

### **13-3401. Definitions**

In this chapter, unless the context otherwise requires:

1. "Administer" means to apply, inject or facilitate the inhalation or ingestion of a substance to the body of a person.

2. "Amidone" means any substance identified chemically as (4-4-diphenyl-6-dimethylamine-heptanone-3), or any salt of such substance, by whatever trade name designated.

3. "Board" means the Arizona state board of pharmacy.

4. "Cannabis" means the following substances under whatever names they may be designated:

(a) The resin extracted from any part of a plant of the genus cannabis, and every compound, manufacture, salt, derivative, mixture or preparation of such plant, its seeds or its resin. Cannabis does not include oil or cake made from the seeds of such plant, any fiber, compound, manufacture, salt, derivative, mixture or preparation of the mature stalks of such plant except the resin extracted from the stalks or any fiber, oil or cake or the sterilized seed of such plant which is incapable of germination.

(b) Every compound, manufacture, salt, derivative, mixture or preparation of such resin or tetrahydrocannabinol.

5. "Coca leaves" means cocaine, its optical isomers and any compound, manufacture, salt, derivative, mixture or preparation of coca leaves, except derivatives of coca leaves which do not contain cocaine, ecgonine or substances from which cocaine or ecgonine may be synthesized or made.

6. "Dangerous drug" means the following by whatever official, common, usual, chemical or trade name designated:

(a) Any material, compound, mixture or preparation that contains any quantity of the following hallucinogenic substances and their salts, isomers, whether optical, positional or geometric, and salts of isomers, unless specifically excepted, whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation:

(i) Alpha-ethyltryptamine.

(ii) Alpha-methyltryptamine.

(iii) (2-aminopropyl) benzofuran (APB).

(iv) (2-aminopropyl)-2, 3-dihydrobenzofuran (APDB).

(v) Aminorex.

(vi) 4-bromo-2, 5-dimethoxyphenethylamine.

(vii) 4-bromo-2, 5-dimethoxyamphetamine.

(viii) Bufotenine.

(ix) [3-(3-carbamoylphenyl)phenyl]N-cyclohexyl carbamate (URB-597).

(x) Diethyltryptamine.

(xi) 2, 5-dimethoxyamphetamine.

(xii) Dimethyltryptamine.

(xiii) 5-methoxy-alpha-methyltryptamine.

(xiv) 5-methoxy-3, 4-methylenedioxyamphetamine.

(xv) 4-methyl-2, 5-dimethoxyamphetamine.

(xvi) Ibogaine.

(xvii) Lysergic acid amide.

(xviii) Lysergic acid diethylamide.

(xix) Mescaline.

(xx) 4-methoxyamphetamine.

(xxi) Methoxymethylenedioxyamphetamine (MMDA).

(xxii) Methylenedioxyamphetamine (MDA).

(xxiii) 3, 4-methylenedioxymethamphetamine.

(xxiv) 3, 4-methylenedioxy-N-ethylamphetamine.

(xxv) N-ethyl-3-piperidyl benzilate (JB-318).

(xxvi) N-hydroxy-3, 4-methylenedioxyamphetamine.

(xxvii) N-methyl-3-piperidyl benzilate (JB-336).

(xxviii) N-methyltryptamine mimetic substances that are any substances derived from N-methyltryptamine by any substitution at the nitrogen, any substitution at the indole ring, any substitution at the alpha carbon, any substitution at the beta carbon or any combination of the above. N-methyltryptamine mimetic substances do not include melatonin (5-methoxy-n-acetyltryptamine). Substances in the N-

methyltryptamine generic definition include AcO-DMT, Baeocystine, Bromo-DALT, DiPT, DMT, DPT, HO-DET, HO-DiPT, HO-DMT, HO-DPT, HO-MET, MeO-DALT, MeO-DET, MeO-DiPT, MeO-DMT, MeO-DPT, MeO-NMT, MET, NMT and Norbufotenin.

(xxix) N-(1-phenylcyclohexyl) ethylamine (PCE).

(xxx) Nabilone.

(xxxi) 1-(1-phenylcyclohexyl) pyrrolidine (PHP).

(xxxii) 1-(1-(2-thienyl)-cyclohexyl) piperidine (TCP).

(xxxiii) 1-(1-(2-thienyl)-cyclohexyl) pyrrolidine.

(xxxiv) Para-methoxyamphetamine (PMA).

(xxxv) Psilacetin.

(xxxvi) Psilocybin.

(xxxvii) Psilocyn.

(xxxviii) Synhexyl.

(xxxix) Trifluoromethylphenylpiperazine (TFMPP).

(xl) Trimethoxyamphetamine (TMA).

(xli) 1-pentyl-3-(naphthoyl)indole (JWH-018 and isomers).

(xlii) 1-butyl-3-(naphthoyl)indole (JWH-073 and isomers).

(xliii) 1-hexyl-3-(naphthoyl)indole (JWH-019 and isomers).

(xliv) 1-pentyl-3-(4-chloro naphthoyl)indole (JWH-398 and isomers).

(xlv) 1-(2-(4-(morpholinyl)ethyl))-3-(naphthoyl)indole (JWH-200 and isomers).

(xlvi) 1-pentyl-3-(methoxyphenylacetyl)indole (JWH-250 and isomers).

(xlvii) (2-methyl-1-propyl-1H-indol-3-YL)-1-naphthalenyl-methanone (JWH-015 and isomers).

(xlviii) (6AR, 10AR)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-YL)-6a,7,10,10a-

tetrahydrobenzo[c]chromen-1-ol (HU-210).

(xlix) 5-(1,1-dimethylheptyl)-2-(3-hydroxycyclohexyl)-phenol (CP 47,497 and isomers).

(l) 5-(1,1-dimethyloctyl)-2-(3-hydroxycyclohexyl)-phenol (cannabicyclohexanol, CP-47,497 C8 homologue and isomers).

(b) Any material, compound, mixture or preparation that contains any quantity of cannabimimetic substances and their salts, isomers, whether optical, positional or geometric, and salts of isomers, unless specifically excepted, whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation. For the purposes of this subdivision, "cannabimimetic substances" means any substances within the following structural classes:

(i) 2-(3-hydroxycyclohexyl)phenol with substitution at the 5-position of the phenolic ring by alkyl or alkenyl, whether or not substituted on the cyclohexyl ring to any extent. Substances in the 2-(3-hydroxycyclohexyl)phenol generic definition include CP-47,497, CP-47,497 C8-Homolog, CP-55,940 and CP-56,667.

(ii) 3-(naphthoyl)indole or 3-(naphthylmethane)indole by substitution at the nitrogen atom of the indole ring, whether or not further substituted on the indole ring to any extent, whether or not substituted on the naphthoyl or naphthyl ring to any extent. Substances in the 3-(naphthoyl)indole generic definition include AM-678, AM-2201, JWH-004, JWH-007, JWH-009, JWH-015, JWH-016, JWH-018, JWH-019, JWH-020, JWH-046, JWH-047, JWH-048, JWH-049, JWH-050, JWH-070, JWH-071, JWH-072, JWH-073, JWH-076, JWH-079, JWH-080, JWH-081, JWH-082, JWH-094, JWH-096, JWH-098, JWH-116, JWH-120, JWH-122, JWH-148, JWH-149, JWH-175, JWH-180, JWH-181, JWH-182, JWH-184, JWH-185, JWH-189, JWH-192, JWH-193, JWH-194, JWH-195, JWH-196, JWH-197, JWH-199, JWH-200, JWH-210, JWH-211, JWH-212, JWH-213, JWH-234, JWH-235, JWH-236, JWH-239, JWH-240, JWH-241, JWH-242, JWH-262, JWH-386, JWH-387, JWH-394, JWH-395, JWH-397, JWH-398, JWH-399, JWH-400, JWH-412, JWH-413, JWH-414 and JWH-415.

(iii) 3-(naphthoyl)pyrrole by substitution at the nitrogen atom of the pyrrole ring, whether or not further substituted in the pyrrole ring to any extent, whether or not substituted on the naphthoyl ring to any extent. Substances in the 3-(naphthoyl)pyrrole generic definition include JWH-030, JWH-145, JWH-146, JWH-147, JWH-150, JWH-156, JWH-243, JWH-244, JWH-245, JWH-246, JWH-292, JWH-293, JWH-307, JWH-308, JWH-346, JWH-348, JWH-363, JWH-364, JWH-365, JWH-367, JWH-368, JWH-369, JWH-370, JWH-371, JWH-373 and JWH-392.

(iv) 1-(naphthylmethylene)indene by substitution of the 3-position of the indene ring, whether or not further substituted in the indene ring to any extent, whether or not substituted on the naphthyl ring to any extent. Substances in the 1-(naphthylmethylene)indene generic definition include JWH-176.

(v) 3-(phenylacetyl)indole or 3-(benzoyl)indole by substitution at the nitrogen atom of the indole ring, whether or not further substituted in the indole ring to any extent, whether or not substituted on the phenyl ring to any extent. Substances in the 3-(phenylacetyl)indole generic definition include AM-694, AM-2233, JWH-167, JWH-201, JWH-202, JWH-203, JWH-204, JWH-205, JWH-206, JWH-207, JWH-208, JWH-209, JWH-237, JWH-248, JWH-250, JWH-251, JWH-253, JWH-302, JWH-303, JWH-304, JWH-305, JWH-306, JWH-311, JWH-312, JWH-313, JWH-314, JWH-315, JWH-316, RCS-4, RCS-8, SR-18 and SR-19.

(vi) 3-(cyclopropylmethanone) indole or 3-(cyclobutylmethanone) indole or 3-(cyclopentylmethanone) indole by substitution at the nitrogen atom of the indole ring, whether or not further substituted in the indole ring to any extent, whether or not substituted on the cyclopropyl, cyclobutyl or cyclopentyl rings to any extent. Substances in the 3-(cyclopropylmethanone) indole generic definition include UR-144, fluoro-UR-144 and XLR-11.

(vii) 3-adamantoylindole with substitution at the nitrogen atom of the indole ring, whether or not further substituted on the indole ring to any extent, whether or not substituted on the adamantyl ring to any extent. Substances in the 3-adamantoylindole generic definition include AB-001.

(viii) N-(adamantyl)-indole-3-carboxamide with substitution at the nitrogen atom of the indole ring, whether or not further substituted on the indole ring to any extent, whether or not substituted on the adamantyl ring to any extent. Substances in the N-(adamantyl)-indole-3-carboxamide generic definition include SDB-001.

(ix) Indazole-3-carboxamide with substitution at a nitrogen atom of the indazole ring, whether or not further substituted on the indazole ring to any extent, whether or not substituted on the nitrogen of the carboxamide to any extent. Substances in the indazole-3-carboxamide generic definition include AKB-48, fluoro-AKB-48, APINACA, AB-PINACA and AB-FUBINACA.

(x) 8-quinolinyl-indole-3-carboxylate by substitution at the nitrogen atom of the indole ring, whether or not further substituted in the indole ring to any extent, whether or not substituted on the quinoline ring to any extent. Substances in the 8-quinolinyl-indole-3-carboxylate generic definition include PB-22 and fluoro-PB-22.

(c) Any material, compound, mixture or preparation that contains any quantity of the following substances and their salts, isomers, whether optical, positional or geometric, and salts of isomers having a potential for abuse associated with a stimulant effect on the central nervous system:

(i) Alpha-pyrrolidinobutiophenone (Alpha-PBP).

(ii) Alpha-pyrrolidinopropiophenone (Alpha-PPP).

(iii) Alpha-pyrrolidinovalerophenone (Alpha-PVP).

(iv) Alpha-pyrrolidinovalerothiophenone (Alpha-PVT).

(v) Aminoindane mimetic substances that are derived from aminoindane by any substitution at the indane ring, replacement of the amino group with another N group or any combination of the above. Substances in the aminoindane generic definition include MDAI, MMAI, IAI and AMMI.

(vi) Amphetamine.

(vii) Benzphetamine.

(viii) Benzylpiperazine (BZP).

(ix) Beta-keto-n-methylbenzodioxolylbutanamine (Butylone).

(x) Beta-keto-n-methylbenzodioxolylpentanamine (Pentylone).

(xi) Butorphanol.

(xii) Cathine ((+)-norpseudoephedrine).

(xiii) Cathinomimetic substances that are any substances derived from cathinone, (2-amino-1-phenyl-1-propanone) by any substitution at the phenyl ring, any substitution at the 3 position, any substitution at the nitrogen atom or any combination of the above substitutions.

(xiv) Cathinone.

(xv) 2-(4-Chloro-2,5-dimethoxyphenyl)ethanamine (2C-C).

(xvi) Chlorphentermine.

(xvii) Clortermine.

(xviii) Diethylpropion.

(xix) Dihydro-5H-indeno-(5,6-d)-1,3-dioxol-6-amine (MDAI).

(xx) 2-(2,5-Dimethoxy-4-ethylphenyl)ethanamine (2C-E).

- (xxi) 2-(2,5-Dimethoxy-4-methylphenyl)ethanamine (2C-D).
- (xxii) 2-(2,5-Dimethoxy-4-nitro-phenyl)ethanamine (2C-N).
- (xxiii) 2-(2,5-Dimethoxy-4-(n)-propylphenyl)ethanamine (2C-P).
- (xxiv) 2-(2,5-Dimethoxyphenyl)ethanamine (2C-H).
- (xxv) Dimethylcathinone (Metamfepramone).
- (xxvi) Ethcathinone.
- (xxvii) 2-[4-(Ethylthio)-2,5-dimethoxyphenyl]ethanamine (2C-T-2).
- (xxviii) Fencamfamin.
- (xxix) Fenethylamine.
- (xxx) Fenproporex.
- (xxxi) Fluoroamphetamine.
- (xxxii) Fluoromethamphetamine.
- (xxxiii) Fluoromethcathinone.
- (xxxiv) 2-(4-Iodo-2,5-dimethoxyphenyl)ethanamine (2C-I).
- (xxxv) 2-[4-(Isopropylthio)-2,5-dimethoxyphenyl]ethanamine (2C-T-4).
- (xxxvi) Mazindol.
- (xxxvii) Mefenorex.
- (xxxviii) Methamphetamine.
- (xxxix) Methcathinone.
- (xl) Methiopropamine.
- (xli) Methoxy-alpha-pyrrolidinopropiophenone (MOPPP).
- (xlii) Methoxymethcathinone (methedrone).
- (xliii) Methoxyphenethylamine mimetic substances that are any substances derived from 2, 5-dimethoxy-phenethylamine by any substitution at the phenyl ring, any substitution at the nitrogen atom, any substitutions at the carbon atoms of the ethylamine, or any combination of the above substitutions.
- (xliv) 4-methylaminorex.
- (xlv) Methyl-a-pyrrolidinobutiophenone (MPBP).
- (xlvi) Methylenedioxy-alpha-pyrrolidinopropiophenone (MDPPP).
- (xlvii) Methylenedioxyethcathinone (Ethylone).
- (xlviii) Methylenedioxymethcathinone (Methylone).
- (xlix) Methylenedioxypropylvalerone (MDPV).
- (l) Methylenedioxymethcathinone (Mephedrone).
- (li) Methylphenidate.
- (lii) Modafinil.
- (liii) Naphthylpyrovalerone (Naphyrone).
- (liv) N-ethylamphetamine.
- (lv) N,N-dimethylamphetamine.
- (lvi) Pemoline.
- (lvii) Phendimetrazine.
- (lviii) Phenmetrazine.
- (lix) Phentermine.
- (lx) Pipradol.
- (lxi) Propylhexedrine.
- (lxii) Pyrovalerone.
- (lxiii) Sibutramine.
- (lxiv) Spa ((-)-1-dimethylamino-1,2-diphenylethane).
- (d) Any material, compound, mixture or preparation that contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system:
  - (i) Any substance which contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid, unless specifically excepted.
  - (ii) Alprazolam.
  - (iii) Bromazepam.
  - (iv) Camazepam.
  - (v) Carisoprodol.
  - (vi) Chloral betaine.
  - (vii) Chloral hydrate.

- (viii) Chlordiazepoxide.
- (ix) Chlorhexadol.
- (x) Clobazam.
- (xi) Clonazepam.
- (xii) Clorazepate.
- (xiii) Clotiazepam.
- (xiv) Cloxazolam.
- (xv) Delorazepam.
- (xvi) Diazepam.
- (xvii) Dichloralphenazone.
- (xviii) Estazolam.
- (xix) Ethchlorvynol.
- (xx) Ethinamate.
- (xxi) Ethyl loflazepate.
- (xxii) Fenfluramine.
- (xxiii) Fludiazepam.
- (xxiv) Flunitrazepam.
- (xxv) Flurazepam.
- (xxvi) Gamma hydroxy butyrate.
- (xxvii) Glutethimide.
- (xxviii) Halazepam.
- (xxix) Haloxazolam.
- (xxx) Hydroxyphencyclidine (HO-PCP).
- (xxxi) Ketamine.
- (xxxii) Ketazolam.
- (xxxiii) Loprazolam.
- (xxxiv) Lorazepam.
- (xxxv) Lormetazepam.
- (xxxvi) Lysergic acid.
- (xxxvii) Mebutamate.
- (xxxviii) Mecloqualone.
- (xxxix) Medazepam.
- (xl) Meprobamate.
- (xli) Methaqualone.
- (xlii) Methohexital.
- (xliii) 2-(methoxyphenyl)-2-(ethylamino)cyclohexanone(Methoxetamine).
- (xliv) 2-(methoxyphenyl)-2-(methylamino)cyclohexanone(Methoxyketamine).
- (xlv) Methoxyphencyclidine(MeO-PCP).
- (xlvi) Methyprylon.
- (xlvii) Midazolam.
- (xlviii) Nimetazepam.
- (xlix) Nitrazepam.
- (l) Nordiazepam.
- (li) Oxazepam.
- (lii) Oxazolam.
- (liii) Paraldehyde.
- (liv) Petrichloral.
- (lv) Phencyclidine (PCP).
- (lvi) Phencyclidine mimetic substances that are any substances derived from phenylcyclohexylpiperidine by any substitution at the phenyl ring, any substitution at the piperidine ring, any substitution at the cyclohexyl ring, any replacement of the phenyl ring or any combination of the above. Substances in the phenylcyclohexylpiperidine generic definition include Amino-PCP, BCP, Bromo-PCP, BTCP, Chloro-PCP, Fluoro-PCP, HO-PCP, MeO-PCP, Methyl-PCP, Nitro-PCP, Oxo-PCP, PCE, PCM, PCPY, TCP and TCPY.
- (lvii) Pinazepam.
- (lviii) Prazepam.

- (lix) Scopolamine.
- (lx) Sulfondiethylmethane.
- (lxi) Sulfonethylmethane.
- (lxii) Sulfonmethane.
- (lxiii) Quazepam.
- (lxiv) Temazepam.
- (lxv) Tetrazepam.
- (lxvi) Tiletamine.
- (lxvii) Triazolam.
- (lxviii) Zaleplon.
- (lxix) Zolazepam.
- (lxx) Zolpidem.

(e) Any material, compound, mixture or preparation that contains any quantity of the following anabolic steroids and their salts, isomers or esters:

- (i) Boldenone.
- (ii) Clostebol (4-chlorotestosterone).
- (iii) Dehydrochloromethyltestosterone.
- (iv) Drostanolone.
- (v) Ethylestrenol.
- (vi) Fluoxymesterone.
- (vii) Formebolone (formebolone).
- (viii) Mesterolone.
- (ix) Methandriol.
- (x) Methandrostenolone (methandienone).
- (xi) Methenolone.
- (xii) Methyltestosterone.
- (xiii) Mibolerone.
- (xiv) Nandrolone.
- (xv) Norethandrolon.
- (xvi) Oxandrolone.
- (xvii) Oxymesterone.
- (xviii) Oxymetholone.
- (xix) Stanolone (4-dihydrotestosterone).
- (xx) Stanozolol.
- (xxi) Testolactone.
- (xxii) Testosterone.
- (xxiii) Trenbolone.

7. "Deliver" means the actual, constructive or attempted exchange from one person to another, whether or not there is an agency relationship.

8. "Director" means the director of the department of health services.

9. "Dispense" means distribute, leave with, give away, dispose of or deliver.

10. "Drug court program" means a program that is established pursuant to section 13-3422 by the presiding judge of the superior court in cooperation with the county attorney in a county for the purpose of prosecuting, adjudicating and treating drug dependent persons who meet the criteria and guidelines for entry into the program that are developed and agreed on by the presiding judge and the prosecutor.

11. "Drug dependent person" means a person who is using a substance that is listed in paragraph 6, 19, 20, 21 or 28 of this section and who is in a state of psychological or physical dependence, or both, arising from the use of that substance.

12. "Federal act" has the same meaning prescribed in section 32-1901.

13. "Isoamidone" means any substance identified chemically as (4-4-diphenyl-5-methyl-6-dimethylamino-hexanone-3), or any salt of such substance, by whatever trade name designated.

14. "IsonipECAINE" means any substance identified chemically as (1-methyl-4-phenyl-piperidine-4-carboxylic acid ethyl ester), or any salt of such substance, by whatever trade name designated.

15. "Ketobemidone" means any substance identified chemically as (4-(3-hydroxyphenyl)-1-methyl-4-piperidylethyl ketone hydrochloride), or any salt of such substance, by whatever trade name designated.

16. "Licensed" or "permitted" means authorized by the laws of this state to do certain things.

17. "Manufacture" means produce, prepare, propagate, compound, mix or process, directly or indirectly, by extraction from substances of natural origin or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis. Manufacture includes any packaging or repackaging or labeling or relabeling of containers. Manufacture does not include any producing, preparing, propagating, compounding, mixing, processing, packaging or labeling done in conformity with applicable state and local laws and rules by a licensed practitioner incident to and in the course of his licensed practice.

18. "Manufacturer" means a person who manufactures a narcotic or dangerous drug or other substance controlled by this chapter.

19. "Marijuana" means all parts of any plant of the genus cannabis, from which the resin has not been extracted, whether growing or not, and the seeds of such plant. Marijuana does not include the mature stalks of such plant or the sterilized seed of such plant which is incapable of germination.

20. "Narcotic drugs" means the following, whether of natural or synthetic origin and any substance neither chemically nor physically distinguishable from them:

- (a) Acetyl-alpha-methylfentanyl.
- (b) Acetylmethadol.
- (c) Alfentanil.
- (d) Allylprodine.
- (e) Alphacetylmethadol.
- (f) Alphameprodine.
- (g) Alphamethadol.
- (h) Alpha-methylfentanyl.
- (i) Alpha-methylthiofentanyl.
- (j) Alphaprodine.
- (k) Amidone (methadone).
- (l) Anileridine.
- (m) Benzethidine.
- (n) Benzylfentanyl.
- (o) Betacetylmethadol.
- (p) Beta-hydroxyfentanyl.
- (q) Beta-hydroxy-3-methylfentanyl.
- (r) Betameprodine.
- (s) Betamethadol.
- (t) Betaprodine.
- (u) Bezitramide.
- (v) Buprenorphine and its salts.
- (w) Cannabis.
- (x) Carfentanil.
- (y) Clonitazene.
- (z) Coca leaves.
- (aa) Dextromoramide.
- (bb) Dextropropoxyphene.
- (cc) Diampromide.
- (dd) Diethylthiambutene.
- (ee) Difenoxin.
- (ff) Dihydrocodeine.
- (gg) Dimenoxadol.
- (hh) Dimepheptanol.
- (ii) Dimethylthiambutene.
- (jj) Dioxaphetyl butyrate.
- (kk) Diphenoxylate.
- (ll) Dipipanone.
- (mm) Ethylmethylthiambutene.

- (nn) Etonitazene.
- (oo) Etoxadine.
- (pp) Fentanyl.
- (qq) Fentanyl mimetic substances that are any substances derived from fentanyl by any substitution in the phenethyl group, any substitution in the piperidine ring, any substitution in the aniline ring, any replacement of the phenyl portion of the phenethyl group, any replacement of the N-propionyl group or any combination of the above.
- (rr) Furethidine.
- (ss) Hydroxypethidine.
- (tt) Isoamidone (isomethadone).
- (uu) Pethidine (meperidine).
- (vv) Ketobemidone.
- (ww) Levomethorphan.
- (xx) Levomoramide.
- (yy) Levophenacymorphan.
- (zz) Levorphanol.
- (aaa) Metazocine.
- (bbb) 3-methylfentanyl.
- (ccc) 1-methyl-4-phenyl-4-propionoxypiperidine (MPPP).
- (ddd) 3-methylthiofentanyl.
- (eee) Morpheridine.
- (fff) Noracymethadol.
- (ggg) Norlevorphanol.
- (hhh) Normethadone.
- (iii) Norpipanone.
- (jjj) Opium.
- (kkk) Para-fluorofentanyl.
- (lll) Pentazocine.
- (mmm) Phenadoxone.
- (nnn) Phenampromide.
- (ooo) Phenazocine.
- (ppp) 1-(2-phenethyl)-4-phenyl-4-acetoxypiperidine (PEPAP).
- (qqq) Phenomorphan.
- (rrr) Phenoperidine.
- (sss) Piminodine.
- (ttt) Piriramide.
- (uuu) Proheptazine.
- (vvv) Propoperidine.
- (www) Propiram.
- (xxx) Racemethorphan.
- (yyy) Racemoramide.
- (zzz) Racemorphan.
- (aaaa) Remifentanil.
- (bbbb) Sufentanil.
- (cccc) Thenylfentanyl.
- (dddd) Thiofentanyl.
- (eeee) Tilidine.
- (ffff) Trimeperidine.

21. "Opium" means any compound, manufacture, salt, isomer, salt of isomer, derivative, mixture or preparation of the following, but does not include apomorphine or any of its salts:

- (a) Acetorphine.
- (b) Acetyldihydrocodeine.
- (c) Benzylmorphine.
- (d) Codeine.
- (e) Codeine methylbromide.
- (f) Codeine-N-oxide.

- (g) Cyprenorphine.
- (h) Desomorphine.
- (i) Dihydromorphine.
- (j) Drotebanol.
- (k) Ethylmorphine.
- (l) Etorphine.
- (m) Heroin.
- (n) Hydrocodone.
- (o) Hydromorphanol.
- (p) Hydromorphone.
- (q) Levo-alphaacetylmethadol.
- (r) Methyldesorphine.
- (s) Methyldihydromorphine.
- (t) Metopon.
- (u) Morphine.
- (v) Morphine methylbromide.
- (w) Morphine methylsulfonate.
- (x) Morphine-N-oxide.
- (y) Myrophine.
- (z) Nalorphine.
- (aa) Nicocodeine.
- (bb) Nicomorphine.
- (cc) Normorphine.
- (dd) Oxycodone.
- (ee) Oxymorphone.
- (ff) Pholcodine.
- (gg) Thebacon.
- (hh) Thebaine.

22. "Ordinary ephedrine, pseudoephedrine, (-)-norpseudoephedrine or phenylpropanolamine product" means a product that contains ephedrine, pseudoephedrine, (-)-norpseudoephedrine or phenylpropanolamine and that is all of the following:

- (a) Approved for sale under the federal act.
- (b) Labeled, advertised and marketed only for an indication that is approved by the federal food and drug administration.
- (c) Either:
  - (i) A nonliquid that is sold in package sizes of not more than three grams of ephedrine, pseudoephedrine, (-)-norpseudoephedrine or phenylpropanolamine and that is packaged in blister packs containing not more than two dosage units or, if the use of blister packs is technically infeasible, that is packaged in unit dose packets or pouches.
  - (ii) A liquid that is sold in package sizes of not more than three grams of ephedrine, pseudoephedrine, (-)-norpseudoephedrine or phenylpropanolamine.

23. "Peyote" means any part of a plant of the genus *lophophora*, known as the mescal button.

24. "Pharmacy" means a licensed business where drugs are compounded or dispensed by a licensed pharmacist.

25. "Practitioner" means a person licensed to prescribe and administer drugs.

26. "Precursor chemical I" means any material, compound, mixture or preparation which contains any quantity of the following substances and their salts, optical isomers or salts of optical isomers:

- (a) N-acetylanthranilic acid.
- (b) Anthranilic acid.
- (c) Ephedrine.
- (d) Ergotamine.
- (e) Isosafrole.
- (f) Lysergic acid.
- (g) Methylamine.
- (h) N-ethylephedrine.
- (i) N-ethylpseudoephedrine.

- (j) N-methylephedrine.
- (k) N-methylpseudoephedrine.
- (l) Norephedrine.
- (m) (-)-Norpseudoephedrine.
- (n) Phenylacetic acid.
- (o) Phenylpropanolamine.
- (p) Piperidine.
- (q) Pseudoephedrine.

27. "Precursor chemical II" means any material, compound, mixture or preparation which contains any quantity of the following substances and their salts, optical isomers or salts of optical isomers:

- (a) 4-cyano-2-dimethylamino-4, 4-diphenyl butane.
- (b) 4-cyano-1-methyl-4-phenylpiperidine.
- (c) Chlorephedrine.
- (d) Chlorpseudoephedrine.
- (e) Ethyl-4-phenylpiperidine-4-carboxylate.
- (f) 2-methyl-3-morpholino-1, 1-diphenylpropane-carboxylic acid.
- (g) 1-methyl-4-phenylpiperidine-4-carboxylic acid.
- (h) N-formyl amphetamine.
- (i) N-formyl methamphetamine.
- (j) Phenyl-2-propanone.
- (k) 1-piperidinocyclohexane carbonitrile.
- (l) 1-pyrrolidinocyclohexane carbonitrile.

28. "Prescription-only drug" does not include a dangerous drug or narcotic drug but means:

(a) Any drug which because of its toxicity or other potentiality for harmful effect, or the method of its use, or the collateral measures necessary to its use, is not generally recognized among experts, qualified by scientific training and experience to evaluate its safety and efficacy, as safe for use except by or under the supervision of a medical practitioner.

(b) Any drug that is limited by an approved new drug application under the federal act or section 32-1962 to use under the supervision of a medical practitioner.

(c) Every potentially harmful drug, the labeling of which does not bear or contain full and adequate directions for use by the consumer.

(d) Any drug required by the federal act to bear on its label the legend "Caution: Federal law prohibits dispensing without prescription" or "Rx only".

29. "Produce" means grow, plant, cultivate, harvest, dry, process or prepare for sale.

30. "Regulated chemical" means the following substances in bulk form that are not a useful part of an otherwise lawful product:

- (a) Acetic anhydride.
- (b) Hypophosphorous acid.
- (c) Iodine.
- (d) Sodium acetate.
- (e) Red phosphorus.
- (f) Gamma butyrolactone (GBL).
- (g) 1, 4-butanediol.
- (h) Butyrolactone.
- (i) 1, 2 butanolide.
- (j) 2-oxalalone.
- (k) Tetrahydro-2-furanone.
- (l) Dihydro-2(3H)-furanone.
- (m) Tetramethylene glycol.

31. "Retailer" means either:

(a) A person other than a practitioner who sells any precursor chemical or regulated chemical to another person for purposes of consumption and not resale, whether or not the person possesses a permit issued pursuant to title 32, chapter 18.

(b) A person other than a manufacturer or wholesaler who purchases, receives or acquires more than twenty-four grams of a precursor chemical.

32. "Sale" or "sell" means an exchange for anything of value or advantage, present or prospective.

33. "Sale for personal use" means the retail sale for a legitimate medical use in a single transaction to an individual customer, to an employer for dispensing to employees from first aid kits or medicine chests or to a school for administration pursuant to section 15-344.

34. "Scientific purpose" means research, teaching or chemical analysis.

35. "Suspicious transaction" means a transaction to which any of the following applies:

(a) A report is required under the federal act.

(b) The circumstances would lead a reasonable person to believe that any person is attempting to possess a precursor chemical or regulated chemical for the purpose of unlawful manufacture of a dangerous drug or narcotic drug, based on such factors as the amount involved, the method of payment, the method of delivery and any past dealings with any participant.

(c) The transaction involves payment for precursor or regulated chemicals in cash or money orders in a total amount of more than two hundred dollars.

(d) The transaction involves a sale, a transfer or furnishing to a retailer for resale without a prescription of ephedrine, pseudoephedrine, (-)-norpseudoephedrine or phenylpropanolamine that is not an ordinary ephedrine, pseudoephedrine, (-)-norpseudoephedrine or phenylpropanolamine product.

36. "Threshold amount" means a weight, market value or other form of measurement of an unlawful substance as follows:

(a) One gram of heroin.

(b) Nine grams of cocaine.

(c) Seven hundred fifty milligrams of cocaine base or hydrolyzed cocaine.

(d) Four grams or 50 milliliters of PCP.

(e) Nine grams of methamphetamine, including methamphetamine in liquid suspension.

(f) Nine grams of amphetamine, including amphetamine in liquid suspension.

(g) One-half milliliter of lysergic acid diethylamide, or in the case of blotter dosage units fifty dosage units.

(h) Two pounds of marijuana.

(i) For any combination consisting solely of those unlawful substances listed in subdivisions (a) through (h) of this paragraph, an amount equal to or in excess of the threshold amount, as determined by the application of section 13-3420.

(j) For any unlawful substance not listed in subdivisions (a) through (h) of this paragraph or any combination involving any unlawful substance not listed in subdivisions (a) through (h) of this paragraph, a value of at least one thousand dollars.

37. "Transfer" means furnish, deliver or give away.

38. "Vapor-releasing substance containing a toxic substance" means a material which releases vapors or fumes containing any of the following:

(a) Ketones, including acetone, methyl ethyl ketone, mibk, miak, isophorone and mesityl oxide.

(b) Hydrocarbons, including propane, butane, pentane, hexane, heptane and halogenated hydrocarbons.

(c) Ethylene dichloride.

(d) Pentachlorophenol.

(e) Chloroform.

(f) Methylene chloride.

(g) Trichloroethylene.

(h) Difluoroethane.

(i) Tetrafluoroethane.

(j) Aldehydes, including formaldehyde.

(k) Acetates, including ethyl acetate and butyl acetate.

(l) Aromatics, including benzene, toluene, xylene, ethylbenzene and cumene.

(m) Alcohols, including methyl alcohol, ethyl alcohol, isopropyl alcohol, butyl alcohol and diacetone alcohol.

(n) Ether, including Diethyl ether and petroleum ether.

(o) Nitrous oxide.

(p) Amyl nitrite.

(q) Isobutyl nitrite.

39. "Weight" unless otherwise specified includes the entire weight of any mixture or substance that contains a detectable amount of an unlawful substance. If a mixture or substance contains more than one

unlawful substance, the weight of the entire mixture or substance is assigned to the unlawful substance that results in the greater offense. If a mixture or substance contains lysergic acid diethylamide, the offense that results from the unlawful substance shall be based on the greater offense as determined by the entire weight of the mixture or substance or the number of blotter dosage units. For the purposes of this paragraph, "mixture" means any combination of substances from which the unlawful substance cannot be removed without a chemical process.

40. "Wholesaler" means a person who in the usual course of business lawfully supplies narcotic drugs, dangerous drugs, precursor chemicals or regulated chemicals that he himself has not produced or prepared, but not to a person for the purpose of consumption by the person, whether or not the wholesaler has a permit that is issued pursuant to title 32, chapter 18. Wholesaler includes a person who sells, delivers or dispenses a precursor chemical in an amount or under circumstances that would require registration as a distributor of precursor chemicals under the federal act.

**13-3402. Possession and sale of peyote; classification**

A. A person who knowingly possesses, sells, transfers or offers to sell or transfer peyote is guilty of a class 6 felony.

B. In a prosecution for violation of this section, it is a defense that the peyote is being used or is intended for use:

1. In connection with the bona fide practice of a religious belief, and
2. As an integral part of a religious exercise, and
3. In a manner not dangerous to public health, safety or morals.

**13-3403. Possession and sale of a vapor-releasing substance containing a toxic substance; regulation of sale; exceptions; classification**

A. A person shall not knowingly:

1. Breathe, inhale or drink a vapor-releasing substance containing a toxic substance.  
2. Sell, transfer or offer to sell or transfer a vapor-releasing substance containing a toxic substance to a person under eighteen years of age.

3. Sell, transfer or offer to sell or transfer a vapor-releasing substance containing a toxic substance if such person is not, at the time of sale, transfer or offer, employed by or engaged in operating a licensed commercial establishment at a fixed location regularly offering such substance for sale and such sale, transfer or offer is made in the course of employment or operation.

B. A person making a sale or transfer of a vapor-releasing glue containing a toxic substance shall require identification of the purchaser and shall record:

1. The name of the glue.
2. The date and hour of delivery.
3. The intended use of the glue.
4. The signature and address of the purchaser.
5. The signature of the seller or deliverer.

Such record shall be kept for three years and be available to board inspectors and peace officers.

C. The operator of a commercial establishment shall keep all vapor-releasing glue containing a toxic substance in a place that is unavailable to customers without the assistance of the operator or an employee of the establishment.

D. The operator of a commercial establishment selling vapor-releasing paints and varnishes containing a toxic substance dispensed by the use of any aerosol spray device shall conspicuously display an easily legible sign of not less than eleven by fourteen inches which states: "Warning: inhalation of vapors can be dangerous".

E. This section is not applicable to the transfer of a vapor-releasing substance containing a toxic substance from a parent or guardian to his child or ward, or the sale or transfer made for manufacturing or industrial purposes.

F. Subsection A, paragraphs 2 and 3 and subsections B and C do not apply to substances certified by the department of health services as containing an additive that inhibits inhalation or induces sneezing.

G. A person who violates any provision of this section is guilty of a class 5 felony, but the court, having regard to the nature and circumstances of the offense, may enter judgment of conviction for a class 1 misdemeanor and make disposition accordingly or may place the defendant on probation in accordance with chapter 9 of this title and refrain from designating the offense as a felony or misdemeanor until the probation

is terminated. The offense shall be treated as a felony for all purposes until such time as the court enters an order designating the offense a misdemeanor.

H. For the purposes of subsections A and E, "vapor-releasing substance containing a toxic substance" means paint or varnish dispensed by the use of aerosol spray, or any glue, that releases vapors or fumes containing acetone, volatile acetates, benzene, butyl alcohol, ethyl alcohol, ethylene dichloride, isopropyl alcohol, methyl alcohol, methyl ethyl ketone, pentachlorophenol, petroleum ether, toluene, volatile ketones, isophorone, chloroform, methylene chloride, mesityl oxide, xylene, cumene, ethylbenzene, trichloroethylene, mibk, miak, mek or diacetone alcohol or isobutyl nitrite.

**13-3403.01. Nitrous oxide containers; sale to minors; classification**

A. A person shall not knowingly sell, give or deliver to a person under eighteen years of age any container exclusively containing nitrous oxide, unless the person under eighteen years of age is delivering or accepting delivery in the person's capacity as an employee.

B. A person who violates this section is guilty of a class 5 felony unless the court does either of the following:

1. Enters a judgment of conviction for a class 1 misdemeanor and makes disposition accordingly.
2. Places the person on probation in accordance with chapter 9 of this title and refrains from designating the offense as a felony or misdemeanor until the probation is terminated. The offense shall be treated as a felony for all purposes until such time as the court may actually enter an order designating the offense as a misdemeanor.end\_statute

**13-3403.02. Selling or giving nitrous oxide to underage person; illegally obtaining nitrous oxide containers by underage person; classification; definition**

A. An operator or employee of a commercial establishment who questions or has reason to question whether or not a person ordering, purchasing, attempting to purchase or otherwise procuring or attempting to procure the serving or delivery of a nitrous oxide container is under eighteen years of age shall require the person to exhibit a written instrument of identification and may require the person to sign the person's name, the date, and the number of the identification on a card to be retained by the operator, or may require the person to sign the person's name and the date on a photocopy of the instrument of identification to be retained by the operator. The following written instruments are the only acceptable types of identification:

1. An unexpired driver license issued by any state or by Canada, provided the license includes a picture of the licensee.
2. A nonoperating identification license issued pursuant to section 28-3165.
3. An armed forces identification card.
4. A valid passport or border crossing identification card that is issued by a government.
5. A voter card issued by the government of Mexico and that contains a photograph and the date of birth of the person.

B. An operator or employee of a commercial establishment who sells, gives, serves or furnishes a nitrous oxide container to a person who is under eighteen years of age without having recorded and retained a record of the person's age or a dated and signed photocopy of the instrument of identification exhibited as prescribed by subsection A of this section is deemed to have constructive knowledge of the person's age.

C. A person who is under eighteen years of age and who misrepresents the person's age to any person by means of a written instrument of identification with the intent to induce a person to sell, serve, give or furnish a nitrous oxide container contrary to section 13-3403.01 is guilty of a class 1 misdemeanor.

D. A person who is under eighteen years of age and who solicits another person to purchase, sell, give, serve or furnish a nitrous oxide container contrary to law is guilty of a class 3 misdemeanor.

E. A person who does not have a valid driver or nonoperating identification license and who uses a driver or nonoperating identification license of another in violation of subsection C of this section shall have that person's right to apply for a driver or nonoperating identification license suspended as provided by section 28-3309, subsection B. A person who uses a driver or nonoperating identification license in violation of subsection C of this section is subject to suspension of the driver or nonoperating identification license as provided in section 28-3309, subsection C.

F. A person who knowingly influences the selling, giving or serving of a nitrous oxide container to a person under eighteen years of age by misrepresenting the age of the person or who orders, requests, receives or procures a nitrous oxide container from an operator or employee of a commercial establishment with the intent of selling, giving or serving it to a person under eighteen years of age is guilty of a class 1 misdemeanor.

G. For purposes of this section, "nitrous oxide container" means any container or canister exclusively containing nitrous oxide.end\_statute

**13-3404. Sale of precursor or regulated chemicals; report; exemptions; violation; classification**

A. A manufacturer, wholesaler, retailer or other person who sells, transfers or otherwise furnishes any precursor chemical or regulated chemical to any person in this state shall submit a report to the department of public safety of all of those transactions unless the entity is required to report similar transactions to a federal agency.

B. The department of public safety shall provide a common reporting form that contains at least the following information:

1. The name of the substance.
2. The proprietary name of the product, if any.
3. The quantity of the substance sold, transferred or furnished.
4. The date the substance is to be sold, transferred or furnished.
5. The name and address of the person buying or receiving the substance.
6. The name and address of the manufacturer, wholesaler, retailer or other person selling, transferring or furnishing the substance.

C. An entity that is required to report pursuant to subsection A of this section, not less than twenty-one days before delivery of the substance, shall submit a report of the transaction to the department of public safety, except that the department of public safety may authorize the submission of the reports on a monthly basis with respect to repeated, regular transactions between the furnisher and the recipient involving the same substance if the department of public safety determines that both of the following exist:

1. A pattern of regular supply of the substance exists between the manufacturer, wholesaler, retailer or other person who sells, transfers or otherwise furnishes such substance and the recipient of the substance.
2. The recipient has established a record of utilization of the substance for lawful purposes.

D. An entity that is required to report pursuant to subsection A of this section and that receives from a source outside of this state any precursor chemical or regulated chemical shall submit a report of such transaction to the department of public safety as prescribed in subsection B of this section.

E. Subsections A, B, C and D of this section do not apply to any of the following:

1. The sale, transfer or furnishing of ordinary ephedrine, pseudoephedrine, (-)-norpseudoephedrine or phenylpropanolamine products.
2. The sale for personal use of ephedrine, pseudoephedrine, (-)-norpseudoephedrine or phenylpropanolamine products totaling four packages or less.
3. The sale, transfer or furnishing of a precursor chemical or regulated chemical by a wholesaler or manufacturer if both parties to the transaction possess a valid and current permit issued pursuant to title 32, chapter 18 and a valid and current precursor list I chemical distributor registration or controlled substance distributor registration issued pursuant to the federal act.

F. Any manufacturer, wholesaler, retailer or other person who sells, transfers or otherwise furnishes any precursor chemical or regulated chemical to any person in this state in a suspicious transaction shall report the transaction in writing to the department of public safety.

G. A person who is regulated by the provisions of this chapter and who discovers the theft, disappearance or other loss of any precursor chemical II or regulated chemical or the excessive or unusual loss of any precursor chemical I shall report the theft or loss in writing to the department of public safety within three days after such discovery. Any difference between the quantity of any precursor chemical II or regulated chemical received and the quantity shipped and any excessive or unusual loss of any precursor chemical I shipped shall be reported in writing to the department of public safety within three days of actual knowledge of the discrepancy. A report made pursuant to this subsection shall also include the name of the common carrier or person who transports the substance and the date of shipment of the substance.

H. An entity that is required to report pursuant to subsection A of this section shall maintain records as described in subsection B of this section relating to all such transactions for not less than two years, except that this requirement does not apply to sales for personal use of ordinary ephedrine, pseudoephedrine,

(-)-norpseudoephedrine or phenylpropanolamine products by a permitted retailer. These records shall be open for inspection and copying by peace officers in the performance of their duties. A peace officer shall not divulge pricing information obtained pursuant to this subsection except in connection with a prosecution, investigation, judicial proceeding or administrative proceeding or in response to a judicial order.

I. This section does not apply to any of the following transactions:

1. The sale, transfer or furnishing to or by any practitioner or any pharmacist acting pursuant to a prescription.

2. The sale, transfer or furnishing to or by a hospital, long-term health care provider or managed health care provider or any other licensed or permitted health care provider that administers or dispenses precursor chemical I medication under the supervision of a practitioner.

3. The sale, transfer or furnishing of iodine either:

(a) In an amount of two ounces or less by weight.

(b) To a licensed or permitted wholesaler, health care facility, pharmacy or practitioner.

(c) As a tincture of iodine or topical solution of iodine.

4. The sale, transfer or furnishing of red phosphorous in an amount of less than four ounces.

5. The movement from one facility of a licensee or permittee to another facility of the same licensee or permittee without sale.

6. The sale, transfer or furnishing of dietary supplements if all of the following apply:

(a) The dietary supplements are not otherwise prohibited by law.

(b) The dietary supplements contain naturally occurring ephedrine, ephedrine alkaloids or pseudoephedrine, or their salts, isomers or salts of isomers, or a combination of these substances that both:

(i) Are contained in the matrix of organic material in which they naturally occur.

(ii) Do not exceed five per cent of the total weight of the natural product.

(c) The dietary supplements are manufactured and distributed for legitimate use in a manner that reduces or eliminates the likelihood of abuse.

(d) The dietary supplements are labeled in compliance with the dietary supplement health and education act of 1994 (21 United States Code section 321).

J. The department of public safety shall grant an exemption from the reporting requirements under subsection C of this section to any person who supplies a precursor chemical or regulated chemical if the person can demonstrate to the department's satisfaction that the recipient requires the substance for a lawful purpose and that special circumstances prevent the supplier from reporting the transaction to the department twenty-one days or more before delivery.

K. An entity that is required to report pursuant to subsection A of this section may satisfy the reporting or record keeping requirements of this section by submitting to the department of public safety either:

1. Computer readable data from which all of the required information may be derived.

2. Copies of reports that are filed pursuant to federal law and that contain all of the information required by this section.

L. This chapter does not preclude any person, including a licensee, permittee, manufacturer, wholesaler or retailer, from instituting contact with and disclosing transactions or transaction records to appropriate federal, state or local law enforcement agencies if the person has information that may be relevant to a possible violation of any criminal statute or to the evasion or attempted evasion of any reporting or record keeping requirement of this chapter.

M. Any person, including a licensee, permittee, manufacturer, wholesaler or retailer or any officer, employee or agent of any licensee, permittee, manufacturer, wholesaler or retailer, that keeps or files a record as prescribed by this section or that communicates or discloses information or records under this section is not liable to its customer, a state or local agency or any person for any loss or damage caused in whole or in part by the making, filing or governmental use of the report or any information contained in that report.

N. Notwithstanding any other law, a county, city or town shall not enact an ordinance that is more restrictive than the requirements of this section.

O. It is unlawful for a person to knowingly:

1. Fail to submit a report that is required by this section.

2. Fail to maintain a record that is required by this section.

3. Furnish false information or omit any material information in any report or record that is required by this section.

4. Cause another person to furnish false information or to omit any material information in any report or record that is required by this section.

5. Participate in any wholesale or retail transaction or series of transactions that is structured by a person with the intent to avoid the filing by any party to the transaction of any report that is required by this section.

P. A person who violates subsection O, paragraph 3, 4 or 5 of this section is guilty of a class 5 felony. A person who violates subsection O, paragraph 1 or 2 of this section is guilty of a class 6 felony.

**13-3404.01. Possession or sale of precursor chemicals, regulated chemicals, substances or equipment; exceptions; classification**

A. A person shall not do any of the following:

1. Knowingly possess a precursor chemical II.

2. Knowingly possess more than twenty-four grams of pseudoephedrine, (-)-norpseudoephedrine or phenylpropanolamine without a license or permit issued pursuant to title 32, chapter 18.

3. Knowingly purchase more than three packages, not to exceed nine grams of pseudoephedrine, (-)-norpseudoephedrine or phenylpropanolamine without a valid prescription order as defined in section 32-1901 or a license or permit issued pursuant to title 32, chapter 18.

4. Knowingly possess any ephedrine that is uncombined or that is the sole active ingredient of a product or more than twenty-four grams of ephedrine that is combined with another active ingredient in any ephedrine product without a license or permit issued pursuant to title 32, chapter 18.

5. Knowingly purchase any ephedrine that is uncombined or is the sole active ingredient of a product or more than three packages, not to exceed nine grams of ephedrine that is combined with another active ingredient in any ephedrine product without a license or permit issued pursuant to title 32, chapter 18.

6. Sell, transfer or otherwise furnish any precursor chemical, regulated chemical or other substance or equipment with knowledge that the recipient will use the precursor chemical, regulated chemical, substance or equipment to unlawfully manufacture a dangerous drug or narcotic drug.

7. As a manufacturer, wholesaler or retailer, knowingly possess any precursor chemical or regulated chemical from which the label, the national drug control number or the manufacturer's lot number has been removed, altered or obliterated, except that a licensed manufacturer may relabel products as permitted under the federal act.

8. Knowingly sell, transfer or otherwise furnish more than nine grams of any precursor chemical without a license or permit issued pursuant to title 32, chapter 18.

9. Sell, transfer or furnish ephedrine, pseudoephedrine, (-)-norpseudoephedrine or phenylpropanolamine in a total amount of more than nine grams in a single transaction in this state unless the recipient possesses a valid and current permit issued by the board pursuant to title 32, chapter 18.

10. Sell, transfer or otherwise furnish a precursor chemical in violation of any rule of the board or the department of public safety.

11. As a wholesaler or retailer, purchase or otherwise acquire or receive a precursor chemical from any person who does not possess a valid and current permit issued pursuant to title 32, chapter 18.

12. Knowingly participate in any transaction or series of transactions that is structured by any person with the intent to avoid or circumvent the prohibitions or limits on sales established by this section.

B. A retailer shall not knowingly sell, transfer or otherwise furnish a precursor chemical unless:

1. The transaction occurs in the normal course of business at premises that are permitted pursuant to title 32, chapter 18.

2. The retailer has a valid and current permit that is issued pursuant to title 32, chapter 18 and that is prominently displayed at the premises where the transaction occurs.

C. A retailer shall not sell more than a total of three packages, not to exceed nine grams of ephedrine, pseudoephedrine, (-)-norpseudoephedrine or phenylpropanolamine in a single transaction unless the person has a valid prescription order as defined in section 32-1901.

D. A wholesaler shall not sell, transfer or otherwise furnish a precursor chemical to any person unless:

1. The wholesaler has a valid and current permit issued pursuant to title 32, chapter 18.

2. The recipient has a permit issued pursuant to title 32, chapter 18, is a pharmacy or is a practitioner.

3. The transaction does not involve payment in cash or money orders in an amount of more than one thousand dollars.

E. A manufacturer shall not sell, transfer or otherwise furnish a precursor chemical to any person unless:

1. The recipient is licensed or has a permit issued pursuant to title 32, chapter 18, is a pharmacy or is a practitioner.

2. The transaction does not involve payment in cash or money orders in an amount of more than one thousand dollars.

F. This section does not apply to any of the following:

1. The transfer by a licensee or permittee to a reclamation facility for destruction.

2. The movement from one facility of a licensee or permittee to another facility of the same licensee or permittee without sale.

G. Notwithstanding any other law, a county, city or town shall not enact an ordinance that is more restrictive than the requirements of this section.

H. A violation of subsection A, paragraph 1 or 6 is a class 2 felony. A violation of subsection A, paragraph 2, 3, 4, 5, 7, 9, 11 or 12 is a class 5 felony. A violation of subsection A, paragraph 8 or 10 is a class 6 felony. A violation of subsection B, D or E is a class 5 felony. A violation of subsection C is a class 5 felony, except that if the violation involves less than a total of fifty grams of ephedrine, pseudoephedrine, (-)-norpseudoephedrine or phenylpropanolamine, the first violation is a class 2 misdemeanor and the second violation is a class 1 misdemeanor. An enterprise is not criminally accountable for a violation of subsection C unless the conduct constituting the offense is engaged in, authorized, commanded or recklessly tolerated by the directors of the enterprise in any manner or by a high managerial agent acting within the scope of employment.

**13-3405. Possession, use, production, sale or transportation of marijuana; classification**

A. A person shall not knowingly:

1. Possess or use marijuana.

2. Possess marijuana for sale.

3. Produce marijuana.

4. Transport for sale, import into this state or offer to transport for sale or import into this state, sell, transfer or offer to sell or transfer marijuana.

B. A person who violates:

1. Subsection A, paragraph 1 of this section involving an amount of marijuana not possessed for sale having a weight of less than two pounds is guilty of a class 6 felony.

2. Subsection A, paragraph 1 of this section involving an amount of marijuana not possessed for sale having a weight of at least two pounds but less than four pounds is guilty of a class 5 felony.

3. Subsection A, paragraph 1 of this section involving an amount of marijuana not possessed for sale having a weight of four pounds or more is guilty of a class 4 felony.

4. Subsection A, paragraph 2 of this section involving an amount of marijuana having a weight of less than two pounds is guilty of a class 4 felony.

5. Subsection A, paragraph 2 of this section involving an amount of marijuana having a weight of at least two pounds but not more than four pounds is guilty of a class 3 felony.

6. Subsection A, paragraph 2 of this section involving an amount of marijuana having a weight of more than four pounds is guilty of a class 2 felony.

7. Subsection A, paragraph 3 of this section involving an amount of marijuana having a weight of less than two pounds is guilty of a class 5 felony.

8. Subsection A, paragraph 3 of this section involving an amount of marijuana having a weight of at least two pounds but not more than four pounds is guilty of a class 4 felony.

9. Subsection A, paragraph 3 of this section involving an amount of marijuana having a weight of more than four pounds is guilty of a class 3 felony.

10. Subsection A, paragraph 4 of this section involving an amount of marijuana having a weight of less than two pounds is guilty of a class 3 felony.

11. Subsection A, paragraph 4 of this section involving an amount of marijuana having a weight of two pounds or more is guilty of a class 2 felony.

C. If the aggregate amount of marijuana involved in one offense or all of the offenses that are consolidated for trial equals or exceeds the statutory threshold amount, a person who is sentenced pursuant to subsection B, paragraph 5, 6, 8, 9 or 11 of this section is not eligible for suspension of sentence, probation, pardon or release from confinement on any basis until the person has served the sentence imposed by the court, the person is eligible for release pursuant to section 41-1604.07 or the sentence is commuted.

D. In addition to any other penalty prescribed by this title, the court shall order a person who is convicted of a violation of any provision of this section to pay a fine of not less than seven hundred fifty dollars or three times the value as determined by the court of the marijuana involved in or giving rise to the charge, whichever is greater, and not more than the maximum authorized by chapter 8 of this title. A judge shall not suspend any part or all of the imposition of any fine required by this subsection.

E. A person who is convicted of a felony violation of any provision of this section for which probation or release before the expiration of the sentence imposed by the court is authorized is prohibited from using any marijuana, dangerous drug or narcotic drug except as lawfully administered by a practitioner and as a condition of any probation or release shall be required to submit to drug testing administered under the supervision of the probation department of the county or the state department of corrections as appropriate during the duration of the term of probation or before the expiration of the sentence imposed.

F. If the aggregate amount of marijuana involved in one offense or all of the offenses that are consolidated for trial is less than the statutory threshold amount, a person who is sentenced pursuant to subsection B, paragraph 4, 7 or 10 and who is granted probation by the court shall be ordered by the court that as a condition of probation the person perform not less than two hundred forty hours of community restitution with an agency or organization providing counseling, rehabilitation or treatment for alcohol or drug abuse, an agency or organization that provides medical treatment to persons who abuse controlled substances, an agency or organization that serves persons who are victims of crime or any other appropriate agency or organization.

G. If a person who is sentenced pursuant to subsection B, paragraph 1, 2 or 3 of this section is granted probation for a felony violation of this section, the court shall order that as a condition of probation the person perform not less than twenty-four hours of community restitution with an agency or organization providing counseling, rehabilitation or treatment for alcohol or drug abuse, an agency or organization that provides medical treatment to persons who abuse controlled substances, an agency or organization that serves persons who are victims of crime or any other appropriate agency or organization.

H. If a person is granted probation for a misdemeanor violation of this section, the court shall order as a condition of probation that the person attend eight hours of instruction on the nature and harmful effects of narcotic drugs, marijuana and other dangerous drugs on the human system, and on the laws related to the control of these substances, or perform twenty-four hours of community restitution.

**13-3406. Possession, use, administration, acquisition, sale, manufacture or transportation of prescription-only drugs; classification**

A. A person shall not knowingly:

1. Possess or use a prescription-only drug unless the person obtains the prescription-only drug pursuant to a valid prescription of a prescriber who is licensed pursuant to title 32, chapter 7, 11, 13, 14, 15, 16, 17, 21, 25 or 29 or is similarly licensed in another state.

2. Unless the person holds a license or a permit issued pursuant to title 32, chapter 7, 11, 13, 14, 15, 16, 17, 18, 21, 25 or 29, possess a prescription-only drug for sale.

3. Unless the person holds a license or a permit issued pursuant to title 32, chapter 7, 11, 13, 14, 15, 16, 17, 18, 21, 25 or 29, possess equipment and chemicals for the purpose of manufacturing a prescription-only drug.

4. Unless the person holds a license or a permit issued pursuant to title 32, chapter 18, manufacture a prescription-only drug.

5. Administer a prescription-only drug to another person whose possession or use of the prescription-only drug violates any provision of this section.

6. Obtain or procure the administration of a prescription-only drug by fraud, deceit, misrepresentation or subterfuge.

7. Unless the person is authorized, transport for sale, import into this state or offer to transport for sale or import into this state, sell, transfer or offer to sell or transfer a prescription-only drug.

B. A person who violates:

1. Subsection A, paragraph 1, 3, 4, 5 or 6 is guilty of a class 1 misdemeanor.

2. Subsection A, paragraph 2 or 7 is guilty of a class 6 felony.

C. In addition to any other penalty prescribed by this title, the court shall order a person who is convicted of a violation of any provision of this section to pay a fine of one thousand dollars. A judge shall not suspend any part or all of the imposition of any fine required by this subsection.

D. A person who is convicted of a felony violation of a provision of this section for which probation or release before the expiration of the sentence imposed by the court is authorized is prohibited from using any marijuana, dangerous drug, narcotic drug or prescription-only drug except as lawfully administered by a practitioner and as a condition of any probation or release shall be required to submit to drug testing administered under the supervision of the probation department of the county or the state department of corrections, as appropriate, during the duration of the term of probation or before the expiration of the sentence imposed.

E. If a person who is convicted of a violation of a provision of subsection A, paragraph 2 or 7 is granted probation, the court shall order that as a condition of probation the person perform not less than two hundred forty hours of community restitution with an agency or organization providing counseling, rehabilitation or treatment for alcohol or drug abuse, an agency or organization that provides medical treatment to persons who abuse controlled substances, an agency or organization that serves persons who are victims of crime or any other appropriate agency or organization.

**13-3407. Possession, use, administration, acquisition, sale, manufacture or transportation of dangerous drugs; classification**

A. A person shall not knowingly:

1. Possess or use a dangerous drug.

2. Possess a dangerous drug for sale.

3. Possess equipment or chemicals, or both, for the purpose of manufacturing a dangerous drug.

4. Manufacture a dangerous drug.

5. Administer a dangerous drug to another person.

6. Obtain or procure the administration of a dangerous drug by fraud, deceit, misrepresentation or subterfuge.

7. Transport for sale, import into this state or offer to transport for sale or import into this state, sell, transfer or offer to sell or transfer a dangerous drug.

B. A person who violates:

1. Subsection A, paragraph 1 of this section is guilty of a class 4 felony. Unless the drug involved is lysergic acid diethylamide, methamphetamine, amphetamine or phencyclidine or the person was previously convicted of a felony offense or a violation of this section or section 13-3408, the court on motion of the state, considering the nature and circumstances of the offense, for a person not previously convicted of any felony offense or a violation of this section or section 13-3408 may enter judgment of conviction for a class 1 misdemeanor and make disposition accordingly or may place the defendant on probation in accordance with chapter 9 of this title and refrain from designating the offense as a felony or misdemeanor until the probation is successfully terminated. The offense shall be treated as a felony for all purposes until the court enters an order designating the offense a misdemeanor.

2. Subsection A, paragraph 2 of this section is guilty of a class 2 felony.

3. Subsection A, paragraph 3 of this section is guilty of a class 3 felony, except that if the offense involved methamphetamine, the person is guilty of a class 2 felony.

4. Subsection A, paragraph 4 of this section is guilty of a class 2 felony.

5. Subsection A, paragraph 5 of this section is guilty of a class 2 felony.

6. Subsection A, paragraph 6 of this section is guilty of a class 3 felony.

7. Subsection A, paragraph 7 of this section is guilty of a class 2 felony.

C. Except as provided in subsection E of this section, a person who is convicted of a violation of subsection A, paragraph 1, 3 or 6 and who has not previously been convicted of any felony or who has not been sentenced pursuant to section 13-703, section 13-704, section 13-706, subsection A, section 13-708, subsection D or any other law making the convicted person ineligible for probation is eligible for probation.

D. Except as provided in subsection E of this section, if the aggregate amount of dangerous drugs involved in one offense or all of the offenses that are consolidated for trial equals or exceeds the statutory threshold amount, a person who is convicted of a violation of subsection A, paragraph 2, 5 or 7 of this section

is not eligible for suspension of sentence, probation, pardon or release from confinement on any basis until the person has served the sentence imposed by the court, the person is eligible for release pursuant to section 41-1604.07 or the sentence is commuted.

E. If the person is convicted of a violation of subsection A, paragraph 2, 3, 4 or 7 of this section and the drug involved is methamphetamine, the person shall be sentenced as follows:

<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
5 calendar years	10 calendar years	15 calendar years

A person who has previously been convicted of a violation of subsection A, paragraph 2, 3, 4 or 7 of this section involving methamphetamine or section 13-3407.01 shall be sentenced as follows:

<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
10 calendar years	15 calendar years	20 calendar years

F. A person who is convicted of a violation of subsection A, paragraph 4 of this section or subsection A, paragraph 2, 3 or 7 of this section involving methamphetamine is not eligible for suspension of sentence, probation, pardon or release from confinement on any basis until the person has served the sentence imposed by the court, the person is eligible for release pursuant to section 41-1604.07 or the sentence is commuted.

G. If a person is convicted of a violation of subsection A, paragraph 5 of this section, if the drug is administered without the other person's consent, if the other person is under eighteen years of age and if the drug is flunitrazepam, gamma hydroxy butrate or ketamine hydrochloride, the convicted person is not eligible for suspension of sentence, probation, pardon or release from confinement on any basis until the person has served the sentence imposed by the court, the person is eligible for release pursuant to section 41-1604.07 or the sentence is commuted.

H. In addition to any other penalty prescribed by this title, the court shall order a person who is convicted of a violation of this section to pay a fine of not less than one thousand dollars or three times the value as determined by the court of the dangerous drugs involved in or giving rise to the charge, whichever is greater, and not more than the maximum authorized by chapter 8 of this title. A judge shall not suspend any part or all of the imposition of any fine required by this subsection.

I. A person who is convicted of a violation of this section for which probation or release before the expiration of the sentence imposed by the court is authorized is prohibited from using any marijuana, dangerous drug, narcotic drug or prescription-only drug except as lawfully administered by a health care practitioner and as a condition of any probation or release shall be required to submit to drug testing administered under the supervision of the probation department of the county or the state department of corrections, as appropriate, during the duration of the term of probation or before the expiration of the sentence imposed.

J. If a person who is convicted of a violation of this section is granted probation, the court shall order that as a condition of probation the person perform not less than three hundred sixty hours of community restitution with an agency or organization that provides counseling, rehabilitation or treatment for alcohol or drug abuse, an agency or organization that provides medical treatment to persons who abuse controlled substances, an agency or organization that serves persons who are victims of crime or any other appropriate agency or organization.

K. The presumptive term imposed pursuant to subsection E of this section may be mitigated or aggravated pursuant to section 13-701, subsections D and E.

**13-3407.01. Manufacturing methamphetamine under circumstances that cause physical injury to a minor; classification**

A. A person shall not knowingly manufacture methamphetamine under any circumstance that causes physical injury to a minor who is under fifteen years of age.

B. A person who violates this section is guilty of a class 2 felony and is punishable as provided by section 13-705.

**13-3408. Possession, use, administration, acquisition, sale, manufacture or transportation of narcotic drugs; classification**

A. A person shall not knowingly:

1. Possess or use a narcotic drug.

2. Possess a narcotic drug for sale.
  3. Possess equipment or chemicals, or both, for the purpose of manufacturing a narcotic drug.
  4. Manufacture a narcotic drug.
  5. Administer a narcotic drug to another person.
  6. Obtain or procure the administration of a narcotic drug by fraud, deceit, misrepresentation or subterfuge.
  7. Transport for sale, import into this state, offer to transport for sale or import into this state, sell, transfer or offer to sell or transfer a narcotic drug.
- B. A person who violates:**
1. Subsection A, paragraph 1 of this section is guilty of a class 4 felony.
  2. Subsection A, paragraph 2 of this section is guilty of a class 2 felony.
  3. Subsection A, paragraph 3 of this section is guilty of a class 3 felony.
  4. Subsection A, paragraph 4 of this section is guilty of a class 2 felony.
  5. Subsection A, paragraph 5 of this section is guilty of a class 2 felony.
  6. Subsection A, paragraph 6 of this section is guilty of a class 3 felony.
  7. Subsection A, paragraph 7 of this section is guilty of a class 2 felony.
- C. A person who is convicted of a violation of subsection A, paragraph 1, 3 or 6 of this section and who has not previously been convicted of any felony or who has not been sentenced pursuant to section 13-703, section 13-704, subsection A, B, C, D or E, section 13-706, subsection A, section 13-708, subsection D or any other provision of law making the convicted person ineligible for probation is eligible for probation.**
- D. If the aggregate amount of narcotic drugs involved in one offense or all of the offenses that are consolidated for trial equals or exceeds the statutory threshold amount, a person who is convicted of a violation of subsection A, paragraph 2, 5 or 7 of this section is not eligible for suspension of sentence, probation, pardon or release from confinement on any basis until the person has served the sentence imposed by the court, the person is eligible for release pursuant to section 41-1604.07 or the sentence is commuted.**
- E. A person who is convicted of a violation of subsection A, paragraph 4 of this section is not eligible for suspension of sentence, probation, pardon or release from confinement on any basis until the person has served the sentence imposed by the court, the person is eligible for release pursuant to section 41-1604.07 or the sentence is commuted.**
- F. In addition to any other penalty prescribed by this title, the court shall order a person who is convicted of a violation of this section to pay a fine of not less than two thousand dollars or three times the value as determined by the court of the narcotic drugs involved in or giving rise to the charge, whichever is greater, and not more than the maximum authorized by chapter 8 of this title. A judge shall not suspend any part or all of the imposition of any fine required by this subsection.**
- G. A person who is convicted of a violation of this section for which probation or release before the expiration of the sentence imposed by the court is authorized is prohibited from using any marijuana, dangerous drug, narcotic drug or prescription-only drug except as lawfully administered by a health care practitioner and as a condition of any probation or release shall be required to submit to drug testing administered under the supervision of the probation department of the county or the state department of corrections, as appropriate, during the duration of the term of probation or before the expiration of the sentence imposed.**
- H. If a person who is convicted of a violation of this section is granted probation, the court shall order that as a condition of probation the person perform not less than three hundred sixty hours of community restitution with an agency or organization that provides counseling, rehabilitation or treatment for alcohol or drug abuse, an agency or organization that provides medical treatment to persons who abuse controlled substances, an agency or organization that serves persons who are victims of crime or any other appropriate agency or organization.**

**13-3409. Involving or using minors in drug offenses; classification**

- A. A person shall not knowingly:**
1. Hire, employ or use a minor to engage in any conduct, completed or preparatory, that is prohibited by sections 13-3404, 13-3404.01, 13-3405, 13-3406, 13-3407 and 13-3408.
  2. Sell, transfer or offer to sell or transfer to a minor any substance if its possession is prohibited by sections 13-3404, 13-3404.01, 13-3405, 13-3407 and 13-3408.

B. A person who violates this section is guilty of a class 2 felony and is not eligible for suspension of sentence, probation, pardon or release from confinement on any basis until the sentence imposed by the court has been served or commuted, and if the minor is under fifteen years of age it is punishable pursuant to section 13-705, subsection C.

C. In addition to any other penalty prescribed by this title, the court shall order a person who is convicted of a violation of this section to pay a fine of not less than two thousand dollars or three times the value as determined by the court of the substance involved in or giving rise to the charge, whichever is greater, and not more than the maximum authorized by chapter 8 of this title. A judge shall not suspend any part or all of the imposition of any fine required by this subsection.

#### **13-3410. Serious drug offender; sentencing; definitions**

A. A person who is at least eighteen years of age or who has been tried as an adult and who stands convicted of a serious drug offense and who committed the offense as part of a pattern of engaging in conduct prohibited by this chapter, which constituted a significant source of the person's income, shall be sentenced to life imprisonment and is not eligible for suspension of sentence, probation, pardon or release from confinement on any basis until the person has served not less than twenty-five years or the sentence is commuted.

B. A person who is at least eighteen years of age or who has been tried as an adult and who stands convicted of a serious drug offense and who committed the offense as part of the person's association with and participation in the conduct of an enterprise as defined in section 13-2301, subsection D, paragraph 2, which is engaged in dealing in substances controlled by this chapter, and who organized, managed, directed, supervised or financed the enterprise with the intent to promote or further its criminal objectives shall be sentenced to life imprisonment and is not eligible for suspension of sentence, probation, pardon or release from confinement on any basis until the person has served not less than twenty-five years or the sentence is commuted.

C. A person commits an offense as part of a pattern of engaging in conduct prohibited by this chapter if the person's conduct involves at least three criminal acts that have the same or similar purposes, results, participants, victims or methods of commission, or otherwise are interrelated by distinguishing characteristics and are not isolated events.

D. For the purposes of this section:

1. "Serious drug offense" means any violation of, including any attempt or conspiracy to commit a violation of, section 13-3404.01, section 13-3405, subsection A, paragraphs 2 through 4, section 13-3407, subsection A, paragraphs 2 through 7 or section 13-3408, subsection A, paragraphs 2 through 7 involving an amount of marijuana, dangerous drugs or narcotic drugs having a weight that equals or exceeds the statutory threshold amount, a felony violation of section 13-3406 or any violation of section 13-3409.

2. "Significant source of income" means a source of income that exceeds twenty-five thousand dollars received during a calendar year without reference to any exceptions, reductions or setoffs.

#### **13-3411. Possession, use, sale or transfer of marijuana, peyote, prescription drugs, dangerous drugs or narcotic drugs or manufacture of dangerous drugs in a drug free school zone; violation; classification; definitions**

A. It is unlawful for a person to do any of the following:

1. Intentionally be present in a drug free school zone to sell or transfer marijuana, peyote, prescription-only drugs, dangerous drugs or narcotic drugs.

2. Possess or use marijuana, peyote, dangerous drugs or narcotic drugs in a drug free school zone.

3. Manufacture dangerous drugs in a drug free school zone.

B. A person who violates subsection A of this section is guilty of the same class of felony that the person would otherwise be guilty of had the violation not occurred within a drug free school zone, except that the presumptive, minimum and maximum sentence shall be increased by one year. The additional sentence imposed under this subsection is in addition to any enhanced punishment that may be applicable under section 13-703, section 13-704, section 13-708, subsection D or any provision in this chapter. A person is not eligible for suspension of sentence, probation, pardon or release from confinement on any basis except

pursuant to section 31-233, subsection A or B until the sentence imposed by the court has been served or commuted.

C. In addition to any other penalty prescribed by this title, the court shall order a person who is convicted of a violation of this section to pay a fine of not less than two thousand dollars or three times the value as determined by the court of the drugs involved in or giving rise to the charge, whichever is greater, and not more than the maximum authorized by chapter 8 of this title. A judge shall not suspend any part or all of the imposition of any fine required by this subsection.

D. Each school district's governing board or its designee, or the chief administrative officer in the case of a nonpublic school, shall place and maintain permanently affixed signs located in a visible manner at the main entrance of each school that identifies the school and its accompanying grounds as a drug free school zone.

E. The drug free school zone map prepared pursuant to title 15 shall constitute an official record as to the location and boundaries of each drug free school zone. The school district's governing board or its designee, or the chief administrative officer in the case of any nonpublic school, shall promptly notify the county attorney of any changes in the location and boundaries of any school property and shall file with the county recorder the original map prepared pursuant to title 15.

F. All school personnel who observe a violation of this section shall immediately report the violation to a school administrator. The administrator shall immediately report the violation to a peace officer. It is unlawful for any school personnel or school administrator to fail to report a violation as prescribed in this section.

G. School personnel having custody or control of school records of a student involved in an alleged violation of this section shall make the records available to a peace officer upon written request signed by a magistrate. Records disclosed pursuant to this subsection are confidential and may be used only in a judicial or administrative proceeding. A person furnishing records required under this subsection or a person participating in a judicial or administrative proceeding or investigation resulting from the furnishing of records required under this subsection is immune from civil or criminal liability by reason of such action unless the person acted with malice.

H. A person who violates subsection F of this section is guilty of a class 3 misdemeanor.

I. For the purposes of this section:

1. "Drug free school zone" means the area within three hundred feet of a school or its accompanying grounds, any public property within one thousand feet of a school or its accompanying grounds, a school bus stop or on any school bus or bus contracted to transport pupils to any school.

2. "School" means any public or nonpublic kindergarten program, common school or high school.

### **13-3412. Exceptions and exemptions; burden of proof; privileged communications**

(Caution: 1998 Prop. 105 applies)

A. The provisions of sections 13-3402 and 13-3403, section 13-3404.01, subsection A, paragraph 1 and sections 13-3405 through 13-3409 do not apply to:

1. Manufacturers, wholesalers, pharmacies and pharmacists under the provisions of sections 32-1921 and 32-1961.

2. Medical practitioners, pharmacies and pharmacists while acting in the course of their professional practice, in good faith and in accordance with generally accepted medical standards.

3. Persons who lawfully acquire and use such drugs only for scientific purposes.

4. Officers and employees of the United States, this state or a political subdivision of the United States or this state, while acting in the course of their official duties.

5. An employee or agent of a person described in paragraphs 1 through 4 of this subsection, and a registered nurse or medical technician under the supervision of a medical practitioner, while such employee, agent, nurse or technician is acting in the course of professional practice or employment, and not on his own account.

6. A common or contract carrier or warehouseman, or an employee of such carrier or warehouseman, whose possession of drugs is in the usual course of business or employment.

7. Persons lawfully in possession or control of controlled substances authorized by title 36, chapter

8. The receipt, possession or use, of a controlled substance included in schedule I of section 36-2512, by any seriously ill or terminally ill patient, pursuant to the prescription of a doctor in compliance with the provisions of section 13-3412.01.

B. In any complaint, information or indictment and in any action or proceeding brought for the enforcement of any provision of this chapter the burden of proof of any such exception, excuse, defense or exemption is on the defendant.

C. In addition to other exceptions to the physician-patient privilege, information communicated to a physician in an effort to procure unlawfully a prescription-only, dangerous or narcotic drug, or to procure unlawfully the administration of such drug, is not a privileged communication.

**13-3412.01. Prescribing controlled substances included in schedule I for seriously ill and terminally ill patients**

(Caution: 1998 Prop. 105 applies)

A. Notwithstanding any law to the contrary, any medical doctor licensed to practice in this state may prescribe a controlled substance included in schedule I as prescribed by section 36-2512 to treat a disease, or to relieve the pain and suffering of a seriously ill patient or terminally ill patient, subject to the provisions of this section. In prescribing such a controlled substance, the medical doctor shall comply with professional medical standards.

B. Notwithstanding any law to the contrary, a medical doctor shall document that scientific research exists that supports the use of a controlled substance listed in schedule I as prescribed by section 36-2512 to treat a disease, or to relieve the pain and suffering of a seriously ill patient or a terminally ill patient before prescribing the controlled substance. A medical doctor prescribing a controlled substance included in schedule I as prescribed by section 36-2512 to treat a disease, or to relieve the pain and suffering of a seriously ill patient or terminally ill patient, shall obtain the written opinion of a second medical doctor that prescribing the controlled substance is appropriate to treat a disease or to relieve the pain and suffering of a seriously ill patient or terminally ill patient. The written opinion of the second medical doctor shall be kept in the patient's official medical file. Before prescribing the controlled substance included in schedule I as prescribed by section 36-2512 the medical doctor shall receive in writing the consent of the patient.

C. Any failure to comply with the provisions of this section may be the subject of investigation and appropriate disciplining action by the Arizona medical board.

**13-3413. Forfeiture and disposition of drugs and evidence**

A. The following items used or intended for use in violation of this chapter are subject to seizure and forfeiture pursuant to chapter 39 of this title:

1. Property, equipment, containers, chemicals, materials, money, books, records, research products, formulas, microfilm, tapes and data.

2. Vapor-releasing substances containing a toxic substance.

3. Vehicles to transport or in any manner facilitate the transportation, sale or receipt of, or in which is contained or possessed, any item or drug, except as provided in chapter 39 of this title.

B. The following property is subject to seizure and forfeiture pursuant to chapter 39 of this title:

1. All proceeds traceable to an offense that is included in this chapter and that is committed for financial gain.

2. All proceeds seized in this state and traceable to an offense that:

(a) Is chargeable or indictable under the laws of the state in which the offense occurred and, if the offense occurred in a state other than this state, would be chargeable or indictable under this chapter if the offense occurred in this state.

(b) Is punishable by imprisonment for more than one year.

(c) Involves prohibited drugs, marijuana or other prohibited chemicals or substances.

(d) Is committed for financial gain.

C. Peyote, dangerous drugs, prescription-only drugs, marijuana, narcotic drugs and plants from which such drugs may be derived which are seized in connection with any violation of this chapter or which come into the possession of a law enforcement agency are summarily forfeited.

D. When seizures of marijuana are made in excess of ten pounds or seizures of any other substance specified in subsection C of this section are made in excess of one pound in connection with any violation of this chapter the responsible law enforcement agency may retain ten pounds of the marijuana or one pound of the other substance randomly selected from the seized quantity for representation purposes as evidence. The agency may destroy the remainder of the seized marijuana or substance. Before any destruction is carried out, the responsible law enforcement agency shall photograph the material seized with identifying case numbers or other means of identification and prepare a report, identifying the seized material. The responsible law enforcement agency shall notify in writing any person arrested for a violation of this chapter or the attorney for the person at least twenty-four hours in advance that such photography will take place and that such person or the person's attorney may be present at such photographing of the seized material. In addition to the amount of marijuana or other substance retained for representation purposes as evidence, all photographs and records made under this section and properly identified are admissible in any court proceeding for any purpose for which the seized marijuana or substance itself would be admissible. Evidence retained after trial shall be disposed of pursuant to the rules of criminal procedure, rule 28.

E. If a seizure is made of chemicals used for the manufacture of a narcotic drug or dangerous drug as defined by section 13-3401 in connection with a violation of this title, the seizing agency may apply to a magistrate or superior court judge in the application for the search warrant or as soon as reasonable after the seizure for an order allowing the proper disposal or destruction of the substances, on a showing to the magistrate or superior court judge by affidavit of both of the following:

1. The substances pose a significant safety hazard to life or property because of their explosive, flammable, poisonous or otherwise toxic nature.

2. No adequate and safe storage facility is reasonably available to the seizing agency.

F. On a proper showing pursuant to subsection E of this section, the magistrate or superior court judge shall order the substances to be properly destroyed if the containers are first photographed. In addition the magistrate or superior court judge may order that the chemicals be sampled and the samples preserved, unless the court finds either:

1. Sampling would be unnecessary or unsafe.

2. The chemicals are in labeled or factory sealed containers.

**13-3414. Notice of conviction to be sent to licensing board and the department of economic security; suspension or revocation of license or registration**

On the conviction of a person of an offense in this chapter, a copy of the judgment and sentence, and of the opinion of the court or magistrate, if any opinion is filed, shall be sent by the clerk of the court, or by the magistrate, to all of the following:

1. The board or officer, if any, by whom the convicted defendant has been licensed or registered to practice a profession or to carry on a business. On the conviction of any such person, the court, in its discretion, may suspend or revoke the license or registration of the convicted defendant to practice the profession or to carry on the business. On the application of any person whose license or registration has been suspended or revoked, and on proper showing and for good cause, the board or officer may reinstate the license or registration.

2. If the court has knowledge that the convicted person receives temporary assistance for needy families cash benefits, the department of economic security.

**13-3415. Possession, manufacture, delivery and advertisement of drug paraphernalia; definitions; violation; classification; civil forfeiture; factors**

A. It is unlawful for any person to use, or to possess with intent to use, drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a drug in violation of this chapter. Any person who violates this subsection is guilty of a class 6 felony.

B. It is unlawful for any person to deliver, possess with intent to deliver or manufacture with intent to deliver drug paraphernalia knowing, or under circumstances where one reasonably should know, that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process,

prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a drug in violation of this chapter. Any person who violates this subsection is guilty of a class 6 felony.

C. It is unlawful for a person to place in a newspaper, magazine, handbill or other publication any advertisement knowing, or under circumstances where one reasonably should know, that the purpose of the advertisement, in whole or in part, is to promote the sale of objects designed or intended for use as drug paraphernalia. Any person who violates this subsection is guilty of a class 6 felony.

D. All drug paraphernalia is subject to forfeiture pursuant to chapter 39 of this title. The failure to charge or acquittal of an owner or anyone in control of drug paraphernalia in violation of this chapter does not prevent a finding that the object is intended for use or designed for use as drug paraphernalia.

E. In determining whether an object is drug paraphernalia, a court or other authority shall consider, in addition to all other logically relevant factors, the following:

1. Statements by an owner or by anyone in control of the object concerning its use.
2. Prior convictions, if any, of an owner, or of anyone in control of the object, under any state or federal law relating to any drug.
3. The proximity of the object, in time and space, to a direct violation of this chapter.
4. The proximity of the object to drugs.
5. The existence of any residue of drugs on the object.
6. Direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver it to persons whom he knows, or should reasonably know, intend to use the object to facilitate a violation of this chapter.
7. Instructions, oral or written, provided with the object concerning its use.
8. Descriptive materials accompanying the object which explain or depict its use.
9. National and local advertising concerning its use.
10. The manner in which the object is displayed for sale.
11. Whether the owner, or anyone in control of the object, is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products.
12. Direct or circumstantial evidence of the ratio of sales of the object to the total sales of the business enterprise.
13. The existence and scope of legitimate uses for the object in the community.
14. Expert testimony concerning its use.

F. In this section, unless the context otherwise requires:

1. "Drug" means any narcotic drug, dangerous drug, marijuana or peyote.
2. "Drug paraphernalia" means all equipment, products and materials of any kind which are used, intended for use or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a drug in violation of this chapter. It includes:
  - (a) Kits used, intended for use or designed for use in planting, propagating, cultivating, growing or harvesting any species of plant which is a drug or from which a drug can be derived.
  - (b) Kits used, intended for use or designed for use in manufacturing, compounding, converting, producing, processing or preparing drugs.
  - (c) Isomerization devices used, intended for use or designed for use in increasing the potency of any species of plant which is a drug.
  - (d) Testing equipment used, intended for use or designed for use in identifying or analyzing the strength, effectiveness or purity of drugs.
  - (e) Scales and balances used, intended for use or designed for use in weighing or measuring drugs.
  - (f) Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose and lactose, used, intended for use or designed for use in cutting drugs.
  - (g) Separation gins and sifters used, intended for use or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining, marijuana.
  - (h) Blenders, bowls, containers, spoons and mixing devices used, intended for use or designed for use in compounding drugs.
  - (i) Capsules, balloons, envelopes and other containers used, intended for use or designed for use in packaging small quantities of drugs.

(j) Containers and other objects used, intended for use or designed for use in storing or concealing drugs.

(k) Hypodermic syringes, needles and other objects used, intended for use or designed for use in parenterally injecting drugs into the human body.

(l) Objects used, intended for use or designed for use in ingesting, inhaling or otherwise introducing marijuana, a narcotic drug, a dangerous drug, hashish or hashish oil into the human body, such as:

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

(ii) Water pipes.

(iii) Carburetion tubes and devices.

(iv) Smoking and carburetion masks.

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

(vi) Miniature cocaine spoons and cocaine vials.

(vii) Chamber pipes.

(viii) Carburetor pipes.

(ix) Electric pipes.

(x) Air-driven pipes.

(xi) Chillums.

(xii) Bongs.

(xiii) Ice pipes or chillers.

**13-3416. Probationer; payment of costs**

In addition to any other fines or assessments, persons placed on probation for a violation of this chapter with a condition to participate in community restitution, drug testing or antidrug abuse education may be required by the court to pay any reasonable costs associated with participation in these programs.

**13-3417. Use of wire communication or electronic communication in drug related transactions; classification**

A. It is unlawful for a person to use any wire communication or electronic communication as defined in section 13-3001 to facilitate the violation of any felony provision or to conspire to commit any felony provision of this chapter or chapter 23 of this title.

B. Any offense committed by use of a wire communication or electronic communication as set forth in this section is deemed to have been committed at the place where the transmission or transmissions originated or at the place where the transmission or transmissions were received.

C. A person who violates this section is guilty of a class 4 felony except if the felony facilitated carries a class 5 or 6 designation in which case a violation of this section shall carry the same classification as the felony facilitated.

**13-3418. Ineligibility to receive public benefits; restoration; definition**

A. On conviction of any offense in this chapter, the court may render the person who is convicted ineligible to receive any public benefits. The court shall determine the length of time that shall elapse before the person's eligibility is restored.

B. The court shall not deny any public benefit otherwise directly or indirectly available to any innocent person nor shall the court deny any public benefit if such denial is in conflict with the laws of the United States.

C. For the purposes of this section, "public benefits" includes any money or services provided by this state for scholarships or tuition waivers granted for state funded universities or community colleges, welfare benefits, public housing or other subsidies but does not include benefits available for drug abuse treatment, rehabilitation or counseling programs.

**13-3419. Multiple drug offenses not committed on the same occasion; sentencing**

A. Except for a person convicted of possession offenses pursuant to section 13-3405, subsection A, paragraph 1, section 13-3407, subsection A, paragraph 1 or section 13-3408, subsection A, paragraph 1, a person who is convicted of two or more offenses under this chapter that were not committed on the same occasion but that either are consolidated for trial purposes or are not historical prior felony convictions shall

be sentenced for the second or subsequent offense pursuant to this section. The person shall not be eligible for suspension of sentence, probation, pardon or release from confinement on any basis except as specifically authorized by section 31-233, subsection A or B until the sentence imposed by the court has been served, the person is eligible for release pursuant to section 41-1604.07 or the sentence is commuted, except that a person sentenced pursuant to paragraph 1 of this subsection shall be eligible for probation. The presumptive term for paragraph 1, 2, 3 or 4 of this subsection may be aggravated under this section pursuant to section 13-701, subsections C and D. The presumptive term for paragraph 1, 2 or 3 of this subsection may be mitigated within the range under this section pursuant to section 13-701, subsections C and E. The terms are as follows:

1. For two offenses for which the aggregate amount of drugs involved in one offense or both of the offenses is less than the statutory threshold amount for the second offense:

<u>Felony</u>	<u>Mitigated</u>	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>	<u>Aggravated</u>
Class 2	3 years	4 years	5 years	10 years	12.5 years
Class 3	1.8 years	2.5 years	3.5 years	7 years	8.7 years
Class 4	1.1 years	1.5 years	2.5 years	3 years	3.7 years
Class 5	.5 years	.75 years	1.5 years	2 years	2.5 years

2. For three or more offenses for which the aggregate amount of drugs involved in one offense or all of the offenses is less than the statutory threshold amount for any offense subsequent to the second offense:

<u>Felony</u>	<u>Mitigated</u>	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>	<u>Aggravated</u>
Class 2	3 years	4 years	5 years	10 years	12.5 years
Class 3	1.8 years	2.5 years	3.5 years	7 years	8.7 years
Class 4	1.1 years	1.5 years	2.5 years	3 years	3.7 years
Class 5	.5 years	.75 years	1.5 years	2 years	2.5 years

3. For two offenses for which the aggregate amount of drugs involved in one offense or all of the offenses equals or exceeds the statutory threshold amount for the second offense:

<u>Felony</u>	<u>Mitigated</u>	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>	<u>Aggravated</u>
Class 2	3 years	4 years	5 years	10 years	12.5 years
Class 3	1.8 years	2.5 years	3.5 years	7 years	8.7 years
Class 4	1.1 years	1.5 years	2.5 years	3 years	3.7 years
Class 5	.5 years	.75 years	1.5 years	2 years	2.5 years

4. For three or more offenses for which the aggregate amount of drugs involved in one offense or all of the offenses equals or exceeds the statutory threshold amount for any offense subsequent to the second offense:

<u>Felony</u>	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>	<u>Aggravated</u>
Class 2	4 years	7 years	12 years	15 years
Class 3	2.5 years	5 years	9 years	11.2 years
Class 4	1.5 years	3 years	5 years	6.2 years
Class 5	.75 years	2.5 years	4 years	5 years

B. If the court increases or decreases a sentence pursuant to this section, the court shall state on the record the reasons for the increase or decrease.

C. The court shall inform all of the parties before the sentencing occurs of its intent to increase or decrease a sentence pursuant to this section. If the court fails to inform the parties, a party waives its right to be informed unless the party timely objects at the time of sentencing.

**13-3420. Unlawful substances; threshold amounts**

(Caution: 1998 Prop. 105 applies)

For purposes of determining if the threshold amount is equaled or exceeded in any single offense or combination of offenses, a percentage of each substance listed by weight in section 13-3401, or any fraction thereof to its threshold amount shall be established. The percentages shall be added to determine if the threshold amount is equaled or exceeded. If the total of the percentages established equals or exceeds one hundred per cent, the threshold amount is equaled or exceeded. If the threshold amount is equaled or exceeded because of the application of this subsection, the person shall be sentenced as if the combination of unlawful substances consisted entirely of the unlawful substance of the greatest proportionate amount. If there are equal proportionate amounts, the person shall be sentenced as if the unlawful substances consisted entirely of the unlawful substance constituting the highest class of offense.

**13-3421. Using building for sale or manufacture of dangerous or narcotic drugs; fortification of a building; classification; definitions**

A. A person who as a lessee or occupant intentionally uses a building for the purpose of unlawfully selling, manufacturing or distributing any dangerous drug or narcotic drug is guilty of a class 6 felony.

B. A person who as a lessee or occupant of a building and who with the intent to suppress law enforcement entry knowingly fortifies or allows to be fortified the building for the purpose of unlawfully selling, manufacturing or distributing any dangerous drug or narcotic drug is guilty of a class 4 felony.

C. As used in this section:

1. "Building" means any part of a building or structure, including a room, space or enclosure, that may be entered through the same outside entrance.

2. "Fortified" means the use of steel doors, wooden planking, cross bars, alarm systems, dogs or other means to prevent or impede entry into a building or structure.

**13-3422. Drug court program; establishment; participation**

A. The presiding judge of the superior court in each county may establish a drug court program as defined in section 13-3401.

B. Cases assigned to the drug court program may consist of defendants who are drug dependent persons and who are charged with a probation eligible offense under this chapter, including preparatory offenses.

C. A defendant may be admitted into the drug court program prior to a guilty plea or a trial only on the agreement of the court and the prosecutor.

D. A defendant is not eligible for entry into the drug court program pursuant to subsections F and H of this section if any of the following applies:

1. The defendant has been convicted of a serious offense as defined in section 13-706.

2. The defendant has been convicted of an offense under chapter 14 of this title.

3. The defendant has been convicted of a dangerous offense.

4. The defendant has completed or previously been terminated from a drug court program other than a juvenile drug court program.

5. The defendant has completed or previously been terminated from a drug diversion program other than a juvenile drug diversion program for an offense in violation of this chapter.

E. For the purposes of subsection D of this section, the age of the conviction does not matter.

F. Notwithstanding any law to the contrary, if a defendant who is assigned to the drug court program is subsequently found guilty of the offense and probation is otherwise available, the court, without entering a judgment of guilt and with the concurrence of the defendant, may defer further proceedings and place the defendant on probation. The terms and conditions of probation shall provide for the treatment of the drug dependent person and shall include any other conditions and requirements that the court deems

appropriate, including the imposition of a fine, payment of fees and any other terms and conditions as provided by law which are not in violation of section 13-901.01.

G. If the defendant is placed on probation pursuant to subsection F of this section and the defendant violates a term or condition of probation, the court may terminate the defendant's participation in the drug court program, enter an adjudication of guilt and revoke the defendant's probation.

H. If the defendant is convicted of an offense listed in subsection I of this section and is placed on probation pursuant to subsection F of this section, on fulfillment of the terms and conditions of probation, the court may discharge the defendant and dismiss the proceedings against the defendant or may dispose of the case as provided by law.

I. A defendant is eligible for dismissal of proceedings as provided in subsection H of this section if the defendant is convicted of any of the following offenses:

1. Possession or use of marijuana in violation of section 13-3405, subsection A, paragraph 1.
2. Possession or use of a prescription-only drug in violation of section 13-3406, subsection A, paragraph 1.
3. Possession or use of a dangerous drug in violation of section 13-3407, subsection A, paragraph 1.
4. Possession or use of a narcotic drug in violation of section 13-3408, subsection A, paragraph 1.
5. Possession or use of drug paraphernalia in violation of section 13-3415, subsection A.
6. Any preparatory offense, as prescribed in chapter 10 of this title, to an offense listed in this subsection.

J. If the defendant is placed on probation pursuant to subsection F of this section and the defendant fails to fulfill the terms and conditions of probation, the court shall enter an adjudication of guilt and sentence the defendant as provided by law.

K. If a defendant chooses not to participate in the drug court program, the defendant shall be prosecuted as provided by law.

L. This section does not prohibit the presiding judge of the superior court from establishing a drug court program other than as defined in section 13-3401 with other terms and conditions, including requiring a defendant to participate in a drug court program subsequent to the entry of judgment of guilt and sentencing.