, tear gas, tear gas weapons, or stun gun (Pen.C. 12021, 12025, 12027, 12403.7, 12651).

**Firearms — persons under court conservatorship**

A person who is under conservatorship by a court due to mental illness or impairment by chronic alcoholism must not be allowed to possess any firearm or other deadly weapon if the court believes it would be potentially dangerous (Welf. & Inst.C. 8104).

**GAIN Participation — exemption from**

A person who is so seriously dependent upon alcohol or drugs that work or training is not possible is exempt from participating in the program requirements of the Greater Avenues for Independence program (Welf. & Inst.C. 11320.5).

**Gaming club — removal from**

A city or county may exclude or remove from any gaming club an individual who uses or has been convicted of the sale of a controlled substance (Bus. & Prof.C. 19820).

**Marriage licence — issue to intoxicated persons**

A marriage license will not be issued to an applicant under the influence of any intoxicating liquor or narcotic drug (Civ.C. 4201).

**Open container — in specified locations**

Cities and counties may adopt ordinances that prohibit open containers in certain locations to include the posted parking lot immediately adjacent to any retail package off-sale alcoholic beverage license. However, the provision would not apply to a private residential parking lot immediately adjacent to the posted premises (Pen.C. 64e). In addition, the Penal Code does not invalidate an ordinance adopted by a county or city that directly regulates the exposure of the genital or buttocks or the breasts of any person employed by an establishment that serves alcoholic beverages (Pen.C. 318.5).

**Patron — solicitation of alcohol from**

It is unlawful to beg or solicit alcohol from a patron or customer of a place of business where alcohol is sold (Pen.C. 303a), (Bus. & Prof.C. 25657).

**Peyote — unlawful possession of**

Every person who plants, cultivates, harvests, dries, or processes any part of the peyote plant, will be punished by imprisonment in the county jail not more than one year, or state prison (Health & S.C. 11363).

**Piperidine — unlawful possession of**

The regulations, fees, punishments, and violation regarding the sale, purchase, or possession of piperidine may be found in Health & S.C. sections 11140, 11383 and 11100.

**Public intoxication**

Any person found in a public place to be under the influence of an intoxicating liquor, drug, or controlled substance and unable to care for his/her own safety or interferes with the use of a public way is guilty of disorderly conduct, which is a misdemeanor (Pen.C. 647), (Pen.C. 827.1).

**Registration of offenders**

Any person who is convicted of any offense defined in Health & S.C. sections 11350-11355, 11357-11361, 11363, 11366, 11368, 11550 (such as unlawful possession of a controlled substance; planting, cultivating, or processing peyote; generation and use of forged or altered prescriptions; illegal use of a controlled substance) must register within 30 days with the chief of police of the city in which he/she resides or the sheriff of the county if they reside in an unincorporated area (Health & S.C. 11590, 11592, 11594).

**Toluene — possession for inhalation**

Any person who sells or distributes toluene or any substance or material containing toluene to a minor is guilty of a misdemeanor (Pen.C. 380). Moreover, the possession of this substance or similar substances with the intent to inhale and become intoxicated is also a misdemeanor. This statute does not apply where glue or cement is sold as part of a model or craft kit (Pen.C. 381).

**LAWS RELATING TO DRIVING UNDER THE INFLUENCE**

**Aircraft/parachuting — operating while under the influence**

It is unlawful for any person who is under the influence of an alcoholic beverage or any drug or combined influence of those substances to operate an aircraft in the air, on the ground, or engage in parachuting for sport. The person's blood alcohol content level may not be over 0.04 percent. Anyone who operates an aircraft is deemed to have given his/her consent to chemical

testing for the purpose of determining the alcoholic content of his/her blood (Pub.Util.C. 21407.1, 21407.2).

**Arrest for driving under the influence**

As a result of a positive blood alcohol level test, a peace officer may, without a warrant, arrest a person when the officer has reasonable cause to believe that the person has been driving while under the influence (Veh.C. 40300.5, 40300.6).

**Bicycle — operating under the influence**

Everyone riding a bicycle upon a highway is subject to all the provisions applicable to the driving of a vehicle to include driving under the influence of alcoholic beverages or drugs. Violations are a misdemeanor (Veh.C. 21200, 21200.5, 40000.13).

**Commercial driver license sanctions**

Any driver convicted of one specified driving offense occurring in a commercial vehicle is disqualified for one year, three years if the offense occurred in a vehicle transporting hazardous material from obtaining a commercial driver license (Veh.C. 15300). Any driver convicted of more than one of these specified driving offenses is barred for life from obtaining a commercial driver license (Veh.C. 15302).

**Constitutionality of declaring driving under influence convictions**

No municipal or justice court should declare invalid on constitutional grounds any prior conviction of driving under the influence of intoxicating liquor or any drug or combination of substances, unless the record establishes a factual or legal basis for doing so (Rules of Ct., Appendix 1, Sect.13).

**Diversion and treatment — driving under the influence**

Offenders who have been arrested for driving under the influence may be diverted to programs relating to drug and alcohol education. An individual may be diverted to a pretrial or post-trial drug or alcohol rehabilitation facility unless the person has been convicted of driving under the influence of alcohol or drugs (Veh.C. 23152,23153, Pen.C. 1001.2).

**Driver education information/testing**

In recognition of the dangers of driving under the influence, the Department of Motor Vehicles has instituted certain criteria for driver's courses, driver's examinations, and vehicle registration renewal. All courses on driver education and driver training must include information relating to the dangers involved in consuming alcohol or drugs in connection with the operation of a motor vehicle (Veh.C. 11113), (Educ.C. 51220.1, Educ.C. 60115). The driver's examination must include at least one question testing the applicant's knowledge of the table of blood alcohol concentrations in the Driver's Handbook. Additionally, each driver's license, certificate renewal, and each vehicle renewal by mail must contain information showing the

amount of alcohol consumption necessary for a person to reach a 0.10 percent blood alcohol concentration by weight (Veh.C. 1666). Mature drivers in driver improvement courses also must be informed of the effects of medication and alcohol on driving performance (Veh.C. 1675).

#### **Driving with license suspended/revoked**

No person may drive a motor vehicle when that person's driving privilege is suspended or revoked for a conviction for driving under the influence (Veh.C. 14601.2, 14601.3).

#### **Eligibility for diversion programs**

Offenders who have been arrested for driving under the influence may be diverted to programs relating to drug and alcohol education. An individual may be diverted to a pretrial or post-trial drug or alcohol rehabilitation facility unless the person has been previously convicted of driving under the influence of alcohol or drugs (Veh.C. 23152, 23153, Pen.C. 1001.2).

#### **First-time offenders — county responsibility**

The counties have been given independent responsibility for first-time offenders of driving under the influence so that a variety of program designs can be developed and evaluated. The evaluation is to be done by members of the Governor's Intergovernmental Advisory Council on Alcohol, Drugs, and Traffic Safety (Veh.C. 1660.5, 1660.6).

#### **Fines/forfeiture for conviction**

Of the money deposited for fines and forfeiture for conviction of driving under the influence (Veh.C. 23103.5, 23104, 23152, or 23153), \$50 for each conviction will be deposited into a special account to be used exclusively to pay for the costs of the analysis of blood, breath or urine for alcohol or drug content (Pen.C. 1463.14); and an additional amount not to exceed \$50 from the fine will be allocated for the county's alcohol programs (Pen.C. 1463.16) (Pen.C. 1463.25). For more specific information relating to offenses involving alcohol and drugs, including penalties, probation, prior convictions, ignition interlock devices, etc., see Vehicle Code Sections 23152-23229.1, 23103.5, 23240-23249.4).

#### **Insurance — effect on rates**

A conviction for driving under the influence while driving a work vehicle can have an effect on a person's insurance premiums. An insurer may increase the premium on a private passenger automobile of an insured driver or applicant who has been convicted of a traffic violation or had his/her license suspended or revoked while operating a motor vehicle for compensation during hours of employment if such conviction, suspension or revocation was the result of driving under the influence of alcoholic beverage or drug "Also, an employer's motor vehicle liability policy can be cancelled, or renewal can be denied, with respect to drivers hired by the employer if said drivers have been convicted of certain alcohol or drug-related driving

violations which have resulted in a substantial increase in the hazards insured against." (Ins.C. 448, 670, 1861.03).

#### **Issuance, renewal, or revocation of license**

The Department of Motor Vehicles may refuse to issue, renew, or it may revoke a driver's license for any of the following reasons: the person cannot safely operate a motor vehicle because of alcoholism, including excessive and chronic use of alcoholic beverages; addiction to or habitual use of any drug, except someone participating in an approved methadone maintenance program; conviction of an alcohol-related offense; or if the applicant is convicted of any offense involving the transportation for purpose of sale, or compensation of a controlled substance, and the offense involved the use of a motor vehicle (Veh.C. 12806, 12809, 13202, 13202.5, 13205, 13252.2, 13252.3, 13351, 13352, 13353, 13361, 13800, 13954). Driver's certificates for farm labor vehicles, tour buses, or radioactive material drivers similarly may be denied or revoked for drug and alcohol offenses (Veh.C. 12520, 12525, 12526, 12526.5).

#### **Operation of a vehicle — by a minor**

It is unlawful for a person under the age of 18 who has a blood alcohol level of 0.05 percent or more to drive a vehicle. Any minor found in violation must participate in an education program which provides an alcohol education component, unless the minor's parents cannot afford the fee or there is no appropriate program in the county. A minor's driving privilege may be suspended, revoked or delayed until 21 years of age for failure to complete the program (Veh.C. 23140-23147, 23154). A court is required to delay or suspend the driving privilege of any person between 13 and 21 years of age for one year who is convicted of specified offenses relating to the use of alcohol or drugs. These convictions do not have to be motor vehicle related convictions (Veh.C. 13202.5).

#### **Operation of a vehicle — general**

It is unlawful for any person who is under the influence of an alcoholic beverage or any drug or combination of substances, or addicted to a drug, to drive a vehicle. Under the influence is defined by a blood alcohol level of 0.10 or more by weight (Veh.C. 23152-23155).

#### **Public access to criminal history records**

Any record of a conviction of driving while under the influence which occurred before January 1, 1987, is a public record five years after the date of the conviction. This information is available only to persons authorized by law to receive the information, such as courts of the state, the Attorney General, probation or parole officers (Veh.C. 1807.5). Department of Motor Vehicle records relating to convictions of any offense involving the use or possession of a controlled substance not arising from circumstances involving a motor vehicle, are always confidential and not open to public inspection (Veh.C.1 808.5).

**Reciprocity with other governments — suspensions/revocations**

A suspension, revocation or limitation in the operation of a motor vehicle from the licensing authority of a state within the Driver License Compact will have the same effect within all states in the compact (Veh.C. 13352, 15023). A conviction of driving under the influence in any state, territory, or possessions of the United States, the District of Columbia, Puerto Rico, or Dominion of Canada is equivalent to a conviction in California (Veh. C. 13352.2, 13363, 23210).

**Restriction in lieu of suspension**

As a condition of probation, a court may require participation in an alcohol rehabilitation program. Such participation will place a restriction on the person's driving privilege but will not result in a suspension (Veh.C. 13352.5).

**Testing — implied consent of drivers**

Any person who drives a motor vehicle is deemed to have given his/her consent to chemical blood, breath or urine testing to determine the level of alcohol content (Veh.C. 23157, 23159.5).

**Testing — regulations/procedures**

When law enforcement agencies test an individual who has been involved in a traffic accident or traffic violation for alcohol or drug blood levels, only laboratories that are approved and licensed by the State Department of Health Services can test the blood, urine or tissue concentrations of the individual. The law enforcement agency may use ampoules (vials) for breath analysis, but must keep the ampoules for one year after the collection of the sample (Health & S.C. 432.51, 436.52, 436.64). The specific procedures for testing may be found in Vehicle Code Sections 23157-23158.

**Testing — refusal to submit**

Refusal to submit to a law enforcement officer's request to complete a chemical or similar test relating to operating a vehicle while under the influence of alcohol or a drug will result in a six-month suspension of the person's driving privilege. A revocation for two years will result if the person has a separate alcohol or drug related driving offense within seven years. A revocation for three years will result if the person has been convicted of two or more alcohol or drug related offenses within the past seven years (Veh.C. 13353). Refusal of failure to complete a test will also result in a fine and imprisonment if the arrest results in a conviction of driving under the influence (Veh.C. 23159).

**Watercraft/water-skiing — operating**

It is illegal for any person to operate any vessel, water-ski, aquaplane or similar device while under the influence of intoxicating liquor, any drug, or combined influence of these substances. The operator's blood alcohol content may not be more than 0.10 percent. In addition, no person may serve as a

crew member on a charter boat while under the influence of an intoxicating liquor, drug, or combination of such substances (Harb. & Nav.C. 651, 655.1, 655.4).

## **IV. LAWS RELATING TO SALE, DISPENSING, AND ADMINISTERING**

### **INTRODUCTION**

This section of the report provides a summary of the drug and alcohol laws relating to the sale, dispensing, and administering of alcohol and controlled substances. The primary emphasis is on the actions committed by individuals illegally selling, dispensing, or administering alcohol or controlled substances. This section also describes the laws relating to administering alcohol or controlled substances to animals.

Drug abuse has reached epidemic proportions in the United States. Each year, thousands of Californians die from alcohol and drug abuse. The California Department of Alcohol and Drug Programs reports that in 1987, 2,488 people died as a direct result of alcohol abuse and another 2,000 from drug abuse.

Alcohol is known to be related to various cancers, while the synergistic effects of mixing drugs and alcohol are known to be particularly toxic. Moreover, the abuse of drugs and alcohol in pregnancy has resulted in approximately 4,500 infants born each year in California with Fetal Alcohol Syndrome and Fetal Alcohol Effects. Symptoms of the alcohol-related defects include mental retardation, deformities, hyperactivity, and growth retardation. It is estimated that two to five percent of all infants born in California have been exposed to illicit drugs. Pregnant women who use cocaine, for example, increase the risk that their infants will die of Sudden Infant Death Syndrome. In addition, women who share needles while injecting drugs risk infection by the AIDS virus and transmission of this infection to their babies during any subsequent pregnancies. Infants requiring services of a state developmental center can cost the state upwards of \$70,000 per child annually.

Drug and alcohol abuse among California youth is a most serious problem, the consequences of which are accidents, suicide, homicide. Youthful substance abusers disrupt families, schools, communities, and often become involved in the criminal justice system.

### **GENERAL**

#### **Abortion — providing drugs for**

Any person who provides, supplies, or administers to any woman any medicine, or any woman who solicits any medicine or drug, with the intent to cause a miscarriage except as allowed in the Therapeutic Abortion Act is punishable by imprisonment in state prison (Pen.C. 274, 275).

#### **Alcoholic beverage place used as a polling place**

A place where the primary purpose of the establishment is the sale and dispensation of alcoholic beverages cannot be used as a polling place. In addition, a polling place cannot be connected by a door, window or other

opening with any place where any alcoholic beverage is sold or dispensed while the polls are opened (Elec.C. 14404).

**Correctional institutions — dispensing**

The Board of Corrections establishes standards relating to the acquisition, storage, labeling, packaging, and dispensing of drugs within the corrections system (Pen.C. 6030).

**Warehouse licenses**

Warehouse licenses for, controlled substances are defined and described, and suspension, revocation and other disciplinary actions that can be taken on those that violate the law may be found in Health & S.C. Sections 11122-11136).

**Drunkard or incompetent — sale/dispensing**

It is unlawful to sell or furnish intoxicating liquors to a common drunkard or incompetent (Pen.C. 397). Violations are misdemeanors.

**Employees — encouraging purchase of alcohol**

It is unlawful for a person engaged in the sale of alcoholic beverages to employ upon his/her premises a person for the purpose of encouraging the sale of the beverages. It is also unlawful to pay a person a percentage or commission for the sale of the beverage. The exception is when the alcoholic beverages are in their original package (Pen.C. 303).

**False representation of authority to prescribe drugs**

Any person who falsely represents himself to be a physician or other person able to prescribe drugs available only through a pharmacist is guilty of a misdemeanor (Pen.C. 377).

**Felony — administration of drug in commission of**

The administration or use of controlled substances or anesthetic or any intoxicant to aid in a felony is a felony (Pen.C. 222) (Pen.C. 12022.75). The felonies included under this statute are rape (Pen.C. 261), sodomy (Pen.C. 286), oral copulation (Pen.C. 288a), and anal or genital penetration by a foreign object (Pen.C. 289).

**Legal distribution of controlled substances**

In order to have controlled substances filled from a pharmacy, wholesaler or manufacturer, an individual must have a prescription from one of the following professionals: a physician, a dentist, a podiatrist, a veterinarian, or a pharmacist (Health & S.C. 11250-11256).

**Illegal place of sale**

Every building or place that illegally sells liquor is a nuisance that shall be enjoined, abated, and prevented, whether it is a private or public nuisance (Pen.C. 1120d).

**Manufacture of drugs in the home**

It is unlawful to manufacture drugs in the home (Labor C. 2651).

**Minors — sale/dispensing of alcohol to**

No person may sell, give or furnish alcoholic beverages to any person under the age of 21 years, even if the person appears to be 21 years or older, or when the beverage is for the consumption of the parents. A violator is guilty of a misdemeanor which is punishable by a fine of not more than \$100 (Bus. & Prof.C. 25658, 25658.5). A minor purchasing alcohol is also guilty of a misdemeanor; a minor attempting to purchase alcohol is guilty of an infraction punishable of not more than \$100 (Bus. & Prof.C. 25650.5).

**New drugs — approval for sale, dispensing, or investigation**

No person can sell, deliver, or give away any new drug unless it satisfies specified requirements. "New drug" is defined as any drug that is not generally recognized among experts qualified by scientific training and experience to be safe and effective or has been used only to a limited extent or duration (Health & S.C. 26021). However, drugs may be used in an investigation by qualified experts if pursuant to an approved Investigational New Drug application through FDA or DHS. Data obtained from such Investigational New Drug study may be submitted in the new drug application, which must be reviewed by the FDA and DHS, for general marketing. This would also include AIDS-related drugs. (Health & S.C. 26670-26680).

**Paraphernalia — for use with controlled substances**

A person, firm, or corporation may not knowingly sell, give or furnish to a minor any instrument, or paraphernalia designed for the smoking or ingestion of tobacco or any controlled substance (Pen.C. 308). Definitions and regulation of sales may be found in the Health & S.C. sections 11014.5, 11364, 11364.5 and 11364.7.

**Pharmaceutical dispensing services — identification of fees**

No prescription drug claims processor may enter into or perform any provision of a contract unless it has conducted a survey which identifies fees for pharmaceutical dispensing services to private consumers. A "prescription drug claims processor" is any nongovernmental entity which contracts with purchasers of prepaid or insured prescription drug benefits and which processes benefit claims submitted by a pharmacy. A violation may result in the imposition of a fine ranging from \$1000 to \$10,000 (Civ.C. 2528).

**Piperidine — unlawful sale of**

The regulations, fees, punishments, and violation regarding the sale, purchase, or possession of piperidine may be found in Health & S.C. section 11140, 11383, 11100.

**Prisoners or wards — illegal dispensing of drugs to**

Any person who gives or attempts to give a prisoner or ward any controlled substances or intoxicating liquors is guilty of a felony punishable by imprisonment in the state prison for up to three years. This includes smuggling into a jail, prison, or juvenile facility, or the possession of these substances where prisoners are kept (Pen.C. 2772, 2790). (Welf. & Inst.C. 871.5, 1001.5), (Bus. & Prof.C. 25603). Further, Pen.C. sections 4573, 4573.5 and 4573.6 are specific to correctional facilities and prohibit the possession of not only controlled substances and alcohol within correctional facilities but also any unauthorized drug and any "dispenser, container, device, instrument, or paraphernalia intended to be used to inject or consume the illegal substance."

**Prohibited sale or exposure in certain locations**

The sale or exposure for sale of intoxicating liquor is prohibited within certain distances from colleges and state institutions. Sales are prohibited within one-half mile of land with a state prison, 1900 feet from any Youth Authority institution, one mile from a university or state college, one and one-half miles from any military home or retreat, and the State Capitol or adjacent grounds. Notable exemptions are public eating places (Pen.C. 172e) and holders of retail package off-sale general or beer and wine licenses (Pen.C. 172j). The prohibited sale or exposure for sale of intoxicating liquor is a misdemeanor punishable by a fine of not less than one hundred dollars (\$100) and/or imprisonment for not less than 50 days (Pen.C. 172).

**Reporting of manufacture, sale, theft, or loss of controlled substances**

Any manufacturer, wholesaler, retailer, or other person who sells, transfers, or otherwise furnishes certain controlled substances must submit a report to the Department of Justice of all such transactions. The Department of Justice must provide a common reporting form. If a controlled substance is lost or stolen, a report must be filed with the Department of Justice (Health & S.C. 11100-11106).

**Social host — accountability of**

A social host who furnishes alcoholic beverages to a person is not legally accountable for injuries or damages suffered by that person or his/her property (Civ.C. 1714), (Bus. & Prof.C. 25602, 25602.1).

**Toluene — sale or distribution of**

Any person who sells or distributes toluene or any substance or material containing toluene to a minor is guilty of a misdemeanor (Pen.C. 380). Moreover, the possession of this substance or similar substances with the intent to inhale and become intoxicated is also a misdemeanor. This statute

does not apply where glue or cement is sold as part of a model or craft kit (Pen.C. 381).

## **LAWS RELATED TO ADMINISTERING DRUGS TO ANIMALS**

### **Anaesthesia — possession of within the racing enclosure**

The transportation, possession, or administration of any local anaesthetic of the cocaine group within the racing enclosure is prohibited except upon a veterinarian's prescription (Pen.C. 337g), (Bus. & Prof.C. 19444).

### **Competition — manipulating outcome through use of drugs**

It is unlawful to try to affect the outcome of any competition through the administration of a drug to any animal (Pen.C. 337h).

### **Capture of animals by use of drugs**

Any person engaged in survival training, based on a permit issued by the Fish and Game Commission, may not take fish, amphibia, birds, or mammals by the use of a drug (Fish & G.C. 312).

### **Commercial feeds — regulation of**

Commercial feed is governed by Chapter 6 of the Food and Agriculture Code. The director fixes the standards for commercial feed ingredients including the amount of drugs used in the feed, to insure the safety of the animals and the products of animals which are used for human consumption. Commercial feed manufactured or distributed for feeding to animals on a contract or partnership basis is exempt from labeling provisions unless the commercial feed contains a drug. "Medicated feeds" are commercial feeds that contain drugs. (Food & Agric.C. 14925, 14928, 14934, 14935, 14996, 15011, 15041).

### **Drugging of horses — competitions, shows and sales**

No horse may compete in a horse race, be shown in any class, or offered for sale if it has been administered in any manner any prohibited substance. A "prohibited substance" is any stimulant, depressant, tranquilizer, or local anesthetic which could affect the performance or disposition of a horse and includes all substances recognized as having the power of stimulating or depressing the respiratory, vascular, and central nervous systems. (Pen.C. 337) (Food & Agric.C. 24000-24018).

### **Livestock drugs — availability and distribution of**

Livestock drug distribution and use is governed by Chapter 4 of the Food and Agriculture Code and is intended to assure that such drugs are available to livestock producers for their use in protecting the health of the livestock population of the state and to provide an abundant supply of wholesome food and fiber for the general public (Food & Agric.C. 14200-14209). The Director of the Department of Food and Agriculture may make and enforce such regulations as he may deem necessary (Food & Agric.C. 14231).

This does not apply to any livestock drug sold to or used by a licensed veterinarian; any drug which is dispensed or compounded by a registered pharmacist at the request of the purchaser to be sold at retail; any commercial feed which is subject to the provisions of Chapter 6 (Commercial Feed); any livestock drug intended solely for laboratory or experimental purposes; or any drug which is required by federal law to be sold on prescription only (Food & Agric.C. 14261, 14262). In order to sell a livestock or restricted drug at retail, the seller must be registered with the Department of Food and Agriculture, and must submit an application with a detailed description of the livestock drug to be sold and keep a record of each sale (Food & Agric.C. 14281-14296, 14321-14330). Examples of violations include the sale of unregistered drugs, sale of nonconforming drugs, administration to humans, misrepresentations, etc., and are punishable as a misdemeanor which may result in the refusal to issue or renew a license, or the suspension or revocation of a registration or a license (Food & Agric.C. 14351-14362, 14381, 14382).

## **V. LAWS RELATING TO ADULTERATING/POISONING FOOD, DRINK, OR WATER**

### **INTRODUCTION**

This section of the report provides a summary of the drug and alcohol laws relating to adulterating, counterfeiting, or poisoning alcohol and controlled substances.

The Legislature has enacted statutes regulating the amount of alcohol that can be added to food and liquids. Confectioneries, for example, are adulterated if they contain a greater amount of alcohol than allowed by law. Likewise, there are limits on the amount of alcohol in food that can be furnished to a minor. The intent of such legislation is to protect the public from unknowingly ingesting harmful quantities of alcohol or controlled substances.

#### **Adulterated alcohol and drugs — sale of**

Any person who sells or offers to sell adulterated or diluted articles of food, drink, drugs, medicine, or liquor is guilty of a misdemeanor (Pen.C. 382), (Pen.C. 383).

#### **Alcoholic content — confectionery**

Any confectionery is adulterated if it bears or contains an amount of alcohol in excess of five percent by weight (Health & S.C. 26529).

#### **Alcoholic content — food dispensed to a minor**

Food containing alcohol in excess of one-half of one percent may not be furnished to a person under the age of 21 (Pen.C. 307).

#### **Alcoholic content — public risk and beverage transportation**

Wine and other liquid solutions having an alcoholic content of less than or equal to 24 percent by volume do not fall within the additional protection to the public and risk of possible hazards in the highway transportation of flammable and combustible liquids in tank vehicles (Veh.C. 34006).

#### **Beer — adulteration/mislabeling of**

Beer, while generally subject to the Alcoholic Beverage Control Act, is subject to the food provisions of the Sherman Food, Drug and Cosmetic law which relate to adulteration and misbranding (Health & S.C. 26500).

#### **Counterfeit drugs — sale or dispensing**

It is unlawful for a person to commit any act which causes any drug to be a counterfeit and to sell or dispense any such counterfeit drug (Health & S.C. 26408, Pen.C. 470). See also Division 10.1 of the Health & S.C. entitled "Imitation Controlled Substance Act."

**Poisoning of food, drink, medicine, water**

It is unlawful to willfully mix any poison or harmful substances with any food, drink, potable alcohol solution, medicine, pharmaceutical product or public water supply. It is also unlawful to falsely inform someone that the above has been done (Pen.C. 347) (Pen.C. 347b).

## **VI. LAWS RELATING TO LABELING AND ADVERTISING**

### **INTRODUCTION**

This section of the report provides a summary of the drug and alcohol laws relating to the labeling and advertising of alcohol and controlled substances. The primary emphasis of the laws is on ensuring that the identity, content, and quality of the alcohol or controlled substance in question is made manifest to the user or purchaser. False representation of a drug's therapeutic value in the treatment of certain diseases is also addressed in this section.

Laws regulating labeling and advertising are directed at ensuring the safety of the public in the consumption of legal drugs and alcohol. Moreover, the Legislature has enacted laws to protect the public against false claims related to the therapeutic value of certain commercial drugs on various diseases such as cancer and AIDS.

#### **Confectionery — labeling alcoholic content of**

Any confectionery that contains in excess of one-half of 1 percent of alcohol by weight must provide written notice to the consumer on the label (Health & S.C. 26553.5, 27591, 27591.5).

#### **Correctional institutions — labeling of drugs in**

The Board of Corrections establishes standards relating to the acquisition, storage, labeling, packaging, and dispensing of drugs within the corrections system (Pen.C. 6030).

#### **Drugs — labeling requirements**

All drug labels must conform with the requirements of the declaration of net quantity of contents of Section 4 of the Fair Packaging and Labeling Act (80 Stat. 1296; 15 U.S.C., Sec.1451) unless the drug is exempt from this Act. Any distribution contrary to these provisions is unlawful (Health & S.C. 26430, 26438, 26439). A violation is a misdemeanor (Health & S.C. 26403, 26801, 26802). The Department of Alcoholic Beverage Control may require that the label on each package of a drug bear the common or usual name of such article, and in case such article consists of two or more ingredients, the common or usual name of each ingredient listed in order of decreasing predominance by weight (Health & S.C. 26436).

#### **Falsely advertised, adulterated, or mislabeled drugs — sale of**

It is unlawful for any person to manufacture, sell, deliver, hold, receive or offer for sale any drug that is falsely advertised, adulterated or misbranded (Health & S.C. 26461, 26461.5, 26462, 26467, 26610-26625, 26630-26655).

**Therapeutic effect on disease — representation of drugs**

It is unlawful to represent that a drug has any effect on a list of 37 conditions, disorders, or diseases. Examples are appendicitis, measles, tumors, etc. (Health & S.C. 26463). Whenever the department determines that an advance in medical science has made any type of self-medication safe and effective, it may authorize the advertisement of such drug as having a curative or therapeutic effect (Health & S.C. 26465).

**Wine/distilled spirits — standards of identity and quality**

The Department of Health Services may, by regulation, establish definitions and standards of identity and quality for any distilled spirit or wine whether or not such definitions and standards are in accordance with regulations adopted by the Internal Revenue Service, if such action will promote honesty and fair dealing in the interest of consumers (Health & S.C. 26514-26515).

## VII. LAWS RELATING TO PROFESSIONS AND EMPLOYMENT

### INTRODUCTION

This section of the report provides a summary of the drug and alcohol laws relating to professions employment, and the insurance industry. In the professions section the primary focus is regulation of health care professions, such as clinical laboratories, dentistry, medicine, nursing, and pharmacy. The emphasis of the laws in relation to employment is on the responsibilities and rights of employers as well as sanctions of employees for alcohol and drug abuse. Laws concerning the insurance industry provide for disclosure and coverage requirements.

Many of the professionals in health care, such as physicians, psychologists, nurses, and pharmacists are in positions that involve significant power, influence, and trust in terms of administering and prescribing drugs to patients in treatment or to the general public in daily health care situations. Moreover, such professionals have ready access to controlled substances. Accordingly, the California Legislature has enacted laws to provide for the appropriate conduct by these professionals in the administration and dispensing of drugs, as well as setting standards for employment and licensing in these professions.

The laws on employment in this section of the report focus on the rights of employers to have access to the criminal history records of applicants and employees who are substance abusers, and on the laws that relate to the employee, such as denial of employment for drug offenses. The laws affecting the insurance industry are primarily directed at the coverage of medical treatment and disability for alcohol and drug abuse.

### PROFESSIONS

#### Health Care Professions

For purposes of this report, health care professions encompass the following disciplines: clinical laboratory technology, dentistry, medicine, nursing, physical therapy, psychology, optometry, respiratory therapy, pharmacy, veterinary medicine, and marriage, family and child counselling.

The standards and appropriate conduct for licensed professionals may be found in the Business and Professions Code. An applicant for a professional license must not, at the time of application, be addicted to the intemperate use of alcohol or narcotic drugs, and must have successfully completed courses of training equivalent to the minimum standard established by the governing examining committee of that profession.

For a better understanding of the categories of professional conduct and standards regulated by the Business and Professional codes, see the chart on page 30. The definitions of activities indicated on the chart are as follows:

Unprofessional Conduct — This is the broad legal cause for the licensing agency to take disciplinary action. Aside from dishonesty and convictions for conduct related to the licensee's profession, the major grounds for discipline are gross negligence — an extreme deviation from the community standard of care expected from the licensee. For example, a practitioner administering excessive medications or prescribing large amounts of abusable drugs to many patients.

Misuse of Controlled Substances, Dangerous Drugs or Alcohol — Misuse varies by profession based upon the nature of the professional duties of the profession.

Disciplinary Action and Enforcement — The licensing agency has the authority to revoke, suspend or place on probation the professional's license to practice. Each professional governing board has complete discretion and enforcement authority. Criminal enforcement provisions are found in the Penal Code as well as the individual practice acts and the Uniform Controlled Substances Act.

Diversion/Rehabilitation Programs — Voluntary drug and alcohol abuse programs are available to licensees as an alternative to disciplinary actions.

Practice Authorized by Certificate/License — A license/certificate is a privilege issued by a profession which defines the scope of the respective profession.

Curriculum Requirements — In addition to meeting the minimum standards for practicing the profession, these professionals generally must have instruction in alcoholism and other chemical substance dependency, detection and treatment. This category also refers to continuing education.

Definitions and General Provisions — Included here are definitions which apply to the various professions as they relate to alcohol and drugs.

Sale, Advertisement, Distribution, Purchasing and Possession — This section refers to the standards and requirements for these activities.

Clinic/Clinical Permits — Details regulations which provide for the operation of clinics run by physicians, within which pharmacists are involved to a lesser extent than otherwise required.

**BUSINESS AND PROFESSIONS CODE**

	General	Clinical Laboratory Technology	Dentistry	Medicine	Physical Therapy	Nursing	Psychologist	Optometry	Respiratory Therapy	Pharmacy	Veterinary Medicine	Marriage, Family & Child Counseling
Unprofessional conduct	725	1290	1680* 1681	2221* 2239-2242* 2313 2503		2762 2878.5		3105.1*		4521* (Psych. Tech) 4353 4350.5	4883*	4982* 4986.70*
Misuse of controlled substances, dangerous drugs or alcohol			180	2239 2242* 2332*		2836.3*	2960	3105.1*		4063.5 4227.1* 377* 4234* 4227* 4240*		
Disciplinary action and enforcement		1320 25629* 25691*	1680*	2221* 2237 2238 2313 2332*	2660				3750.5	4009 4234* 4358 4390.5 4010 4236* 4362 4394 4010.5 4238 4363 4416 4051 4238.5 4366 4521* 4054* 4239 4382 1463.23* 4081.4* 4350 4385-4388 4084.6* 4350.5 4390 4232* 4353 4390.1	4837 4883*	4982* 4986.70*
Diversion/rehabilitation programs			1695	2340 2360* 2342* 2497.1		2770				4425 4426	4860* 4861	
Practice authorized by a certificate/license			4033*	2051 2500 2505 4033*		2725.1 2836.3 2836.1* 4033* 14503* 4051.5 11000* 4051.6 2836.2	2904			4008 4047.5* 4087 4080.2* 4033* 4047.6* 4229 4081.5 4036.1* 4050 4229.5 4084 4036.2 4054* 4080* 4084.6* 4036.4	382.4* 11240* 11241*	
Curriculum requirements/continuing education				2089 2091.1		2736.1	2914			4099		4980.41
Definitions and general provisions			4213 4033* 4034	4213						4031 4036.1* 4048.5 4213* 4034 4038 4049 4220 4034.1 4038.1 4049.5 4236* 4035 4046 4051 4330 4035.1 4047 4211 4332 4036 4047.6* 4211.5 4426*	4826 4840.2 4213* 6013.1*	
Sale, advertisement, distribution, purchasing and possession	11250- 11256* 11100- 11106*		4052* 4144* 4231* 11250-11256*	4052* 4144* 4231* 11250-11256*						4047.8 4065* 4227.3 4391 4051 4080.2* 4230 4393 4052 4084* 4231 4450 4052.1 4084.5 4232 4451 4052.2 4144 4240* 11250-11256** 4052.3 4227* 4242 1204* 4063 4227.2 4333	4231 4144 11250-11256*	
Clinic/clinical permits										4063-4063.8 4065.7 4065* 4065.8 4065.2 4080 4065.5 4081		

-03-  
AFFECTED ACTIVITIES

\* Cross-references \* Penal Code \* Health and Safety Code \* Welfare and Institutions Code \* Revenue and Taxation Code

## **Employment**

### **Access to applicant drug conviction records**

An employer may request from the Department of Justice records of all convictions involving drug crimes of a person who applies for employment or volunteers for a position in which he/she would have supervisory or disciplinary power over a minor. The employer and applicant will each receive a copy of the information (Pen.C. 11105.3).

### **Assistance for rehabilitation programs**

Every private employer regularly employing 25 or more employees must reasonably accommodate any employee who wishes to voluntarily enter and participate in an alcohol or drug rehabilitation program as long as it does not impose an undue hardship on the employer. The employer must make reasonable efforts to safeguard the privacy of the employee in the program, and is not required to provide time off for participation in the program, although the employee may use accrued sick leave. However, an employer may refuse to hire, or may discharge an employee who cannot perform his/her duties or who endangers his health and safety or the health and safety of others, due to the employee's current use of alcohol or drugs (Labor C. 1025-28).

### **Cafe musician — licensing exemption for**

A cafe musician, a person playing a musical instrument in any place where food or alcoholic beverages are available, is not required to have a regulatory license or license fee imposed (Gov.C. 37101.5, Bus. & Prof.C. 16000.5, 16100.5).

### **Disability — determination of**

An individual is deemed disabled on any day in which a physical or mental condition prevents performance of regular or customary work. This definition of disabled includes individuals receiving medical treatment for acute alcoholism or acute drug-induced illnesses and residents of alcoholic recovery houses or drug-free residential facilities (Un.Ins.C. 2626, 2626.1, 2626.2).

### **Disability retirement benefits — effect of alcohol/drug abuse on**

A member of a state disability retirement program under age 65, retired for non-service-connected disability, and not simultaneously on retirement of the State Employees' Retirement System or other system established by a county, will receive a disability retirement allowance unless the disability is due to the intemperate use of alcohol or drugs (Gov.C. 31726). A safety member may receive the benefit at age 55 (Gov.C. 31726.5, 31838). If, in the opinion of the member's board, disability is due to the intemperate use of alcohol or drugs and his annuity is less than two hundred forty dollars (\$240) a year, the board may pay the member his/her accumulated contribution in one lump sum (Gov.C. 31728).

**Non-disclosure of participation in a diversion program**

An employer may not ask an applicant or other source to disclose information concerning a referral to and participation in any pretrial or post-trial diversion program. This section does not apply to persons seeking employment as peace officers (Labor C. 432.7).

**Peace officer — disqualification for employment**

Any person adjudged addicted, in danger of becoming addicted to narcotics, or convicted and committed to a state institution is disqualified from holding office as a peace officer (Gov.C. 1029).

**State employees — discipline of for alcohol and drug addiction**

Drunkenness on duty, intemperance, or controlled substance addiction constitute causes for discipline for a state employee or person whose name appears on any employment list (Gov.C. 19572).

**State service — declination of appointment**

The State Personnel Board or executive officer of a designated appointing power may, prior to appointment, refuse to examine, or after examination, disqualify, withhold, or withdraw from certification anyone who is addicted to the excessive use of intoxicating beverages or addicted to the use of controlled substances (Gov.C. 18935).

**Unemployment compensation — denial of**

Any employer entitled to receive notice of the filing of a new or additional unemployment compensation claim may, within 10 days after mailing of the notice, submit to the Employment Development Department any facts within his/her possession relating to whether the claimant was discharged from the claimant's most recent employer as a result of an irresistible compulsion to use or consume intoxicants, including alcoholic beverages. Such a compulsion disqualifies a claimant from receiving unemployment benefits and prevents the employer from being charged for the benefits. Commitment to an institution or other place as a drug addict also disqualifies an individual (Un.Inc.C. 1030, 1032, 1256.5, 2678).

**The Insurance Industry****Disability Insurance — exemption from liability for loss because of alcohol or drug abuse**

A disability policy may contain a provision stating: "Intoxicants and controlled substances: The insurer shall not be liable for any loss sustained or contracted in consequence of the insured's being intoxicated or under the influence of any controlled substances unless administered on the advice of a physician" (Ins.C. 10369.12).

**Disability insurance/health plan — coverage of drugs and alcohol**

Every insurer issuing group disability insurance or nonprofit hospital plan which covers hospital, medical, or surgical expenses must also offer coverage for the treatment of alcoholism and chemical dependency and must communicate such availability to group policy holders and all prospective group policy holders (Ins.C. 10123.6, Ins.C. 11512.14).

**Disclosure of alcohol or drug abuse information and records**

An employer that is an insurance institution, agent or support organization subject to the Insurance Information and Privacy Act may disclose alcohol or drug abuse information and records subject to the federal alcohol and drug abuse regulations gathered in connection with an insurance transaction (Civ.C. 56.30).

**Insurance — effect on rates for driving under the influence**

A conviction for driving under the influence while driving a work vehicle can have an effect on a person's insurance premiums. An insurer may increase or cancel the premium on a private passenger automobile of an insured or applicant who has been convicted of a traffic violation or had his/her license suspended or revoked while operating a motor vehicle for compensation during hours of employment if such conviction, suspension or revocation was the result of driving under the influence of alcoholic beverage or drug (Ins.C. 448, Ins.C. 670).

**Notification to employees of disability insurance for alcohol or drug abuse**

Every insurer issuing group disability insurance or nonprofit hospital plan which covers hospital, medical, or surgical expenses must also offer coverage for the treatment of alcoholism and chemical dependency and must communicate such availability to group policy holders and all prospective group policy holders (Ins.C. 10123.6, Ins.C. 11512.14).

## VIII. LAWS RELATING TO EDUCATION

### INTRODUCTION

This section of the report provides a summary of the drug and alcohol laws applicable to education and schools, including primary through college and university levels. The emphasis is on laws concerning the abuse of alcohol and drugs by teachers, school employees, and students. Also provided are miscellaneous laws providing for instruction in the schools for drug and alcohol abuse and in-service training for teachers.

The legislative intent of laws related to education and schools is to provide an adequate health education program in the public schools as an essential element in the continued progress and improvement in the quality of public health in California. Although many of the communicable diseases and environmental hazards which plagued earlier generations have been controlled, major health problems and hazards are prevalent among today's school-age children and youth, including the abuse of alcohol, narcotics and tobacco. Accordingly, the Legislature has recognized that a comprehensive health education program taught by properly trained persons is effective in the prevention of disease and disability. (Educ.C. 51881).

Educating youth to the dangers of alcohol and drug abuse cannot be overstated. A 1987 study developed by the Department of Alcohol and Drug Programs found that for every dollar spent on education and prevention, \$31 were realized in benefits. The study indicated that the key factors in education were classroom instruction, substantive media information, and knowledgeable parents.

### GENERAL

**Comprehensive health education programs — definition of**  
"Comprehensive health education programs" are all educational programs offered in kindergarten and grades 1 through 12 in the public school system, including in-class and out-of-class activities designed to ensure that, among other things, pupils will receive instruction to aid them in making decisions in matters of personal, family, and community health, including drug and alcohol use and misuse. To the maximum extent possible, the instruction should provide comprehensive health education and should involve community participation by practicing health and safety personnel in the community (Educ.C. 51880, 51881, 51890).

#### **Information center/instructional materials**

The Department of Education is responsible for maintaining an information center of current alcohol, drug, and traffic safety education materials which may be used by school districts and teachers. The information center includes current state and federal drug and alcohol laws including those related to

traffic safety; samples of effective courses of study, curriculum guides, teaching materials, and reference materials; and reports of current school district policies related to alcohol, drug, and traffic safety education (Educ.C. 16110).

#### **In-service training program requirements**

In preparing in-service training programs for all school districts and county offices of education, the State Department of Education must: 1) Prepare and distribute guidelines for incorporating into school and county office staff development plans of in-service training in gang violence, drug and alcohol abuse prevention for teachers, counselors, athletic directors, school board members, and other education personnel; 2) Assist in developing comprehensive gang violence, drug and alcohol abuse prevention in-service training programs; 3) Encourage coordination with other community agencies providing health, drug, alcohol, gang violence prevention, or other related services at the local level; 4) Assist school districts and county offices of education in qualifying for federal and state funds to support gang violence and drug and alcohol abuse and prevention in-service training programs; 5) Consult with the Office of Criminal Justice Planning regarding gang violence; 6) Report to the Legislature on the status of gang violence and drug and alcohol abuse prevention in-service training programs provided by school districts and county offices of education (Educ.C. 51263, 51264, 51265).

#### **Instruction in drug and alcohol use and misuse**

Instruction in alcohol, narcotics, restricted and dangerous drugs, including steroids, and their effects upon the human system must be included in the curricula of all elementary and secondary schools. Moreover, instruction will be provided by appropriately trained instructors (Educ.C. 51202, 51203, 51260, 51262, 51265, 51881, 51890).

#### **Instructional use of drug offenders' records, photos, prints**

Reports, records, prints or photographs of or concerning a person convicted of a controlled substance violation may be used for instruction on the subject of narcotics, although the name of the person must be kept confidential (Gov.C. 818.7).

#### **Suppression of Drug Abuse in Schools Program**

Created within the Office of Criminal Justice Planning is a program called the Suppression of Drug Abuse in Schools Program. This program is designed to concentrate on the substantial drug abuse and drug trafficking problems that exist among school-age children on and around school campuses. The emphasis is on enhancing apprehension, prevention, and education efforts and resources on drug abuse and trafficking through a coordination of the efforts of law enforcement agencies and school districts (Pen.C. 13860, 13861, 13862, 13863), (Educ.C. 51265).

## **TEACHERS/EMPLOYEES**

### **California State University employee dismissal/suspension**

Any permanent or probationary employee of the California State University may be dismissed, demoted, or suspended for several causes, including addiction to the use of controlled substances, conviction of a felony or conviction of any misdemeanor involving moral turpitude, or drunkenness on duty (Educ.C. 89535).

### **Community college — denial of credential**

The board of governors may deny any application for the issuance of a community college credential made by an applicant who is addicted to intoxicating beverages, is addicted to narcotics or habit-forming drugs, or has committed any act involving moral turpitude. Moreover, the board of governors will deny any application for the issuance of a credential made by any applicant who has been convicted of a narcotics offense. When the conviction becomes final or the imposition of the sentence is suspended, the credential or certificate will be revoked (Educ.C. 87289, 87290).

### **Community College — employment/retention of drug abusers**

No person who has been convicted of any controlled substance offense will be employed or retained in employment by a community college district. If, however, any such conviction is reversed and the person is acquitted of the offense in a new trial or the charges against the person are dismissed, employment is not prohibited. The governing board of a community college may employ a person convicted of a controlled substance offense if the governing board of the district determines that the person has been rehabilitated for at least five years. The governing board will determine the type and manner of presentation of the evidence, and the determination of the governing board as to whether or not the person has been rehabilitated is final. This section also applies to exempt employees (Educ.C. 87405, 88022, 88006).

### **Community college — notification of teacher arrest**

The sheriff or chief of police must immediately notify the superintendent of a community college school district and the Commission on Teacher Credentialing of the arrest of any teacher or instructor employed by that district for a controlled substance offense (Health & S.C. 11591.5).

### **Community college — suspension of employee for drug arrest**

Whenever any employee of a community college district is charged with the commission of any narcotics offense or violation of other laws relating to controlled substances, the district may immediately suspend the employee for a specified period of time or place the employee on compulsory leave. The suspension may be extended unless the employee demands a hearing. The employee will continue to be paid his/her salary, which must be repaid if the

employee is convicted of charges or the employee does not return to work after the suspension period (Educ.C. 88123, 87736).

**Compulsory leave for certified employees**

Any certificated employee charged with the commission of any controlled substance offense, excluding marijuana, mescaline, peyote, or tetrahydrocannabinols, may be placed immediately on compulsory leave (Educ.C. 444940).

**Denial of issuance/renewal of a teaching credential**

The Commission for Teacher Preparation may deny an application for the issuance or renewal of a teaching credential for any one of a number of reasons including addiction to the use of intoxicating beverages or controlled substances (Educ.C. 44345, 44346).

**Employment of persons convicted of controlled substance offenses**

School districts may not employ persons in public school service who have been convicted of any controlled substance offense unless the governing board determines that the person has been rehabilitated for five years. ( For purposes of school employees, controlled substance offenses are defined to include any offense in Health and Safety Code Sections 11350,11355, 11366, 11368, 11377-11382, 11550-11553, 115557, 11715, and 11721.)

Controlled substance offenses committed or attempted in other states are also included (Educ.C. 44009, 44011, 44345, 44346, 44836, 45123, 44932, 45304). If the conviction is reversed and the person is acquitted of the offense in a new trial, or the charges are dismissed, employment is allowed (Educ.C. 44425, 44436).

**Notification of school employee drug arrest**

The sheriff or chief of police must immediately notify the superintendent of a school district and the Commission on Teacher Credentialing of the arrest of any employee of that district for a controlled substance offense (Health & S.C. 11591).

**Suspension/revocation of a credential or certificate**

Whenever the holder of a credential or certificate has been convicted of any controlled substance offense, his/her credential or certificate will be suspended. If the conviction is reversed and the holder is acquitted of the offense, or if the charges are dismissed, the suspension will be terminated. When the conviction becomes final or the imposition of the sentence is suspended, the credential or certificate will be revoked (Educ.C. 44425, 44436).

**Teaching credential — drug education requirement for**

The minimum requirements for the teaching credential include the satisfactory completion of a one unit requirement in health education including an emphasis on the physiological and sociological effects of alcohol and narcotic drug abuse. The same minimum requirement also applies to the

five-year renewal of the preliminary, designated subjects, vocational, and adult education teaching credentials (Educ.C. 44227, 44260.1, 44260.3, 44261).

## **STUDENTS**

### **Community college — suspension/expulsion**

A community college student may be suspended or expelled for good cause. Suspension or expulsion of a student for "good cause" includes several offenses including the use, sale, or possession on campus of, or presence on campus under the influence of any controlled substance (Educ.C. 76003).

### **Community service as a condition of probation**

If a court finds that a minor has unlawfully possessed a controlled substance on school grounds during hours of instruction or school-related activities, it will, as a condition of probation — except where the court finds and states on the minor's records that such conditions would be inappropriate — require the minor to perform no less than 40 hours of community service (Welf. & Inst.C. 729.8).

### **Notifying school of student's medication regimen**

To prevent the suspension or expulsion of the pupil, the parent or guardian of a pupil on a continuing medication regimen must inform the school nurse or other designated certificated school employee of the medication being taken, the current dosage and the name of the supervising physician (Educ.C. 49480).

### **Notifying school district of student drug conviction**

If a minor has been found by a court to have used, sold or possessed narcotics, or a controlled substance, the court must inform the superintendent of the minor's school district. The superintendent is responsible for informing any teacher, counselor, or administrator with direct supervisory or disciplinary responsibility over the minor. The superintendent must consult with the school principal to determine who needs such information. Any information received from the court must be destroyed by school authorities within 12 months, or 12 months after the minor returns to public school (Welf. & Inst.C. 827).

### **Refusal to register student posing drug use or distribution threat**

The principal of a school or his/her designee may refuse to register an outsider if he or she has a reasonable basis for concluding that the registration would result in the use or distribution of unlawful or controlled substances on school grounds (Pen.C. 627.4).

### **Rehabilitation following expulsion for drug offenses**

The governing board may require a pupil who is expelled from school for reasons relating to controlled substances to enroll in a county-supported drug

rehabilitation program prior to returning to school. However, parental or guardian consent is required. If a petition is sustained against the minor, the court will require 40 or more hours of community service (Educ.C. 48915).

**Reporting student alcohol/drug abuse**

Any principal or person designated by the principal who in his/her professional capacity has knowledge of or observes a student whom they know or suspect has consumed an alcoholic beverage or abused a controlled substance may report this to the parents or other legal guardians of the student. Such reports are not allowable if the report would require disclosure of confidential information in violation of Educ.C. 72621 (Welf. & Inst.C. 729.6, 729.8, 729.9).

**Suspension/expulsion — grounds for**

A student will not be suspended or expelled unless the the principal or superintendent determines that the student has unlawfully possessed, used, sold, or furnished alcohol, controlled substances, tobacco products, or drug paraphernalia on school grounds, going or coming to school, during lunch on or off school grounds, or at any school sponsored activity. A pupil may be suspended or expelled for any of the reasons enumerated in Section 48900 upon first offense. The law makes an exception for a first offense for the sale of less than one avoirdupois ounce of marijuana other than concentrated cannabis (Educ.C. 48900, 48916.5).

## **IX. LAWS RELATING TO THE ADMINISTRATION OF JUSTICE — LAW ENFORCEMENT, PROSECUTION, COURTS, CORRECTIONS**

### **INTRODUCTION**

This section of the report provides a summary of the alcohol and drug abuse laws relating to the administration of justice. The primary focus is on the disposition of drug-related cases at various stages of the criminal justice process, as well as the penalties and remedies available to law enforcement, prosecution, courts, and corrections.

Alcohol and drug abuse have a major impact on the criminal justice system in California. According to the Department of Alcohol and Drug Programs, 270,561 people were arrested for drug-related offenses and 610,821 for alcohol-related offenses in 1987. Together, drug and alcohol offenses account for 40.3 percent of all crime in California. Furthermore, a 1985 study by the U.S. Department of Justice indicates that nearly half of the nation's convicted inmates were under the influence of alcohol or drugs during the commission of their crimes.

A report by the Department of Alcohol and Drug Programs notes that the growth of the marijuana industry in the State of California and, more recently, the emergence of illicit laboratories has necessitated the seizure of illicit laboratories and interdiction of the drug traffic emanating from them. For example, in 1980 federal, state, and local authorities reported 53 illicit laboratory seizures. In 1987, 489 seizures were reported. The extent of the illicit laboratory problem is further evidenced by the fact that those 489 seizures represent 75.6 percent of the 647 seizures nationwide.

Finally, the cost of justice is high for incarcerating those convicted and committed to state institutions. During 1987, the 7,971 drug commitments to the Department of Corrections cost over \$19,000 per inmate, while the 705 commitments to the California Youth Authority cost over \$24,000 per year per youthful drug offender.

### **LAW ENFORCEMENT**

#### **Career criminal apprehension efforts for drug offenders**

An individual may be the subject of career criminal apprehension efforts if he/she is under investigation for the commission or attempted commission of any unlawful act relating to the possession, purchase for sale, transportation, sale, or distribution of controlled substances and has committed three or more separate felony offenses not arising out of the same transaction, or has suffered at least two convictions during the preceding 10 years. An example would be a person previously convicted two or more times of selling controlled substances to or through a minor (Pen.C. 667.75) (Pen.C. 999e) (Pen.C. 13853).

### **Coroner inquiry into drug and alcohol related deaths**

It is the duty of the coroner to inquire into deaths due to acute alcoholism or drug addiction. This would include the taking of blood and urine samples of persons who die while driving or riding in a motor vehicle or by being struck by a motor vehicle (Gov.C. 27491, 27491.25).

### **Drug suppression — funding for**

Funds granted under the California Community Crime Resistance Program may be used for drug suppression programs (Pen.C. 13844).

### **Exception to the Ralph M. Brown Act for drug enforcement agencies**

The legislative body of a multi-jurisdictional drug law enforcement agency may hold a closed session to discuss the case records of any ongoing criminal investigation, which would be an exception to the Ralph M. Brown Act (Gov.C. 54957.8).

### **Public access to driving under the influence records**

Any record of a conviction of driving while under the influence which occurred before January 1, 1987, is a public record for five years after the date of the conviction. After five years, this information is available only to persons authorized by law to receive the information, such as law enforcement, courts of the state, the Attorney General, probation or parole officers (Veh.C. 1807.5). Department records relating to convictions of any offense involving the use or possession of controlled substance not arising from circumstances involving a motor vehicle are confidential and not open to public inspection (Veh.C. 1808.5).

### **Seizure of illegal laboratories for the production of controlled substances**

The Legislature has made findings and declarations regarding illegal laboratories that produce controlled substances. The Department of Justice is required to establish an enforcement program with specified procedures regarding the seizure of a laboratory and the counties' responsibilities regarding such activities (Health & S.C. 11640-11651).

## **PROSECUTION**

### **Access to complaints against a person**

The district attorney will be given access to any complaint against a person subject to regulation by a consumer-oriented state agency, such as the Department of Alcoholic Beverage Control and California State Board of Pharmacy (Gov.C. 26509).

### **California Major Narcotic Vendors Prosecution Law**

In recognition of the substantial and disproportionate amount of serious crime associated with the cultivation, processing, manufacturing and sale of narcotics, the Legislature has enacted the California Major Narcotic Vendors Prosecution Law. This is an effort to support intensified efforts by district attorneys' offices to prosecute drug producers and sellers through organizational and operational techniques that have been proven effective in selected jurisdictions in this and other states (Pen.C. 13880, 13881, 13882, 13883, 13884).

## **COURTS**

### **Abstinence as a condition of probation**

In granting probation to a defendant convicted of lewd and lascivious acts (Pen.C. 290), a judge may inquire into whether the defendant was intoxicated or addicted to the excessive use of alcohol at the time of the offense; and if he believes that the defendant was, the judge will require as a condition of probation the total abstention from the use of alcoholic liquor or beverages (Pen.C. 1203.02). (Welf. & Inst.C. 1767.2).

### **Appeal of conviction for controlled substance**

The commitment of a defendant for controlled substance addiction shall be deemed a final judgment and is appealable (Pen.C. 1237, 1466).

### **Awarding of costs in controlled substance actions**

The court may award costs, including the costs of investigation, discovery, and reasonable attorney fees to the prevailing party in which a governmental agency seeks to enjoin the use of a building or place, or seeks to enjoin the unlawful sale, manufacture, service, storage, or giving away of any controlled substance (Civ.C. 3496).

### **Bail — where defendant used or possessed controlled substance**

In considering the seriousness of the charge in setting bail, the judge will include the use or possession of controlled substances by the defendant (Pen.C. 1275).

### **Bail — where victim was administered a controlled substance**

Additional bail will be assigned (above the county-wide schedule) for persons charged with the administration of a controlled substance against a victim's will (Pen.C. 1269b).

### **Constitutionality of declaring driving under influence convictions**

No municipal or justice court should declare invalid on constitutional grounds any prior conviction of driving under the influence of intoxicating liquor or any drug or combination of substances, unless the record establishes a factual or legal basis for doing so (Rules of Ct., Appendix 1, Sect.13).

**Destruction of drugs used as exhibits in criminal proceeding**

Any drugs introduced or filed as an exhibit will be destroyed or otherwise disposed of following the final determination of the criminal action or proceeding (Pen.C. 1417.6).

**Judicial intemperance — investigation of**

The Commission on Judicial Performance may make a preliminary investigation into a verified allegation of fact that a judge is guilty of a habitual intemperance in the use of intoxicants or drugs (Rules of Ct.904).

**Minors — declaring free from parental custody**

A minor whose parent or parents suffer a disability because of the habitual use of alcohol or any controlled substance, except those substances used as part of a medically prescribed plan, may be declared free from parental custody or control (Civ.C. 232).

**Minors — declaring unfit for juvenile court proceedings**

When a minor is alleged to have manufactured, compounded, or sold one-half ounce or more of a controlled substance (defined in Section 11055 of the Health and Safety Code) when he/ she was 16 years of age or older, the juvenile court will presume the minor to be unfit to be dealt with under juvenile court law. The juvenile court does, however, have the option to conclude that the minor is appropriate for juvenile court law (Welf. & Inst.C. 707).

**Minors — detention and treatment of**

A minor will be ordered detained by the juvenile court and taken to a 72-hour treatment and evaluation center if the minor is addicted to or is in imminent danger from the use of a controlled substance or intoxicant (Rules of Ct.1327), (Welf. & Inst.C. 708).

**Minors — drug substance testing as a condition of probation**

If a minor is under the jurisdiction of the juvenile court as a result of the unlawful possession, use, sale, or other furnishing of a controlled substance (defined in Section 11053 of the Health and Safety Code) the court may require that the minor submit to drug and substance testing as a condition of probation. The minor may be responsible for the cost of the drug test (Welf. & Inst.C. 729.9).

**Minors — notification of school district of drug conviction**

If a minor has been found by a court to have used, sold or possessed narcotics or a controlled substance, the court must inform the superintendent of the minor's school district. The superintendent is responsible for informing any teacher, counselors, or administrator with direct supervisory or disciplinary responsibility over the minor. The superintendent must consult with the school principal to determine who needs such information. Any information received from the court must be destroyed by school authorities

within 12 months, or 12 months after the minor returns to public school (Welf. & Inst.C. 827).

**Notice of appeal for commitment for narcotics addiction**

In a criminal case where the defendant is committed to a correctional rehabilitation center before final judgment for narcotics addiction, a notice of an appeal shall be filed within 30 days after the commitment (Rules of Ct.182).

**Petition for release from a narcotics treatment facility**

A petition to a reviewing court for a writ of habeas corpus, or any other writ within its original jurisdiction, seeking the release from or modification of the conditions of custody of one confined to a narcotics treatment facility, shall be in a form approved by the Judicial Council. This petition is exempt from the requirements of Rule 56 relating to form and content of a petition and requiring a points and authorities (Rules of Ct.56.5, 201).

**Petition for retrial — denial for shooting another while hunting**

A person whose hunting licence has been revoked for shooting another person while hunting may petition for a new trial on the revocation, but if the revocation was based on an act committed while under the influence of alcohol, the petition will be denied (Fish & G.C. 12150, 12150.5).

**Placement in a restitution center — eligibility for**

A defendant is eligible for placement in a restitution center if the defendant does not have a criminal history of an arrest or conviction for the sale or use of drugs (Pen.C. 6228).

**Placement in a treatment program as condition of probation/suspended sentence**

The trial court may grant probation or suspend the sentence of a person convicted of disorderly conduct (Pen.C. 647), if the county board of supervisors has adopted ordinances to allow for those persons to be placed in alcohol treatment and recovery facilities (Pen.C. 647d).

**Plea bargaining — driving under the influence**

Plea bargaining in a case that charges any offense of driving while under the influence of alcohol, drugs, narcotics or other intoxicating substance is prohibited, unless there is insufficient evidence, the testimony of a material witness cannot be obtained, or a reduction or dismissal would not result in a substantial change in sentence (Pen.C. 1192.7).

**Probation/rehabilitation program — driving under the influence**

As a condition of probation, a court may require participation in an alcohol rehabilitation program for a first time offense. Such participation will place a restriction on the person's driving privilege but will not result in a suspension subsequent violations have varying conditions (Veh.C. 13352.5, 23153, 23161, 23166, 23171, 23176, 23181, 23186, 23191, 23200).

### **Sentencing consideration in drug-related robbery**

Robbery or attempted robbery for the purpose of obtaining any controlled substance committed against a pharmacist, pharmacy employee or other person lawfully possessing a controlled substance is an aggravation to be considered in the sentencing of a defendant on robbery charges (Pen.C. 1170.7).

## **CORRECTIONS**

### **Abstinence as a condition of parole**

The Board of Prison Terms will impose abstinence from the use of alcohol as a condition of parole if the defendant, convicted of certain lewd crimes, was intoxicated or addicted to alcohol at the time when the crime was committed (Pen.C. 3053.5).

### **Placement in reentry work programs — denial of**

The Department of Corrections must deny placement of an inmate in a reentry work furlough program if the inmate has a history of drug use, sales, or addiction (Pen.C. 6263).

### **Probation/suspension for substance convictions**

Probation or suspension of a sentence will not be granted to any person who is convicted for the unlawful possession, selling, offering to sell, manufacture, transportation, or distribution of a controlled substance. An exception may be granted in an unusual case where the interests of justice would best be served. In such a case, drug testing as a condition of probation upon conviction may be imposed upon recommendation of the probation officer (Pen.C. 1203, 1203.07, 1203.073, 1203.074).

## **X. LAWS RELATING TO TREATMENT AND PREVENTION**

### **INTRODUCTION**

This section of the report provides a summary of the drug and alcohol laws relating to treatment and prevention, with special attention given to specific programs, the treatment of addicted minors, the use of controlled substances in treatment programs, treatment in California's correctional institutions, and special provisions for the use of drugs in the Medi-Cal program.

Alcohol and drug abuse are viewed and treated as both a health and law enforcement problem. Establishing state-wide alcohol and drug abuse prevention and treatment programs is important in order to address the continuing problem of alcohol and drug abuse in California. The Health and Safety Code defines narcotic and drug abuse programs and requires that each county establish and maintain a registry of all drug abuse programs to promote a coordination of effort. Each county is also required to have a drug plan that specifies certain requirements. Funding, financing, rate-setting and contract procedures are also delineated. The code further requires that all patient records be kept confidential, except to authorized persons (Health & S.C. 11970.5-11997.9).

The Department of Alcohol and Drug Programs is the state's central information resource on alcohol and drug abuse prevention and treatment projects and develops and maintains a centralized data collection system that issues an annual report of its findings (Health & S.C. 11865-11870). The department has a \$33.6 million budget comprised of state and federal funds for direct alcohol services for Fiscal Year 1988-89. Admissions to direct alcohol services numbered approximately 108,000 during fiscal 1987-1988.

The department also collects data on all persons receiving state or federal funds for drug abuse treatment, including methadone treatment. State and federal funds budgeted for fiscal 1988-1989 are \$49.2 million. Over 95,000 clients were admitted to drug treatment in fiscal 1987-1988. Hospital charges related to drug abuse treatment in 1986 totaled \$162.4 million.

The Attorney General, Board of Pharmacy, and other agencies have been empowered by the Legislature to carry out educational programs designed to prevent and deter misuse and abuse of controlled substances (Health & S.C. 11600-11604).

### **GENERAL**

#### **Advanced payment to private, non-profit providers**

The State Department of Alcohol and Drug Abuse within the Health and Welfare Agency has developed a plan whereby the department determines whether or not an advance payment is essential to a community-based

private nonprofit agency for the effective implementation of a particular program being funded (Gov.C. 11019).

**County coordination with local alcohol and drug programs**

Minimum guidelines developed for adult protective services model projects must require each county to outline steps for coordination with local programs administered by the State Department of Alcohol and Drug Programs (Welf. & Inst.C. 15721).

**County responsibility for first-time offenders — driving under the influence**

The counties have been given independent responsibility for first-time offenders of driving under the influence so that a variety of program designs can be developed and evaluated. The evaluation is to be done by members of the Governor's Intergovernmental Advisory Council on Alcohol, Drugs, and Traffic Safety (Veh.C. 1660.5, 1660.6).

**Dismissal of charges — diversion to treatment**

Individuals charged with the sale, possession, or use of narcotic and drug cases may be diverted to programs in education, treatment, or rehabilitation if a court finds that such diversion and dismissal would be in the interest of justice (see Pen.C. 1000-1000.5).

**Driving under the influence — diversion and treatment**

Offenders who have been arrested for driving under the influence may be diverted to programs relating to drug and alcohol education. An individual may be diverted to pretrial or post-trial drug or alcohol rehabilitation facility unless the person has been convicted of driving under the influence of alcohol or drugs (Veh.C. 23202, Pen.C. 1001.2).

**Educational furlough rehabilitation — definition of**

Educational furlough rehabilitation includes psychological, drug abuse, alcoholic and other rehabilitative counseling (Pen.C. 1208).

**Fees — enrollment by defendant**

The judge may require the payment of an administrative fee as part of an enrollment fee in a diversion program for a defendant; however, diversion may not be denied if the defendant does not have the ability to pay (Pen.C. 1001.15, 1001.16).

**Fees — reduction/cancellation of**

The Director of Mental Health may reduce or cancel the amount to be paid by relatives for the treatment of any alcoholic who is a patient at a state hospital for the mentally ill (Welf. & Inst.C. 7276).

**Funds — diversion to homeless project**

A county is not required to divert existing funding for alcohol and drug programs to the Homeless Relief Pilot Project (Gov.C. 15295).

**Health care facility — definition of**

"Health care facility" includes any drug abuse clinic or detoxification center (Pen.C. 1545).

**Hospital reporting of personal harm from voluntary drug abuse**

Hospitals generally must report personal injuries resulting from violence. However, this does not include any psychological or physical conditions brought about solely through the voluntary administration of a narcotic or restricted dangerous drug (Pen.C. 11160).

**Probation/suspended sentence — treatment program as condition of**

The trial court may grant probation or suspend the sentence of a person convicted of disorderly conduct (Pen.C. 647), if the county board of supervisors has adopted ordinances to allow for those persons to be placed in alcohol treatment and recovery facilities (Pen.C. 647d).

**Release from custody — diversion to treatment**

A peace officer may release from custody any person arrested without a warrant whenever the person was arrested for intoxication only, and no further proceedings are desirable, or the person was arrested only for being under the influence of a controlled substance or drug and is delivered to a facility for treatment and no further proceedings are desirable (Pen.C. 849).

**Rare disease testing — tax exemption**

Clinical testing expenses for certain drugs for rare diseases or conditions generally are allowed as a credit against taxes (Rev.&T.C. 23609.5).

**Reporting of expenditures to the Legislature**

Included in the Department of Health Services annual report to the Legislature must be an itemized list of expenditures made by each prepaid health plan for pharmaceutical services and prescription drugs (Welf. & Inst.C. 14459).

**Substance abuse facilities — licensing of**

The regulations pertaining to the licensing of substance abuse facilities may be found in the Health & S.C. 11834.10-11839, 11875-11882, and 11970-11978. Specific regulations applying to chemical dependency hospitals may be found in Health & S.C. 1337.8. Certain facilities, such as recovery houses and alcoholism recovery facilities are exempt from specified licensing requirements in community care facilities (Health & S.C. 1505). An application for a license, registration, or a special permit may be denied, suspended or revoked due to various violations including aiding and abetting, allowing illegal drugs or alcohol in the possession of a child on a licensed facility, or inappropriate conduct (Health & S.C. 1550).

## **PROGRAMS**

### **AIDS prevention program**

Persons convicted of possession of controlled substances (Health & S.C. 11377), unauthorized use or being under the influence of a controlled substance (Health & S.C. 11550), unauthorized possession or use of a hypodermic needle or syringe (Bus. & Prof.C. 4143, 4149), or disorderly conduct resulting from being under the influence of a controlled substance or alcohol, are required to participate in an AIDS prevention program. This program will be provided by the health department of each county (Pen.C. 1001.10, 1001.11).

### **Cancer treatment programs**

No one may treat or alleviate cancer by drugs, unless his/her California license expressly authorizes the diagnosis and treatment of such disease (Health & S.C. 1706). In order to obtain a license, an applicant must furnish the department with a sample for testing of the drug used or prescribed in the diagnosis, treatment, alleviation or cure of cancer (Health & S.C. 1707). There are various situations in which an application for cancer treatment would be denied; they include: unsafe test results, inadequate manufacturing, processing or packing of a drug (Health & S.C. 1707.4).

### **Community violence prevention and conflict resolution pilot programs — OCJP**

In response to the high rate of community violence within the state, the Office of Criminal Justice Planning contracts for four two-year community violence prevention and conflict resolution pilot programs throughout the state. These programs began after July 1, 1985 and address many subject areas relating to violence to include alcohol, diet, drugs, and other biochemical and biological factors. Priority is given to programs that provide specific direct services, such as drug and alcohol counseling and treatment referral (Pen.C. 14113, 14115).

### **Community mental health treatment programs**

California's system of community mental health services contained in Division 5 (Section 5000 to 5708.5) of the Welfare and Institutions Code is separated into two parts: the Lanterman-Petris-Short Act and the Short-Doyle Act:

#### **The Lanterman-Petris-Short Act**

The Lanterman-Petris-Short Act (starting at Welf. & Inst.C. 5000) is intended to end the inappropriate, indefinite, and involuntary commitment of mentally disordered persons, developmentally-disabled persons, and persons impaired by chronic alcoholism. When a person is a danger to self or others, or gravely disabled as a result of inebriation, a peace officer (and specified others) may place the individual in civil protective custody within a county-designated, state-

approved facility for 72-hour treatment and evaluation (Welf. & Inst.C. 5170, Pen.C. 849). "Gravely disabled" is defined as a condition in which a person, as a result of impairment by chronic alcoholism, is unable to provide for basic personal needs of food, clothing, or shelter (Welf. & Inst.C. 5008). This initial stage of involuntary commitment may be followed by (2) a 14-day commitment. Additional commitments may be extended, if deemed appropriate. Persons who have been detained for evaluation and treatment, who are receiving medications as a result of their mental illness, must be given written and oral information about the likely effects and possible side effects of the medication. The State Department of Mental Health must develop written materials on the effects of the medications. Certain information is required to be given to each patient. Among other things, this information includes the nature of the mental illness that is the reason the medication is being given (Welf. & Inst.C. 5152), (Bus. & Prof.C. 4047.9).

#### **The Short-Doyle Act**

The Short-Doyle Act (commencing with Welf. & Inst.C. 5600) is intended to support community mental health services for the mentally ill through locally administered community mental health programs. Each county mental health program must include a quality assurance system that covers all county operated and county contracted mental health facilities and programs. Among other things, the quality assurance system must include monitoring the medication regimes of Short-Doyle clients (Welf. & Inst.C. 5624).

#### **County alcohol programs**

The Legislature provides guidelines on county alcohol evaluation program standards and licensing of alcohol recovery facilities. The Department of Alcohol and Drug Programs has the authority to contract with other agencies, with the approval of the Health and Welfare Agency (Health & S.C. 11820-11836, 11860-11864). County government is given the authority to determine the methods of planning services through the use of federal and state alcohol program funds. A major emphasis is to be given to Native American Indians and persons who are both chemically dependent and also suffer from a mental illness (Health & S.C. 11810-11819.1). Money from the County Jail Capital Expenditure Bond Act of 1981 may be used to reimburse counties that used diversion programs consistent with public safety for defendants with drug or alcohol-related problems (Pen.C. 441.5, 6029.1).

#### **Gang Violence Suppression Program**

The Gang Violence Suppression Program provides funds for community-based organizations, school districts and county offices of education to establish programs for gang prevention. Community-based organizations funded under the Gang Violence Suppression Program may refer gang members to appropriate agencies for the treatment of drug-related problems.

School districts and county offices of education receiving money under the Gang Violence Suppression Program must incorporate into gang prevention activities references to the relationship between drug abuse and gang violence (Pen.C. 13826.6).

### **Methadone programs**

The state coordinates methadone programs and establishes minimum requirements for all programs within this state. The Department of Alcohol and Drug Programs has the authority to license, inspect, charge, collect fines and make various exemptions to methadone programs. Moreover, the director has the choice to deny, suspend, revoke or not renew a program's license (Health & S.C. 11875-11882). The Department of Health Services (DHS) must approve and license all laboratories that provide urine tests or other body fluid analysis for methadone programs. DHS also has the authority to inspect, suspend, revoke or deny a license by any laboratory. DHS must annually publish a list of approved and licensed laboratories that provide these specified tests (Health & S.C. 11885-11896).

### **Suppression of Drug Abuse in Schools Program**

Created within the Office of Criminal Justice Planning is a program called the Suppression of Drug Abuse in Schools Program. This program is designed to concentrate on the substantial drug abuse and drug trafficking problems that exist among school-age children on and around school campuses. The main emphasis is on enhancing apprehension, prevention, and education efforts and resources on drug abuse and trafficking through a coordination of the efforts of law enforcement agencies and school districts. An additional emphasis is on programs, instruction and curricula which help youth in developing the positive values, self-esteem, knowledge, and skills to lead productive gang-free and drug-free lives. School districts and county offices of education are to give high priority to gang violence and drug and alcohol abuse prevention in-service training programs as part of the overall strategy for comprehensive gang violence and drug and alcohol abuse education (Pen.C. 13860, 13861, 13862, 13863), (Educ.C. 51265).

### **Veterans' programs**

The Department of Veterans' Affairs is required to create a veterans' assistant position in the counties of Los Angeles, San Diego, and San Francisco to be staffed by personnel from one or more community-based organizations which have a successful history of providing alcohol abuse, drug abuse, or readjustment counseling to veterans suffering from alcohol abuse or drug abuse. The assistants will provide outreach programs to make veterans aware of the services and programs available, as well as provide an annual report to the Legislature on or before January 1 of each year (Mil. & Vet.C. 975.5).

## **TREATMENT RELATED TO MINORS**

### **Child abuse/neglect — related to alcohol/drug abuse**

The State Department of Social Services must develop a reporting system to identify potential alcohol and drug abuse as it relates to the potential for child abuse and neglect (Welf. & Inst.C. 18962).

### **Juvenile court order for evaluation/treatment**

California law provides for both short-term and long-term treatment of minors who are misusing and/or addicted to controlled substances. Whenever a minor appears to be a danger to his/herself or others as a result of using controlled substances (defined in Section 11000 of the Health and Safety Code), the juvenile court may order the minor to be taken to a 72-hour treatment and evaluation facility. Such a facility must be designated by the courts and approved by the State Department of Mental Health as a facility for 72-hour treatment and evaluation (Welf. & Inst.C. 708).

### **Minor's consent to treatment**

A minor 12 years of age or older may give consent to the furnishing of medical care and counseling relating to the diagnosis and treatment of a drug or alcohol-related problem. Such consent is not subject to disaffirmance because of minority (Civ.C. 34.10).

### **Parental consent to receive psychotropic drugs**

A minor is not authorized to receive psychotropic drugs without the consent of his or her parent or guardian (Civ.C. 25.9). "Psychotropic drug" means any drug that has the capability of changing or controlling mental functioning or behavior through direct pharmacological action (Pen.C. 3500).

### **Probation-officer supervised program**

As an alternative to filing a petition to have a minor declared a ward of the court (Welf. & Inst.C. 601-602), a probation officer may develop a supervised program for the minor. The program would require parental consent and would not last more than 6 months. The program may require the minor to obtain treatment for the misuse of or addiction to controlled substances (Welf. & Inst.C. 654).

### **Rehabilitation after expulsion from school**

The governing board may require a pupil who is expelled from school for reasons relating to controlled substances or alcohol to enroll in a county-supported drug rehabilitation program prior to returning to school. However, parental or guardian consent is required. If a petition is sustained against the minor, the court may require 40 or more hours of community service. (Welf. & Inst.C. 729.8).

### **School-Community Primary Prevention Program**

Health and Safety Code Sections 11960-11969.7 provide for the School-Community Primary Prevention Program and makes provisions for those counties who have applied for and have been awarded available funds (Health & S.C. 11960-11969.7).

### **USE OF DRUGS IN TREATMENT**

#### **Drugs — approval/administration**

An approved application for any drug may be withdrawn due to various findings such as unsafe use, and inappropriate testing methods (Health & S.C. 1707.5). An application may be reconsidered if new evidence or matter is presented the department and is in compliance with the law (Health & S.C. 1721). Drugs are defined as any thing that is used or intended in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans and animals. Moreover, "new drugs" are defined as any drug which has not been recognized among experts (Health & S.C. 26014). Following an investigation or testing of the content or composition of any drug to determine its value or lack of, those parties who do not meet specified requirements/standards may have their product removed from the market if the Cancer Advisory Council votes for such an order (Health & S.C. 1711, 1711.1). If an injunction or cease and desist order has been issued, that individual may not undertake to use in the diagnosis, treatment, alleviation or cure of cancer any new, experimental, untested or secret drug if there is not an application of file (Health & S.C. 1713). The department may publish reports on its investigation or testing of any drug, that is prescribed, recommended or used by various entities (Health & S.C. 1718).

#### **Controlled substances — administration of**

A controlled substance administered to an addict must be done by a physician or a registered nurse under the physician's instructions. A specified dosage of the drug must be administered within specified period of time. Treatment of an opiate addiction must take place in specified facilities, such as a state or county hospital, a state prison, city or county jail, or an approved institution or facility approved by the Department of Mental Health or Department of Health Services (Health & S.C. 11215-11222 and 11550-11555).

#### **Experimental drugs — exclusion of**

No experimental drug used for investigative purposes may be prescribed for or administered to a ward or conservator placed in a mental health treatment facility (Prob.C. 2356, 2311).

#### **Informed consent — in conditioning programs**

No person shall be administered or subjected to the use of drugs, when used as an aversive or reinforcing stimulus in a program of aversive, classical, or operant conditioning without informed consent (Pen.C. 2670.5).

## **CORRECTIONAL TREATMENT**

### **Commitment of offender — detention/rehabilitation**

The State Department of Corrections has responsibility for the state's program to commit and treat narcotics addicts. When a defendant is convicted of any crime in a municipal or justice court, if the judge believes that the defendant is addicted to narcotics, then the judge may certify the defendant to the superior court and order the district attorney to file a petition to commit the defendant to the Director of Corrections for confinement in the California Rehabilitation Center. The superior court will then order the defendant to be examined by at least one physician to determine if the defendant is addicted to narcotics. If, after a hearing, the judge finds that the defendant is a narcotics addict, then the defendant will be committed to the Director of Corrections for confinement in the state's narcotics treatment facility (Welf. & Inst.C. 3050-3054).

### **Controlled substances offenders — commitment and treatment of**

A primary purpose of the Department of Corrections Medical Facility in Vacaville is to receive, segregate, confine, and treat males addicted to the use of controlled substances (Pen.C. 6102).

### **Criteria for determining treatment progress**

The Director of Corrections establishes the criteria for determining the progress of persons committed to treatment within the corrections systems. The treatment system and its rules are detailed in Welf. & Inst.C. 3000 to 3201.

### **Department of Corrections — responsibility for narcotics addicts**

Persons addicted to narcotics are subject to confinement in the California Rehabilitation Center which has the primary responsibility for receiving, controlling, confining, employing, educating, treating, and rehabilitating persons under custody of the Department who are addicted to narcotics. Persons addicted to narcotics, but not convicted of a crime, may be committed to the Director of Corrections for confinement in the California Rehabilitation Center for narcotics treatment and rehabilitation (Welf. & Inst.C. 3000-3009, 3300-3311).

### **Discharge from treatment for abstinence**

The Director of Corrections may recommend to the Narcotics Addict Evaluation Authority that persons who have abstained from the use of narcotics be discharged from the drug treatment program (Welf. & Inst.C. 3000-3200, 3201).

**Escape/attempted escape from treatment**

Persons committed to treatment, who escape or attempt to escape from lawful custody are guilty of a crime punishable by imprisonment in the state prison (Welf. & Inst.C. 3002).

**Evaluation of drug treatment**

The Narcotic Addict Evaluation Authority is created within the Youth and Adult Correctional Agency. A seven-member evaluation authority is in charge of reviewing the cases of patients receiving drug addiction treatment and who have been certified by the Department of Corrections as eligible for outpatient status (Welf. & Inst.C. 3150-3357).

**Parolees — commitment/treatment**

The Board of Prison Terms may place a parolee in danger of or addicted to a controlled substance in a treatment control unit for a specified period of time. (Health & S.C. 11560-11564).

**Transfer of persons under treatment**

The Director of Corrections may enter into agreements with the Director of Mental Health or the Director of Developmental Services to allow persons receiving drug treatment to be transferred to facilities within the other departments (Welf. & Inst.C. 3003).

## **XI. LAWS RELATING TO ALCOHOLIC BEVERAGE LICENSING AND TAXATION**

### **INTRODUCTION**

This section of the report provides a summary of the drug and alcohol laws, with special attention given to licensing under the Alcoholic Beverage Control Act. Tax laws relating to alcohol are also provided.

Licensing of the sale, purchase, possession and transportation of alcohol is provided under the Alcoholic Beverage Control Act (Bus. & Prof.C. 23050, 23051). The Act gives the Department of Alcoholic Beverage Control the power to issue licenses and investigate suspected violations of the license. The Department of Alcoholic Beverage Control may refuse to issue a license to any person who has violated the Act, has a disqualifying criminal record, or is otherwise disqualified. Generally, a license must be in use within 30 days of issuance, and must be posted. It cannot be transferred from one person to another without application to the department (Bus. & Prof.C. 23300, 23355, 23405.2, 24040, 24041, 24070, 24073). Licenses for the sale of alcoholic beverages are granted or renewed on a yearly basis, and fees are levied at that time (Bus. & Prof.C. 23320-23334). Different licenses are required for manufacturers, wholesale distributors, winegrowers, importers, and retailers. For the schedule of the types of licenses issued, the annual fees charged, restrictions and violations, see Bus. & Prof.C. 23300-23334, 23355.1-23405.2 and contact the district office of the department.

### **LICENSING**

#### **Accusations against a licensee**

Any person may make an accusation against a licensee. Accusations must be verified unless filed by a public officer acting within official capacity and must state facts constituting legal grounds to suspend or revoke a license. For more information see Bus. & Prof.C. 24201-24211.

#### **Keeping a disorderly house**

Any licensee, or agent or employee of any licensee, who keeps or permits a "disorderly house" is guilty of a misdemeanor and the license is subject to disciplinary action. A disorderly place is a place in which people gather to cause a disturbance of the neighborhood, or for purposes injurious to the public morals, health, convenience or safety (Bus. & Prof.C. 25601).

#### **Restrictions and conditions on licenses**

Restrictions may be placed on the issuance of alcoholic beverage licenses. Limitations on a particular license can be found in Bus. & Prof.C. 23770-23793). Conditions may be placed upon the exercise of a license, including the hours of sale, advertising, entertainment, or any condition that appears to alleviate objections to the premises operation (Bus. & Prof.C. 23800-23805).

### **Suspension/revocation of a license**

An alcoholic beverage license may be suspended or revoked for the following reasons: 1) When the continuance of the license would be contrary to public welfare and morals; 2) The violation or permitting the violation of alcoholic beverage laws; 3) The misrepresentation of a material fact by a license applicant; 4) The plea, verdict, or judgment of guilty, or the plea of *nolo contendere* to a public offense involving moral turpitude or under any federal law involving alcoholic beverages; or 5) The failure to take reasonable steps to correct a nuisance on licensed premises or on an immediately adjacent area owned by a licensee within a reasonable time after receiving a notice to correct the nuisance from either the department or a local official (Bus. & Prof.C. 24200).

### **Temporary licenses — issuance of**

The Department of Alcoholic Beverage Control may also issue special licenses on a temporary basis for the sale of beer, wine, and distilled spirits for a period of one to five days. Such exceptions apply to a limited number of persons or entities and govern specific and atypical or unimportant transactions. For a complete listing see Bus. & Prof.C. 23100-23113 and the index for the Business and Professions Code under the specific license of interest.

### **Tied-House Restrictions**

A set of statutory provisions collectively known within the alcoholic beverage industry as "tied-house" laws prohibit certain relationships between alcoholic beverage manufacturers, wholesalers, and retailers. The two most commonly encountered tied-house provisions concern on-sale licenses and off-sale general licenses. Under these provisions, no manufacturer, winegrower, importer, wholesaler, or related licensee may hold the ownership, directly or indirectly, of any interest in any on-sale license or off-sale general license. Certain financial arrangements and property interests are also prohibited. For example, none of the foregoing licensees may provide financial aid to any person who operates, owns, or maintains any premises operated under an on-sale or off-sale general license. In addition, those licensees may not own any interest in the business, furniture, fixtures, refrigeration equipment, specified signs, or lease in any premises subject to an on-sale or off-sale general license. For more information on specific tied-house restrictions, see Bus. & Prof.C. 25500-25510.

### **Transfer of a license — exemption from money judgements**

An alcoholic beverage license that is transferable is generally not subject to enforcement of a money judgment (C.C.P. 699.720). However, a judgment debtors interest in an alcoholic beverage license may be applied to the satisfaction of a money judgment if a receiver is appointed for the purpose of transferring the interest (C.C.P. 699.720, 708.630).

### **Transfer of a license — general requirements/restrictions**

With department approval, a license may be transferred from a licensee to another person and from one premise to another premise. Steps required for the transfer of an alcoholic beverage license depend on the type of license involved. The steps are: 1) establishing an escrow (generally all retail licenses); 2) Recording of notice of intended transfer with County Recorder (generally all retail licenses); 3) Posting on the premises a notice of application for ownership change or notice of application to sell alcoholic beverages (all applications for sale of alcoholic beverages will be made at the premises); 4) Publication of notice of application in a newspaper of general circulation other than a legal or trade publication. (On-sale licenses and some off-sale licenses. Consult local department office for more information); 5) Filing of a statement with the department indicating that the purchase price or consideration for the transfer of the license has been deposited with the escrow holder in transfers requiring an escrow; 6) Clearance of any tax holds placed against the transferor (Bus. & Prof.C. 24074, 24073, 23985, 23986, 24074.3 and 24075); 7) Contacting the nearest Department of Alcoholic Beverage Control for current information and procedures. The department may refuse to transfer any license when the applicant is delinquent in the payment of taxes under certain laws (Bus. & Prof.C. 24049, 24049.5), (Rev. & T.C. 32001, 6001,17001, 23001). For more information on the transfer of licenses and applicable fees see Bus. & Prof.C. 24070-24082.

### **Types of Licenses**

The following are the major types of retail licenses issued by the department:

- off-sale general
- off-sale beer
- on-sale beer public premises
- on-sale beer and wine eating places
- on-sale beer and wine public premises
- on-sale general eating place
- on-sale general public premises

For further information as to the privileges for these licenses and others, see Bus. & Prof.C. Sections 23320, 23393, 23394, 23396, 23399.

## **THE APPLICATION PROCESS**

### **Application for a license**

A signed application for a license must be made to the Department of Alcoholic Beverages Control. The application must contain information such as the name of the applicant and the location of the premises for which the license is intended. Accompanying the application must be The specified license fee and a statement that the applicant has not been convicted of a felony must accompany the application (Bus. & Prof.C. 23950-23962.).

### **Investigation of an applicant**

Upon receipt of the application for a license or for the transfer of license, the Department of Alcoholic Beverages Control will conduct an investigation of the qualifications of the applicant. The department may deny the application, or protests or accusations may be filed which may result in the delay or denial of the transfer. If an application is denied, withdrawn, or if the license is issued late, a tax credit and refund will be issued (Bus. & Prof.C. 23958-23960, 24013, 24070).

### **Notification of intent to sell alcoholic beverages**

An applicant for a license must post a notice of intention to sell alcoholic beverages on the proposed premises and mail a notice of intention to engage in the sale of alcoholic beverages to all residents within 500 feet of the proposed retail premises. On-sale license applicants must publish a notice of the application in a newspaper in the city in which the premises are located (Bus. & Prof.C. 23985-23987).

### **Denial/appeal of an application**

Upon denial of a license, the department must notify the applicant in writing of the decision. If the applicant wishes to pursue the matter, he/she must present a written petition for the license to the Department of Alcoholic Beverages Control within 10 days after the mailing of the notice of denial. Subsequently, upon receipt of the petition, the department will set a hearing. Any person may protest the issuance of a license and hearings for protests must be held within 60 days after receipt of the protest and be convenient to all parties (Bus. & Prof.C. 24011-24016, 24300, 24310).

### **Limits on re-application after withdrawal of application**

If an application is withdrawn because of a protest being filed, an applicant may not re-file an application at the same premises for one year, and all protests remain valid for one year against any subsequent applications filed by other persons (Bus. & Prof.C. 24013.1, 24013.2).

### **Requirements for renewal of application**

Renewal requires submitting an application accompanied by the required fee. It is the responsibility of the licensee to renew his/her license whether or not a renewal notice has been received from the department. The department may deny the renewal of an existing license if the licensee has not paid an annual license fee. For methods of renewal see Bus. & Prof.C. 24048-24048.4.

## **TAXATION**

### **Alcoholic beverages — taxation provisions/definitions**

Alcoholic beverages taxes are imposed on the sale of alcoholic beverages by manufacturers, manufacturer's agents, distillers, winegrowers, wholesalers (distilled spirits only), rectifiers, and importers. The tax is generally levied on

a per gallon basis. The tax on distilled spirits is levied when sold by the wholesaler to the retailer. Taxes on beer and wine are levied when these beverages are imported into this state. The tax is passed on to the retailer who in turn passes it to the consumer by incorporating it into the retail price. Alcoholic beverage taxes incorporated into the retail price of a product become part of the sales tax base for that product. The State Board of Equalization administers security and collects excise taxes. The provisions and definitions relating to taxes on alcoholic beverages may be found in Part 14 of the Revenue and Taxation Code, and is called the "Alcoholic Beverage Tax Law" (Rev.&T.C. 32001-32556). Areas covered include General Exemptions (32051), Registration and Bonds (32101), Tax on Beer and Wine (32151), Tax on Distilled Spirits (32201), Determinations (32251), Collection of Tax 32351, Overpayment and Refunds 32401, Administration/Enforcement (32451), Disposition of Proceeds (32501), and Punishment for Violations (32551).

#### **Alcoholic beverages — taxation rate/exemptions**

There is no single tax rate on alcoholic beverages. The rate varies considerably, depending on the type of alcohol being taxed. Exemptions from the alcoholic beverage tax are provided under the following circumstances: 1) alcohol used in trades, professions, or industries for nonconsumption purposes when sold by specified licenses; 2) ethyl alcohol used by governmental agencies, scientific universities etc., or alcohol or industrial alcohol in certain products when sold in containers larger than one gallon; 3) sales to carriers to use on boats, trains, or airplanes when the alcoholic beverages are to be used outside of the state; 4) sales of alcoholic beverages, except beer, to military installations; 5) transportation of alcoholic beverages through the state by common carriers; 6) receipt of beverages which are to be destroyed; 7) beverages when sold out of state; and 8) distilled spirits sold to other distributors (State Constitution, Article 22, Section 22. Revenue and Taxation Code, Sections 32001-32556).

#### **Alcohol recovery facility — food exemption**

Meals served in approved alcohol recovery facilities are exempt from sales and use taxes (Rev. & T.C. 6363.6).

#### **Club receipts—nondeductibility**

A club (other than a national fraternal organization) which holds an alcoholic beverage license and which restricts membership or access on the basis of age, sex, race, religion, color, ancestry, or national origin, must provide on each receipt furnished to a taxpayer a statement that the expenditures are nondeductible for state income tax purposes or franchise tax purposes (Rev. & T.C. 17269, 24343.2).

#### **Motor vehicle fuel exemption**

Alcohol fuels to propel a motor vehicle are not subject to taxes under the Alcoholic Beverage Tax Law (Rev. & T.C. 8657).

**Prescription medication exemption**

Medicines are exempt from taxes imposed on the gross receipts from the sale, storage, use, or other consumption of such medicines. However, "medicine" does not include any alcoholic beverage that is regulated by the Alcoholic Beverage Control Act (Rev. & T.C. 6369).

**Refusal to transfer alcoholic beverage license**

The Department of Alcoholic Beverage Control may refuse to transfer any license when the applicant is delinquent in the payment of taxes under certain laws (Bus. & Prof.C. 24049, 24049.5), (Rev. & T.C. 32001, 6001,17001, 23001).

**APPENDIX I**

**SB 2599, Chapter 983  
Statutes of 1988**

\*\*\* 1987-1988 Session \*\*\*

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## BILL TEXT

CHAPTER	983
APPROVED BY GOVERNOR	SEPTEMBER 19, 1988
FILED WITH SECRETARY OF STATE	SEPTEMBER 20, 1988
PASSED THE SENATE	AUGUST 31, 1988
PASSED THE ASSEMBLY	AUGUST 31, 1988
AMENDED IN ASSEMBLY	AUGUST 29, 1988
AMENDED IN ASSEMBLY	AUGUST 16, 1988
AMENDED IN ASSEMBLY	JUNE 22, 1988
AMENDED IN SENATE	APRIL 19, 1988
AMENDED IN SENATE	APRIL 7, 1988

INTRODUCED BY Senator Seymour

(Coauthor: Senator Cecil Green)

(Coauthors: Assembly Members Filante, Leslie, Polanco, and Roybal-Allard)

FEBRUARY 19, 1988

An act to amend Section 11751.4 of, and to add Division 10.6 (commencing with Section 11998) to, the Health and Safety Code, and making an appropriation in augmentation of Item 4200-001-001 of Section 2.00 of the Budget Act of 1988 (Ch. 313, Stats. 1988), relating to drug and alcohol abuse.

## LEGISLATIVE COUNSEL'S DIGEST

SB 2599, Seymour. Drug and alcohol abuse programs.

Existing law provides for various state-funded programs relating to drug and alcohol abuse. Under existing law, legislative intent is expressed that the integrity and separate identity of drug and alcohol programs be maintained. Two separate state bodies are created under existing law, the State Advisory Board on Alcohol-Related Programs and the State Advisory Board on Drug Programs, with separate powers and duties.

This bill would make a legislative declaration that drug and alcohol programs have many areas of common concern, and would require these boards to meet jointly at least twice per calendar year. It would also require, in the case of any county which has established separate advisory boards for drug and

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alcohol related programs, that these advisory boards meet jointly on a regular basis and at least 2 times per year. This requirement would constitute a state-mandated local program.

This bill would authorize the board of supervisors in each county or its designee to adopt a long-range, 5-year drug and alcohol abuse plan, combining the drug and alcohol components and to the extent possible, to include specified advisory goals within the plan. The bill would also require that priority in allocating state funds be given to those counties which have established a substance abuse enforcement team, as specified.

This bill would require every state agency that offers drug and alcohol abuse services or financial assistance to report annually to the Legislature on its efforts to achieve the goals specified in the bill. It would require the State Department of Alcohol and Drug Programs to send copies of its enacted form to all program providers, to designate a statewide resource center to assist counties in their preparation of drug and alcohol abuse plans, and to maintain copies of all plans submitted, as well as an updated list of state-funded programs. The bill would require the Senate Office of Research to prepare, on or before June 30, 1989, a summary of drug and alcohol abuse laws for use by the Legislature and the department, as specified.

The bill would require the Auditor General to audit the State Department of Alcohol and Drug Programs and counties, to determine their progress toward

meeting the master plan goals set forth in the bill, and to report the resultant findings to the Legislature on or before January 1, 1993.

The bill would appropriate \$1,000,000 to augment Item 4200-001-001 of Section 2.00 of the Budget Act of 1988, and would prohibit expenditure of these funds until completion and public issuance by the department of the State Master Plan to Reduce Drug and Alcohol Abuse.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason, but would recognize that local agencies and school districts may pursue any available remedies to seek reimbursement for these costs.

Appropriation: yes.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. The Legislature finds and declares all of the following:

(a) Alcohol problems cost the State of California eleven billion seven hundred million dollars (\$11,700,000,000) each year in lost worker productivity, health and medical costs, motor vehicle accidents, violent crimes, social responses, and fire losses.

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(b) Comparable losses due to drug abuse are an additional six billion dollars (\$6,000,000,000).

(c) Approximately 2,500 Californians will die in 1988 in alcohol-related accidents, and there will be over 70,000 alcohol-related traffic injuries. This will occur despite approximately 325,000 misdemeanor arrests and 7,000 felony arrests for persons driving while intoxicated.

(d) Currently there are approximately 68,000 licensed retail liquor outlets in the state. In the 1986-87 fiscal year, the Department of Alcoholic Beverage Control filed accusations against 2,227 vendors for selling alcoholic beverages to minors.

(e) It is conservatively estimated that 3.8 percent of all Californians abuse drugs to the degree that services are needed. The 1986 incidence data reveals that there are 991,000 active drug abusers in this state, and 27 percent of this number are heroin users. Active drug abusers are defined as persons using drugs for nonmedical purposes on a daily basis.

(f) In 1986, the Attorney General's office recorded approximately 60,000 arrests for controlled substance offenses. Furthermore, in 1986, the Attorney General's office estimated that there were at least 975 clandestine laboratories operating in California.

(g) Currently, there are over 38,000 adults on parole in California, of which 79 percent or approximately 8 out of 10 have a history of alcohol or drug abuse. In addition, during a recent 12-month period, at least 8,000 adult parolees were reported in violation of their parole as a result of drug or alcohol abuse.

(h) The Superintendent of Public Instruction reported that in the 1986-87 school year there were 4,377,989 California children registered in public

school. The Attorney General, based on a recent survey of 11th graders, indicated that 78 percent of these youngsters had consumed alcohol by age 14, and 51 percent had tried illegal drugs by the 11th grade.

(i) The State Department of Alcohol and Drug Programs reports that in San Francisco, Los Angeles, and San Diego, 27 children between the ages of 6 and 17 died in 1986 from alcohol or drug-related incidents.

(j) There are approximately 225,000 habitual needle-using drug addicts and an additional 200,000 recreational intravenous drug users in the state. The increasing costs associated with the spread of the AIDS virus is largely caused by the intravenous drug user. Currently, in California, approximately 10 percent of the people suffering from AIDS report a history of injecting illegal drugs.

(k) Every dollar spent on drug and alcohol abuse prevention and treatment produces economic benefits several times greater than cost. For example:

(1) Thirty-one dollars (\$31) in benefits are gained for every one dollar (\$1) spent on prevention services.

(2) Eleven dollars and fifty-four cents (\$11.54) in benefits are gained for every one dollar (\$1) spent on drug abuse treatment services.

(3) Cost savings are realized in such areas as courts, jails, and emergency rooms. Additional benefits not reflected in the above figures include

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reductions of cost in such areas as loss of life; medical costs, personal suffering, and property damage associated with drug-related vehicle accidents, violence, or drug trafficking; or expenditures related to crime prevention.

( l ) One hundred million dollars (\$100,000,000) is the current cost estimate of unmet needs for drug and alcohol services statewide. Implementation of just the top fifteen million dollars (\$15,000,000) of unmet needs would result in benefits to California of almost two hundred forty-two million dollars (\$242,000,000).

(m) Currently, there is no consistent coordination between the 14 different state agencies that provide some type of drug or alcohol services. There is no established mechanism to prevent or eliminate unnecessary duplication of efforts.

(n) Therefore, with insufficient resources to fully address the drug and alcohol abuse problem, it is imperative that all services and resources are coordinated and that all unnecessary duplication is eliminated.

SEC. 2. It is the intent of the Legislature, in enacting this act, to do all of the following:

(a) Establish a five-year master plan with specific goals for all segments of society to strive toward, as California wages the war on drug and alcohol abuse.

(b) Establish lines of communication and avenues of coordination that eliminate unnecessary duplication and facilitate networking and the development of a united approach to the problem.

(c) Maximize and more effectively use existing resources invested in the tremendous efforts to reduce drug and alcohol abuse.

(d) Provide new funding sources to supplement current financial commitments.

(e) Provide direction for legislative, budgetary, and public policy decisions affecting drug and alcohol services.

SEC. 3. Section 11751.4 of the Health and Safety Code is amended to read:

11751.4. (a) It is the intent of the Legislature to assure the integrity

and separate identity of state alcohol and drug programs.

(b) The Legislature recognizes, however, that state alcohol and drug programs have many areas of common concern. Therefore, the State Advisory Board on Alcohol-Related Problems, as created pursuant to Section 11780, and the State Advisory Board on Drug Programs, as created pursuant to Section 11862, shall meet jointly at least twice each calendar year. Furthermore, if a county has established separate advisory bodies for alcohol and drug issues, these local advisory bodies also shall meet jointly on a regular basis and at least two times per year.

SEC. 4. Division 10.6 (commencing with Section 11998) is added to the Health and Safety Code, to read:

DIVISION 10.6. DRUG AND ALCOHOL ABUSE MASTER PLANS  
CHAPTER 1. LONG-RANGE GOALS

11998. This chapter sets forth the long-range goals of a five-year master

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plan to eliminate drug and alcohol abuse in California. The goals of this

chapter are advisory, but it is the intent of the Legislature that the goals be addressed to the extent possible by each county and by state government. These advisory goals do not amend existing law. Implementation of the goals of the master plan, after the state plan has been developed and issued, shall be subject to the budget review process.

11998.1. It is the intent of the Legislature that the following long-term five-year goals be achieved:

(a) With regard to education and prevention of drug and alcohol abuse programs, the following goals:

(1) Drug and alcohol abuse education has been included within the mandatory curriculum in kindergarten and grades 1 to 12, inclusive, in every public school in California.

(2) Basic training on how to recognize, and understand what to do about, drug and alcohol abuse has been provided to administrators and all teachers of kindergarten and grades 1 to 12, inclusive.

(3) All school counselors and school nurses have received comprehensive drug and alcohol abuse training.

(4) Each public school in kindergarten and grades 1 to 12, inclusive, has appointed an onsite drug and alcohol abuse advisory team of school administrators, teachers, counselors, students, parents, and community representatives, and health care professionals, all of whom have expertise in drug and alcohol abuse prevention. The team coordinates with and receives consultation from the county alcohol and drug program administrator.

(5) Every school board member has received basic drug and alcohol abuse information.

(6) Each school district has a drug and alcohol abuse specialist to assist the individual schools.

(7) Each school in grades 7 to 12, inclusive, has student peer group drug and alcohol abuse programs.

(8) Every school in kindergarten and grades 1 to 12, inclusive, has updated written drug and alcohol abuse policies and procedures including disciplinary procedures which will be given to every school employee, every student, and every parent.

(9) The California State University and the University of California have evaluated and, if feasible, established educational programs and degrees in the area of drug and alcohol abuse.

(10) Every school in kindergarten and grades 1 to 12, inclusive, has an established parent teachers group with drug and alcohol abuse prevention goals.

(11) Every school district has instituted a drug and alcohol abuse education program for parents.

(12) Drug and alcohol abuse training has been imposed as a condition for teacher credentialing and license renewal, and knowledge on the issue is measured on the California Basic Education Skills Test.

(13) Drug and alcohol abuse knowledge has been established as a component

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on standardized competency tests as a requirement for graduation.

(14) Every school district has established a parent support group.

(15) Every school has instituted policies which address the special needs of children who have been rehabilitated for drug or alcohol abuse problems and who are reentering school. These policies shall consider the loss of school time, the loss of academic credits, and the sociological problems associated with drug and alcohol abuse, its rehabilitation, and the educational delay it causes.

(16) The number of drug and alcohol abuse related incidents on school grounds has decreased by 20 percent.

(b) With regard to community programs, the following goals:

(1) Every community-based social service organization that receives state and local financial assistance has drug and alcohol abuse information available for clients.

(2) All neighborhood watch, business watch, and community conflict resolution programs have included drug and alcohol abuse prevention efforts.

(3) All community-based programs that serve school-aged children have staff trained in drug and alcohol abuse and will give a clear, drug and alcohol-free message.

(c) With regard to drug and alcohol abuse programs of the media, the following goals:

(1) The state has established a comprehensive media campaign that involves all facets of the drug and alcohol abuse problem, including treatment, education, prevention, and intervention.

(2) The department on a statewide basis, and the county board of supervisors or its designees at the local level, have:

(A) Assisted the entertainment industry in identifying ways to effectively use the entertainment industry to encourage lifestyles free of substance abuse.

(B) Assisted the manufacturers of drug and alcohol products in identifying ways to effectively use product advertising to discourage substance abuse.

(C) Assisted television stations in identifying ways to effectively use television programming to encourage lifestyles free of substance abuse.

(3) A statewide cooperative fundraising program with recording artists and the entertainment industry has been encouraged to fund drug and alcohol abuse prevention efforts in the state.

(d) With regard to drug and alcohol abuse health care programs, the following goals:

(1) The number of drug and alcohol abuse-related medical emergencies has decreased by 4 percent per year.

(2) All general acute care hospitals and AIDS medical service providers have provided information to their patients on drug and alcohol abuse.

(3) The Board of Medical Quality Assurance, the Psychology Examining Committee, the Board of Registered Nursing, and the Board of Behavioral Science Examiners have developed and implemented the guidelines or regulations requiring drug and alcohol abuse training for their licensees, and have

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developed methods of providing training for those professionals.

(e) With regard to private sector drug and alcohol abuse programs, the following goals:

(1) A significant percentage of businesses in the private sector have developed personnel policies that discourage drug and alcohol abuse and encourage supervision, training, and employee education.

(2) Noteworthy and publicly recognized figures and private industry have been encouraged to sponsor fundraising events for drug and alcohol abuse prevention.

(3) Every public or private athletic team has been encouraged to establish policies forbidding drug and alcohol abuse.

(4) The private sector has established personnel policies that discourage drug and alcohol abuse but encourage treatment for those employees who require this assistance.

(f) With regard to local government drug and alcohol abuse programs, the following goals:

(1) Every county has a five-year master plan to eliminate drug and alcohol abuse developed by the county designated alcohol and drug program administrator and reviewed and approved by the advisory body set forth in paragraph (2). In those counties which do not have an established advisory body as provided in paragraph (2), the county designated alcohol and drug program administrator has assumed responsibility for developing the plan, with assistance from representatives of the county's population as designated in paragraph (2). To the degree possible, all existing local plans relating to drug or alcohol abuse shall be incorporated into the master plan.

(2) Every county has a multidisciplinary drug and alcohol abuse advisory body. The membership of the local advisory body is representative of the county's population, geographically balanced, and consists of representatives of each of the following:

(A) Law enforcement.

(B) Education.

(C) The treatment and recovery community, including a representative with expertise in AIDS treatment services.

(D) The judiciary.

(E) County alcohol and drug administrators or their designees.

(F) Student groups.

(G) Parent groups.

(H) Private industry.

(I) Other community organizations involved in drug and alcohol services.

To the maximum extent possible, the county advisory board on alcohol problems and the county advisory board on drug problems have been modified to meet this goal.

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(3) Every county public social service agency has established direct service policies that discourage drug and alcohol abuse and encourage rehabilitation treatment when necessary.

(4) Every local unit of government has an employee assistance program that addresses drug and alcohol abuse problems.

(5) Every local unit of government has considered the potential for drug and alcohol abuse problems when developing zoning ordinances and issuing conditional use permits.

(6) Every county master plan includes treatment and recovery services.

(6.5) Every county master plan includes specialized provisions to ensure optimum alcohol and drug abuse service delivery for handicapped and disabled persons.

(7) Every local unit of government has been encouraged to establish an employee assistance program that includes the treatment of drug and alcohol abuse related programs.

(8) Every local governmental social service provider has established a referral system under which clients with drug and alcohol abuse problems can be referred for treatment.

(9) Every county drug and alcohol abuse treatment or recovery program gives priority for services to pregnant women.

(10) Every alcohol and drug abuse program provides acquired immune deficiency syndrome (AIDS) information to all program participants.

(g) With regard to state and federal government drug and alcohol abuse programs, the following goals:

(1) The Department of Alcoholic Beverage Control has informed all alcohol retailers of the laws governing liquor sales and has provided training available to all personnel selling alcoholic beverages, on identifying and handling minors attempting to purchase alcohol.

(2) The Office of Criminal Justice Planning has required all applicants for crime prevention and juvenile justice and delinquency prevention funds to include drug and alcohol abuse prevention efforts in their programs.

(3) All county applications for funding from the department include a prevention component.

(4) The Superintendent of Public Instruction has employed drug and alcohol abuse school prevention specialists and assisted local school districts with the implementation of prevention programs.

(5) The State Department of Mental Health has staff trained in drug and alcohol abuse prevention who can assist local mental health programs with prevention efforts.

(6) The Department of the California Highway Patrol has established routine statewide sobriety check points for driving while under the influence.

(7) The Department of Corrections and the Department of the Youth Authority have provided drug and alcohol abuse education and prevention services for all inmates, wards, and parolees. Both departments have provided drug and alcohol abuse treatment services for any inmate, ward, or parolee determined to be in need of these services, or who personally requests these services.

(8) The Department of Motor Vehicles has distributed prevention materials

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with each driver's license or certificate of renewal and each vehicle registration renewal mailed by the Department of Motor Vehicles.

(9) Federal prevention programs have been encouraged to follow the master plan.

(10) State licensing and program regulations for drug and alcohol abuse treatment programs have been consolidated and administered by one state agency.

(11) State treatment funding priorities have been included to specially recognize the multiple diagnosed client who would be eligible for services from more than one state agency.

(12) Every state agency has formalized employee assistance programs that include the treatment of drug and alcohol abuse-related problems.

(13) The state master plan includes specialized provisions to ensure optimum drug and alcohol abuse service delivery for handicapped and disabled persons.

(h) With regard to private sector direct service providers, the following goals:

(1) Drinking drivers programs have provided clear measurements of successful completion of the program to the courts for each court-ordered client.

(2) All drug and alcohol abuse treatment programs provide poly drug abuse services or have an established referral system to ensure clients receive all needed services.

(3) Adequate nonresidential and residential services, are available statewide for juveniles in need of alcohol or drug abuse services.

(4) Each provider of alcohol or drug services has been certified by the state.

(5) Drug and alcohol abuse treatment providers provide general acquired immune deficiency syndrome (AIDS) information during treatment.

(i) With regard to supply regulation and reduction in conjunction with drug and alcohol abuse, the following goals:

(1) Each county has a drug and alcohol abuse enforcement team, designated by the board of supervisors, as a part of the overall drug and alcohol abuse advisory committee. This team includes all components of the criminal justice system.

This team shall be responsible to the board of supervisors and shall advise the drug and alcohol abuse advisory committee and the county on all criminal

justice matters relating to drug and alcohol abuse.

(2) The Office of Criminal Justice Planning, the Youth and Adult Correctional Agency, the Department of the California Highway Patrol, the Office of Traffic Safety, and the Department of Justice have established a state level drug and alcohol abuse enforcement team that includes representatives from all facets of criminal justice. The lead agency for the enforcement team has been designated by the Governor. This team advises the state and assists the local teams.

(3) State career criminal apprehension and community crime prevention

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programs have included drug and alcohol abuse prevention components.

(4) The Office of Criminal Justice Planning, Youth and Adult Correctional Agency, and the Department of Justice have as a priority when determining training subjects, prevention seminars on drug and alcohol abuse.

(5) The Department of the California Highway Patrol, as permitted by the United States Constitution, will in conjunction with establishing sobriety check points statewide, assist local law enforcement agencies with the establishment of local programs.

(6) Counties with more than 10 Superior Court judgeships have established programs under which drug cases receive swift prosecution by well-trained prosecutors before judges who are experienced in the handling of drug cases.

(7) The courts, when determining bail eligibility and the amount of bail for persons suspected of a crime involving a controlled substance, shall consider the quantity of the substance involved when measuring the danger to society if the suspect is released.

(8) Drunk driving jails have been established that provide offender education and treatment during incarceration.

(9) All probation and parole officers have received drug and alcohol abuse training, including particular training on drug recognition.

(10) All parolees and persons on probation with a criminal history that involves drug or alcohol abuse have conditions of parole or probation that prohibit drug and alcohol abuse.

(11) The Judicial Council has provided training on drug and alcohol abuse for the judges.

(12) The courts, when sentencing offenders convicted of selling drugs, consider 'street value' of the drugs involved in the underlying crime.

(13) Judges have been encouraged to include treatment and prevention services in sentences for all offenders. Judges are requiring, as a condition of sentencing, education and treatment services for all persons convicted of driving under the influence of alcohol or drugs.

(14) Juvenile halls and jails provide clients with information on drug and alcohol abuse.

(15) The estimated number of clandestine labs operating has decreased by 10 percent per year.

(16) Each local law enforcement agency has developed, with the schools, protocol on responding to school drug and alcohol abuse problems.

(17) Every county has instituted a mandatory driving while under the influence presentence offender evaluation program.

11998.2. (a) 'Department,' as used in this division, means the State Department of Alcohol and Drug Programs.

(b) The board of supervisors of each county, or its designee, may, and is encouraged to, prepare and adopt a county drug and alcohol abuse master plan,

developed by the county alcohol and drug program administrator and reviewed and approved by the advisory body set forth in Section 11998, that addresses as many of the long-range goals set forth in Section 11998.1 as possible. It is the intent of the Legislature that every county master plan include

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quantitative outcome objectives that, at a minimum, measure progress in the areas of prevention, education, enforcement, and treatment. It is the intent of the Legislature that these objectives include measurements of:

(1) The reduction of driving under the influence of drugs or alcohol arrests, or both.

(2) The reduction of drug-related arrests.

(3) Increased public education on the dangers of substance abuse and the available prevention techniques including specific measurements of children, parents, and teachers who have received this education.

(4) The reduction of alcohol and drug-related deaths and injuries.

(5) The increased number of successful drug and alcohol rehabilitated clients.

If a county master plan is adopted, the board of supervisors or its

designee shall, in conjunction with the advisory body, annually assess the progress of the county in reaching its long-range goals.

(c) Every county or public or private agency within a county that applies or reapplies for state or local assistance funds for drug and alcohol abuse efforts, including, but not limited to, funds provided under Division 10.5 (commencing with Section 11750), in their program, may address, to the extent possible, any long-range goals set forth in a county drug and alcohol abuse master plan pursuant to subdivision (b), and funding priority may be given to those entities which address these goals within their respective programs.

(d) The Governor shall designate one state agency to act as the lead agency on all drug and alcohol abuse matters.

(e) Every state agency that contracts or grants money to local jurisdictions or programs for drug and alcohol abuse services shall require the submission and shall review the contents of an approved county drug and alcohol abuse master plan, to the extent a plan has been adopted pursuant to subdivision (b).

(f) Commencing on January 1, 1990, every state agency that offers drug and alcohol abuse services or financial assistance shall report to the Legislature annually on its efforts to achieve the master plan goals provided in Section 11998.1.

(g) The department shall send copies of this division to all state-funded social service programs that provide drug and alcohol abuse services.

(h) The department shall maintain copies of every county drug and alcohol abuse master plan for review by other state agencies and the Legislature.

(i) The Governor shall designate one statewide resource center to coordinate efforts of other resource centers statewide and to coordinate with local government and assist in their preparation of drug and alcohol abuse master plans.

(j) The Senate Office of Research shall prepare, on or before June 30, 1989, a summary of drug and alcohol abuse laws for use by the Legislature, the department, and all other related state agencies in oversight of drug and alcohol abuse programs, and in evaluating the need for statutory changes. To the degree possible this summary shall be available to the public.

(k) Commencing June 30, 1989, the department shall maintain an annually

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updated listing of all drug and alcohol abuse programs provided or funded by the state. Every other state agency shall regularly provide the department with current information on programs they fund or provide.

( 1) The Governor's Policy Council on Drug and Alcohol Abuse shall review and consider all of the goals contained in Section 11998.1. After January 1, 1992, the Auditor General shall audit the department to determine the state's progress and to the degree possible, the counties' progress toward meeting the master plan objectives set forth by this division. On or before January 1, 1993, the Auditor General shall report the findings resulting from these audits to the Legislature.

11998.3. Priority in allocating state funds for substance abuse law enforcement agencies shall be given to those counties which have established a drug and alcohol abuse enforcement team, comprised of representatives of all law enforcement agencies within the county, including the courts. The drug and alcohol abuse enforcement team shall adopt measures to coordinate the efforts of drug and alcohol abuse law enforcement agencies within the county.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because this act does not mandate a new program or higher level of service on local government. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Chapter 4 (commencing with Section 17550) of Part 7 of Division 2 of Title 2 of the Government Code.

SEC. 6. The sum of one million dollars (\$1,000,000) is hereby appropriated from the General Fund in augmentation of Item 4200-001-001 of Section 2.00 of the Budget Act of 1988 (Ch. 313, Stats. 1988). The funds so appropriated shall be expended by the State Department of Alcohol and Drug Programs only

upon completion and public issuance of the master plan as set forth by this act, as the State Master Plan to Reduce Drug and Alcohol Abuse.

## **APPENDIX II**

### **California Codes Used: Abbreviations**

## APPENDIX II

### CALIFORNIA CODES USED: ABBREVIATIONS

Business and Professions Code .....	Bus. & Prof.C.
Code of Civil Procedure.....	C.C.P.
Civil Code.....	Civ.C.
Constitution.....	Const.
Education Code .....	Educ.C.
Elections Code .....	Elec.C.
Evidence Code .....	Evid.C.
Fish and Game Code .....	Fish & G.C.
Food and Agriculture Code.....	Food & Agric.C.
Government Code .....	Gov.C.
Harbors and Navigation Code .....	Harb. & Nav.C.
Health and Safety Code.....	Health & S.C.
Insurance Code.....	Ins.C.
Labor Code.....	Labor C.
Military and Veterans Code.....	Mil. & Vet.C.
Penal Code.....	Pen.C.
Probate Code.....	Prob.C.
Public Utilities Code.....	Pub.Util.C.
Revenue and Taxation Code.....	Rev. & T.C.
Statutes .....	Stats.
Unemployment Insurance Code.....	Un.Ins.C.
Vehicle Code .....	Veh.C.
Welfare and Institutions Code .....	Welf. & Inst.C.

## **APPENDIX III**

### **Standards and Schedules: Controlled Substances**

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

(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.

(c) A scientific investigator, or other person licensed, registered or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a controlled substance in the course of professional practice or research in this state. **Leg.H.** 1972 ch. 1407, 1976 ch. 896, 1977 ch. 843, 1986 ch. 1042, effective September 23, 1986.

#### §11027. "Prescription."

"Prescription" means an oral order for a controlled substance given individually for the person(s) for whom prescribed, directly from the prescriber to the furnisher or indirectly by means of a written order of the prescriber. **Leg.H.** 1972 ch. 1407, 1976 ch. 896, 1979 ch. 634.

#### §11029. "Production."

"Production" includes the manufacture, planting, cultivation, growing, or harvesting of a controlled substance. **Leg.H.** 1972 ch. 1407.

#### §11030. "Ultimate User."

"Ultimate user" means a person who lawfully possesses a controlled substance for his own use or for the use of a member of his household or for administering to an animal owned by him or by a member of his household. **Leg.H.** 1972 ch. 1407.

#### §11031. "Wholesaler."

"Wholesaler" has the same meaning as provided in Section 4038 of the Business and Professions Code. **Leg.H.** 1972 ch. 1407.

#### §11032. "Narcotics," "Restricted Dangerous Drugs" and "Marijuana" as Used in Other Divisions.

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

stricted dangerous drugs" outside of this division, unless otherwise expressly provided, it shall be construed to mean controlled substances classified in Schedules III and IV. Whenever reference is made to the term "marijuana" in any provision of law outside of this division, unless otherwise expressly provided, it shall be construed to mean marijuana as defined in this division. **Leg.H.** 1972 ch. 1407.

#### §11033. "Isomer."

As used in this division, except as otherwise defined, the term "isomer" includes optical and geometrical (diastereomeric) isomers. **Leg.H.** 1985 ch. 21, effective April 2, 1985.

## CHAPTER 2 STANDARDS AND SCHEDULES

#### §11053. Nomenclature Used in Schedules.

The controlled substances listed or to be listed in the schedules in this chapter are included by whatever official, common, usual, chemical, or trade name designated. **Leg.H.** 1972 ch. 1407.

#### §11054. Schedule I Controlled Substances.

(a) The controlled substances listed in this section are included in Schedule I.

(b) Opiates. Unless specifically excepted or unless listed in another schedule, any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers whenever the existence of those isomers, esters, ethers, and salts is possible within the specific chemical designation:

- (1) Acetylmethadol.
- (2) Allylprodine.
- (3) Alphacetylmethadol.
- (4) Alphameprodine.
- (5) Alphamethadol.
- (6) Benzethidine.
- (7) Betacetylmethadol.
- (8) Betameprodine.
- (9) Betamethadol.
- (10) Betaprodine.
- (11) Clonitazene.
- (12) Dextromoramide.
- (13) Diampromide.
- (14) Diethylthiambutene.
- (15) Difenoxin.
- (16) Dimenoxadol.
- (17) Dimepheptanol.
- (18) Dimethylthiambutene.
- (19) Dioxaphetyl butyrate.
- (20) Dipipanone.

- (21) Ethylmethylthiambutene.  
 (22) Etonitazene.  
 (23) Etoperidine.  
 (24) Furethidine.  
 (25) Hydroxypethidine.  
 (26) Ketobemidone.  
 (27) Levomoramide.  
 (28) Levophenacymorphan.  
 (29) Morpheridine.  
 (30) Noracymethadol.  
 (31) Norlevorphanol.  
 (32) Normethadone.  
 (33) Norpipanone.  
 (34) Phenadoxone.  
 (35) Phenampromide.  
 (36) Phenomorphan.  
 (37) Phenoperidine.  
 (38) Pirtramide.  
 (39) Proheptazine.  
 (40) Properidine.  
 (41) Propiram.  
 (42) Racemoramide.  
 (43) Tilidine.  
 (44) Trimeperidine.  
 (45) Any substance which contains any quantity of acetylfentanyl (N-[1-phenethyl-4-piperidinyl] acetanilide) or a derivative thereof.  
 (46) Any substance which contains any quantity of the thiophene analog of acetylfentanyl (N-[1-[2-(2-thienyl) ethyl]-4-piperidinyl] acetanilide) or a derivative thereof.  
 (47) 1-Methyl-4-Phenyl-4-Propionoxypiperidine (MP-PP).  
 (48) 1-(2-Phenethyl)-4-Phenyl-4-Acetyloxypiperidine (PEPAP).
- (c) Opium derivatives. Unless specifically excepted or unless listed in another schedule, any of the following opium derivatives, its salts, isomers, and salts of isomers whenever the existence of those salts, isomers, and salts of isomers is possible within the specific chemical designation:
- (1) Acetorphine.  
 (2) Acetyldihydrocodeine.  
 (3) Benzylmorphine.  
 (4) Codeine methylbromide.  
 (5) Codeine-N-Oxide.  
 (6) Cyprenorphine.  
 (7) Desomorphine.  
 (8) Dihydromorphine.  
 (9) Drotebanol.  
 (10) Etorphine (except hydrochloride salt)  
 (11) Heroin.  
 (12) Hydromorphanol.  
 (13) Methyldesorphine.  
 (14) Methyldihydromorphine.  
 (15) Morphine methylbromide.  
 (16) Morphine methylsulfonate.  
 (17) Morphine-N-Oxide.  
 (18) Myrophine.  
 (19) Nicocodeine.  
 (20) Nicomorphine.  
 (21) Normorphine.  
 (22) Pholcodine.  
 (23) Thebacon.
- (d) Hallucinogenic substances. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation, which contains any quantity of the following hallucinogenic substances, or which contains any of its salts, isomers, and salts of isomers whenever the existence of those salts, isomers, and salts of isomers is possible within the specific chemical designation (for purposes of this subdivision only, the term "isomer" includes the optical, position, and geometric isomers):
- (1) 4-bromo-2,5 dimethoxy-amphetamine—Some trade or other names: 4-bromo-2,5-dimethoxy-alpha-methylphenethylamine; 4-bromo-2,5-DMA.  
 (2) 2,5-dimethoxyamphetamine—Some trade or other names: 2,5-dimethoxy-alpha-methylphenethylamine; 2,5-DMA.  
 (3) 4-methoxyamphetamine—Some trade or other names: 4-methoxy-alpha-methylphenethylamine, paramethoxyamphetamine, PMA.  
 (4) 5-methoxy-3,4-methylenedioxy-amphetamine.  
 (5) 4-methyl-2,5-dimethoxy-amphetamine—Some trade or other names: 4-methyl-2,5 dimethoxy-alpha-methylphenethylamine; "DOM"; and "STP".  
 (6) 3,4-methylenedioxy amphetamine.  
 (7) 3,4,5-trimethoxy amphetamine.  
 (8) Bufotenine—Some trade or other names: 3-(beta-Dimethylaminoethyl)-5-hydroxyindole; 3-(2-dimethylaminoethyl)-5 indolol; N,N-dimethylserolonin, 5-hydroxy-N,N-dimethyltryptamine; mappine.  
 (9) Diethyltryptamine—Some trade or other names: N,N-Diethyltryptamine; DET.  
 (10) Dimethyltryptamine—Some trade or other names: DMT.  
 (11) Ibogaine—Some trade or other names: 7-Ethyl-6,6beta, 7,8,9,10,12,13-octahydro-2-methoxy-6,9-methano-5H-pyrido [1',2':1,2] azepino [5,4-b] indole; Tabernanthe iboga.  
 (12) Lysergic acid diethylamide.

(13) Marijuana.

(14) Mescaline.

(15) Peyote—Meaning 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 extracts (interprets 21 U.S.C. Sec. 812(c), Schedule 1(c)(12)).

(16) N-ethyl-3-piperidyl benzilate.

(17) N-methyl-3-piperidyl benzilate.

(18) Psilocybin.

(19) Psilocyn.

(20) Tetrahydrocannabinols. Synthetic equivalents of the substances contained in the plant, or in the resinous extractives of *Cannabis*, sp. and/or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following: delta 1 cis or trans tetrahydrocannabinol, and their optical isomers, delta 6 cis or trans tetrahydrocannabinol, and their optical isomers; 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).

(21) Ethylamine analog of phencyclidine—Some trade or other names: N-ethyl-1-phenylcyclohexylamine, (1-phenylcyclohexyl) ethylamine, N-(1-phenylcyclohexyl) ethylamine, cyclohexamine, PCE.

(22) Pyrrolidine analog of phencyclidine—Some trade or other names: 1-(1-phenylcyclohexyl)-pyrrolidine, PCPy, PHP.

(23) Thiophene analog of phencyclidine—Some trade or other names: 1-[1-(2-thienyl)-cyclohexyl]-piperidine, 2-thienyl analog of phencyclidine, TPCP, TCP.

(e) 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 those salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Mecloqualone.

(2) Methaqualone.

(f) 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 isomers:

(1) Cocaine base.

(2) Fenethylamine, including its salts.

(3) N-Ethylamphetamine, including its salts. Leg.H. 1984 ch. 1635 §44 5, 1985 chs. 290, 1098, effective September 27, 1985, 1986 ch. 1044, 1987 ch. 1174, effective September 25, 1987.

1985 Note: The Legislature finds and declares that this act is intended to cover the synthetic narcotics which are not presently covered by the Uniform Controlled Substances Act and which have caused serious injury and multiple deaths in California in the last several years. The Legislature further expressly finds and declares that nothing in this act is intended to reduce or eliminate any penalties or prohibitions currently prescribed as to any controlled substances Stats. 1985 ch. 1098 §8

Ref.: Cal. Fms Pl. & Pr., "Parent and Child"; Cal. Crim. Def. Prac., Ch. 145, "Narcotics and Alcohol Offenses"

### §11055. Schedule II Controlled Substances.

(a) The controlled substances listed in this section are included in Schedule II.

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

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

(A) Raw opium.

(B) Opium extracts.

(C) Opium fluid extracts.

(D) Powdered opium.

(E) Granulated opium.

(F) Tincture of opium.

(G) Apomorphine.

(H) Codeine.

(I) Ethylmorphine.

(J) Hydrocodone.

(K) Hydromorphone.

(L) Metopon.

(M) Morphine.

(N) Oxycodone.

(O) Oxymorphone.

(P) Thebaine.

(2) Any salt, compound, isomer, or derivative, whether natural or synthetic, of the substances referred to in paragraph (1), but not including the isoquinoline alkaloids of opium.

(3) Opium poppy and poppy straw.

(4) Coca leaves and any salt, compound, derivative, or preparation of coca leaves, but not including decocainized coca leaves or extractions which do not contain cocaine or ecgonine.

(5) Concentrate of poppy straw (the crude extract of poppy straw in either liquid, solid, or powder form which contains the phenanthrene alkaloids of the opium poppy).

(6) Cocaine, except as specified in Section 11054.

(7) Ecgonine, whether natural or synthetic, or any salt, isomer, derivative, or preparation thereof.

(c) Opiates. Unless specifically excepted or unless in another schedule, any of the following opiates, including its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers whenever the existence of those isomers, esters, ethers, and salts is possible within the specific chemical designation, dextrophan and levopropoxyphene excepted:

- (1) Alfentanyl.
- (2) Alphaprodine.
- (3) Anileridine.
- (4) Bezitramide.
- (5) Bulk dextropropoxyphene (nondosage forms).
- (6) Dihydrocodeine.
- (7) Diphenoxylate.
- (8) Fentanyl.
- (9) Isomethadone.
- (10) Levomethorphan.
- (11) Levorphanol.
- (12) Metazocine.
- (13) Methadone.
- (14) Methadone-Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane.
- (15) Moramide-Intermediate, 2-methyl-3-morpholino-1, 1-diphenylpropane-carboxylic acid.
- (16) Pethidine (meperidine).
- (17) Pethidine-Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine.
- (18) Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate.
- (19) Pethidine-Intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid.
- (20) Phenazocine.
- (21) Piminodine.
- (22) Racemethorphan.
- (23) Racemorphan.
- (24) Sufentanyl.

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

(1) Amphetamine, its salts, optical isomers, and salts of its optical isomers.

(2) Methamphetamine, its salts, isomers, and salts of its isomers.

(3) Dimethylamphetamine (N,N-dimethylamphetamine), its salts, isomers, and salts of its isomers.

(4) N-Ethylmethamphetamine (N-ethyl, N-methylamphetamine), its salts, isomers, and salts of its isomers.

(5) Phenmetrazine and its salts.

[1] (6) Methylphenidate.

(e) 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 those salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Amobarbital.

(2) Pentobarbital.

(3) Phencyclidines, including the following:

(A) 1-(1-phenylcyclohexyl) piperidine (PCP).

(B) 1-(1-phenylcyclohexyl) morpholine (PCM).

(C) Any analog of phencyclidine which is added by the Attorney General by regulation pursuant to this paragraph.

The Attorney General, or his or her designee, may, by rule or regulation, add additional analogs of phencyclidine to those enumerated in this paragraph after notice, posting, and hearing pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The Attorney General shall, in the calendar year of the regular session of the Legislature in which the rule or regulation is adopted, submit a draft of a proposed bill to each house of the Legislature which would incorporate the analogs into this code. No rule or regulation shall remain in effect beyond January 1 after the calendar year of the regular session in which the draft of the proposed bill is submitted to each house. However, if the draft of the proposed bill is submitted during a recess of the Legislature exceeding 35 calendar days, the rule or regulation shall be effective until January 1 after the next calendar year.

(4) Secobarbital.

(5) Glutethimide.

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

(1) Immediate precursor to amphetamine and methamphetamine:

(A) Phenylacetone. Some trade or other names: phenyl-2 propanone, P2P; benzyl methyl ketone; methyl benzyl ketone.

(2) Immediate precursors to phencyclidine (PCP).

(A) 1-phenylcyclohexylamine.

(B) 1-piperidinocyclohexane carbonitrile (PCC).

(g) Hallucinogenic substances. Any of the following hallucinogenic substances: dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in a drug product approved by the federal Food and Drug Administration. Leg.H. 1984 ch. 1635 §45.5, 1985 ch. 3, effective January 29, 1985, ch. 21, effective April 2, 1985, ch. 1098, effective September 27, 1985, 1986 ch. 384, effective July 17, 1986, ch. 1042 §3, effective September 23, 1986, ch. 1044 §2.5, 1987 ch. 1174, effective September 25, 1987, 1988 ch. 712, effective August 29, 1988.

§11055, 1988 Delet. 1 (4)

1985 Note: See note following Health and Safety Code §11054

#### §11056. Schedule III Controlled Substances.

(a) The controlled substances listed in this section are included in Schedule III.

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

(1) Those compounds, mixtures, or preparations in dosage unit form containing any stimulant substances listed in Schedule II which compounds, mixtures, or preparations were listed on August 25, 1971, as excepted compounds under Section 1308.32 of Title 21 of the Code of Federal Regulations, and any other drug of the quantitative composition shown in that list for those drugs or which is the same except that it contains a lesser quantity of controlled substances.

- (2) Benzphetamine.
- (3) Chlorphentermine.
- (4) Clortermine.
- (5) Mazindol.
- (6) Phendimetrazine.

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

(1) Any compound, mixture, or preparation containing any of the following

- (A) Amobarbital
- (B) Secobarbital
- (C) Pentobarbital

or any salt thereof and one or more other active medicinal ingredients which are not listed in any schedule.

(2) Any suppository dosage form containing any of the following:

- (A) Amobarbital
- (B) Secobarbital
- (C) Pentobarbital

or any salt of any of these drugs and approved by the federal Food and Drug Administration for marketing only as a suppository.

(3) Any substance which contains any quantity of a derivative of barbituric acid or any salt thereof.

- (4) Chlorhexadol.
- (5) Lysergic acid.
- (6) Lysergic acid amide
- (7) Methyprylon.
- (8) Sulfondiethylmethane.
- (9) Sulfonethylmethane.
- (10) Sulfonmethane.
- (d) Nalorphine.

(e) 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:

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

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

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

(4) Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active nonnarcotic ingredients in recognized therapeutic amounts. Additionally, oral liquid preparations of dihydrocodeinone containing the above specified amounts may not contain as its nonnarcotic ingredients two or more antihistamines in combination with each other.

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

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

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

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

(f) Anabolic steroids. Any material, compound, mixture, or preparation containing an anabolic steroid, including, but not limited to, the following:

- (1) Methandrostenolone.
- (2) Stanozolol.
- (3) Ethylestrenol.
- (4) Nandrolone phenpropionate.
- (5) Nandrolone deconoate.
- (6) Testosterone propionate.

(7) Chorionic gonadotropin. **Leg.H.** 1984 ch. 1635 §46.5, 1986 ch. 384, effective July 17, 1986, ch. 534, effective August 20, 1986, ch. 1033.

Ref.: Cal. Fms Pl. & Pr. "Parent and Child."

#### §11057. Schedule IV Controlled Substances.

(a) The controlled substances listed in this section are included in Schedule IV.

(b) Schedule IV shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section.

(c) 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:

(1) Not more than 1 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.

(2) Dextropropoxyphene (alpha-(+)-4-dimethylamino-1, 2-diphenyl-3-methyl-2-propionoxybutane).

(d) Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which con-

tains any quantity of the following substances, including its salts, isomers, and salts of isomers whenever the existence of those salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (1) Barbital.
- (2) Chloral betaine.
- (3) Chloral hydrate.
- (4) Chlordiazepoxide.
- (5) Clonazepam.
- (6) Clorazepate.
- (7) Diazepam.
- (8) Ethchlorvynol.
- (9) Ethinamate.
- (10) Flurazepam.
- (11) Lorazepam.
- (12) Mebutamate.
- (13) Meprobamate.
- (14) Methohexital.
- (15) Methylphenobarbital (Mephobarbital).
- (16) Oxazepam.
- (17) Paraldehyde.
- (18) Petrichoral.
- (19) Phenobarbital.
- (20) Prazepam.

(e) 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 those isomers, whenever the existence of those salts, isomers, and salts of isomers is possible:

- (1) Fenfluramine.

(f) 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 those isomers is possible within the specific chemical designation:

- (1) Diethylpropion.
- (2) Phentermine.
- (3) Pemoline (including organometallic complexes and chelates thereof).
- (4) Pipradrol.
- (5) SPA ((-)-1-dimethylamino-1,2-diphenylethane).

(g) Other substances. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances, including its salts:

(1) Pentazocine. **Leg.H.**, 1984 ch. 1635 §47.5, 1985 ch. 290.

Ref.: Cal Fms Pl. & Pr., "Parent and Child"

**§11058. Schedule V Controlled Substances.**

(a) The controlled substances listed in this section are included in Schedule V.

(b) Schedule V shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section.

(c) 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 shall include one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualities other than those possessed by narcotic drugs alone:

(1) Not more than 200 milligrams of codeine per 100 milliliters or per 100 grams.

(2) Not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams.

(3) Not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams.

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

(5) Not more than 100 milligrams of opium per 100 milliliters or per 100 grams.

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

(d) Buprenorphine. **Leg.H.**, 1984 ch. 1635 §48.5, 1985 ch. 1098, effective September 27, 1985, 1986 ch. 63, effective April 23, 1986.

1985 Note: See note following Health and Safety Code §11054

Ref.: Cal Fms Pl. & Pr., "Parent and Child."

## CHAPTER 3 REGULATION AND CONTROL

### ARTICLE 1 Reporting

**§11100. Monthly Reports of Transactions; Exceptions.**

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

- (1) Phenyl-2-propanone.
- (2) Methylamine.

- (3) Ethylamine.
- (4) D-lysergic acid.
- (5) Ergotamine tartrate.
- (6) Diethyl malonate.
- (7) Malonic acid.
- (8) Ethyl malonate.
- (9) Barbituric acid.
- (10) Piperidine.
- (11) N-acetylanthranilic acid.
- (12) Pyrrolidine.
- (13) Phenylacetic acid.
- (14) Anthranilic acid.
- (15) Morpholine.
- (16) Ephedrine.
- (17) Pseudoephedrine [1].
- (18) Norpseudoephedrine [2].
- (19) Phenylpropanolamine.
- (20) Propionic anhydride.
- (21) Isosafrole.
- (22) Safrole.
- (23) Piperonal.
- (24) Thionylchloride.
- (25) Benzyl cyanide.
- (26) Ergonovine maleate.
- (27) N-methylephedrine.
- (28) N-ethylephedrine.
- (29) N-methypseudoephedrine.
- (30) N-ethylpseudoephedrine.
- (31) Chloroephedrine.
- (32) Chloropseudoephedrine.

(33) Any of the substances listed by the Department of Justice in regulations promulgated pursuant to subdivision (b).

(b) The Department of Justice may adopt rules and regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code that add substances to subdivision (a) if the substance is a precursor to a controlled substance and delete substances from subdivision (a). However, no regulation adding or deleting a substance shall have any effect beyond March 1 of the year following the calendar year during which the regulation was adopted.

(c) (1) Any manufacturer, wholesaler, retailer, or other person shall, prior to selling, transferring, or otherwise furnishing any substance specified in subdivision (a) to a person in this state, require proper identification from the purchaser.

(2) For the purposes of this subdivision, "proper identification" means a motor vehicle operator's license or other official state-issued identification of the purchaser which contains a