

Drugs

The increased use of illegal drugs is the most damaging crime to our community. Families are broken apart and many lives are lost needlessly from drug overdose.

Drug addiction is often the motivating factor for committing other crimes. More and more we see drug addicts committing violent crimes like burglary, assaults, and robberies to obtain money to purchase illegal drugs in an effort to satisfy their drug cravings.

To combat the drug problem, the District Attorney's Office pursues several strategies. Of most importance is education. Schools are visited upon request and every effort is made to educate our children of the dangers associated with drug use.

Additionally, the District Attorney's Office manages the Clearfield County Drug Task Force. The Drug Task Force is made possible through grant money received from Attorney General Tom Corbett. The Drug Task Force is made up of municipal police officers from multiple departments in Clearfield County. Task Force officers are a dedicated group who devote their time to the detection, investigation, and prosecution of individuals who violate the Drug Act.

The District Attorney's Office also works closely with the Pennsylvania State Police, Troop-C Vice Unit. Troopers from the Vice Unit work dilligently to infiltrate the local drug culture and prosecute drug dealers in our community.

**THE CONTROLLED SUBSTANCE, DRUG,
DEVICE and COSMETIC ACT**

Most often cited provisions are highlighted in bold

35 P.S. § 780-113

§ 780-113. Prohibited acts; penalties

(a) The following acts and the causing thereof within the Commonwealth are hereby prohibited:

(1) The manufacture, sale or delivery, holding, offering for sale, or possession of any controlled substance, other drug, device or cosmetic that is adulterated or misbranded.

(2) The adulteration or misbranding of any controlled substance, other drug, device or cosmetic.

(3) The dissemination or publication of any false or materially misleading advertisement.

(4) The removal or disposal of a detained or embargoed substance or article, whether or not such substance or article is in fact adulterated or misbranded.

(5) The adulteration, mutilation, destruction, obliteration or removal of the whole or any part of the labeling of, or the doing of any other act with respect to a controlled substance, other drug, device or cosmetic, if such act is done while such substance or article is held for sale and results in such substance or article being adulterated or misbranded.

(6) Forging, counterfeiting, simulating or falsely representing, or without proper authority using any mark, stamp, tag, label or other identification symbol authorized or required by regulation promulgated under the provisions of this act.

(7) Placing or causing to be placed upon any controlled substance,

other drug, device or cosmetic, or upon the container of any controlled substance, other drug, device or cosmetic, with intent to defraud, the trademark, trade name or other identifying mark, imprint or symbol of another, or any likeness of any of the foregoing.

(8) Selling, dispensing, disposing of or causing to be sold, dispensed or disposed of, or keeping in possession, control or custody, or concealing any controlled substance, other drug, device or cosmetic or any container of any drug, device or cosmetic with knowledge that the trademark, trade name or other identifying mark, imprint or symbol of another, or any likeness of any of the foregoing, has been placed thereon in a manner prohibited by clause (7) hereof.

(9) Making, selling, disposing of or causing to be made, sold, or disposed of, or keeping in possession, control or custody, or concealing with intent to defraud, any punch, die, plate, stone or other thing designed to print, imprint or reproduce the trademark, trade name or other identifying mark, imprint or symbol of another or any likeness of any of the foregoing upon any controlled substance, other drug, device or cosmetic or container thereof.

(10) The sale at retail of a nonproprietary drug except by a registered pharmacist in a licensed pharmacy or by a practitioner.

(11) The operation of a drug manufacturing, distributing or retailing establishment, except by registered pharmacists in a licensed pharmacy, without conforming with such standards respecting sanitation, materials, equipment and supplies as the secretary, after consultation with the board, may establish by regulation for the protection of the public health and safety.

(12) The acquisition or obtaining of possession of a controlled substance by misrepresentation, fraud, forgery, deception or subterfuge.

(13) The sale, dispensing, distribution, prescription or gift by any practitioner otherwise authorized by law so to do of any controlled substance to any person known to such practitioner to be or whom such practitioner has reason to know is a drug dependent person, unless said drug is prescribed, administered, dispensed or given, for the cure or treatment of some malady other than drug dependency, except that the council, in accordance with Federal narcotic and food and drug laws, shall allocate the responsibility for approving and designating certain clinics, and shall provide or allocate the responsibility for providing regulations for such clinics at which controlled substances, including but not limited to methadone, may be prescribed, administered or dispensed for the treatment of drug dependency. This clause shall not prohibit any practitioner from prescribing, distributing or dispensing

any controlled substance for a period of time not to exceed fourteen days pending confirmed admission of the patient to a hospital or rehabilitation center.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

controlled substance of a registration number which is fictitious, revoked, suspended or issued to another person.

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

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

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

(31) Notwithstanding other subsections of this section, (i) the possession of a small amount of marihuana only for personal use; (ii) the possession of a small amount of marihuana with the intent to distribute it but not to sell it; or (iii) the distribution of a small amount of marihuana but not for sale. For purposes of this subsection, thirty (30) grams of marihuana or eight (8) grams of hashish shall be considered a small amount of marihuana.

(32) The use of, or possession with intent to use, drug paraphernalia for the purpose of planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packing, repacking, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a controlled substance in violation of this act.

(33) The delivery of, possession with intent to deliver, or manufacture with intent to deliver, drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it would be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled substance in violation of this act.

(34) The placing in any newspaper, magazine, handbill or other publication or by written or electronic means, including electronic mail, Internet, facsimile and similar transmission, any advertisement, knowing, or under circumstances where one reasonably should know, that the purpose of the advertisement, in whole or in part is to promote the sale of objects designed or intended for use as drug paraphernalia.

(35) (i) Except as otherwise provided by law, manufacturing, processing, packaging, distributing, possessing with intent to distribute or selling a noncontrolled substance that has a stimulant or depressant effect on humans, other than a prescription drug, which, or the label or container of which, substantially resembles a specific controlled substance. In determining whether there has been a violation of this subclause, the following factors shall be considered:

(A) Whether the noncontrolled substance in its overall finished dosage appearance is substantially similar in size, shape, color and markings or lack thereof to a specific controlled substance.

(B) Whether the noncontrolled substance in its finished dosage form is packaged in a container which, or the labeling of which, bears markings or printed material substantially similar to that accompanying or containing a specific controlled substance.

(ii) Except as otherwise provided by law, no person shall knowingly distribute or sell a noncontrolled substance upon the express or implied representation that the substance is a controlled substance. In determining whether there has been a violation of this subclause, the following factors shall be considered:

(A) Whether the noncontrolled substance in its overall finished dosage appearance is substantially similar in size, shape, color and markings or lack thereof to a specific controlled substance.

(B) Whether the noncontrolled substance in its finished dosage form is packaged in a container which, or the labeling of which, bears markings or printed material substantially similar to that accompanying or containing a specific controlled substance.

(C) Whether the noncontrolled substance is packaged in a manner

ordinarily used for the illegal delivery of a controlled substance.

(D) Whether the consideration tendered in exchange for the noncontrolled substance substantially exceeds the reasonable value of the substance, considering the actual chemical composition of the substance and, where applicable, the price at which over-the-counter substances of like chemical composition sell.

(E) Whether the consideration tendered in exchange for the noncontrolled substance approximates or exceeds the price at which the substance would sell upon illegal delivery were it actually the specific controlled substance it physically resembles.

(iii) Except as otherwise provided by law, no person shall knowingly distribute or sell a noncontrolled substance upon the express representation that the recipient, in turn, will be able to distribute or sell the substance as a controlled substance.

(iv) In any criminal prosecution brought under this clause, it shall not be a defense that the defendant believed the noncontrolled substance actually to be a controlled substance.

(v) The provisions of this clause shall not be applicable to:

(A) Law enforcement officers acting in the course and legitimate scope of their employment.

(B) Persons who manufacture, process, package, distribute or sell noncontrolled substances to licensed medical practitioners for use as placebos in the course of professional practice or research or for use in FDA approved investigational new drug trials.

(C) Licensed medical practitioners, pharmacists and other persons authorized to dispense or administer controlled substances and acting in the legitimate performance of their professional license pursuant to subclause (v)(B).

(D) A noncontrolled substance that was initially introduced into commerce prior to the initial introduction into commerce of the controlled substance which it is alleged to imitate.

(36) The knowing or intentional manufacture, distribution, possession with intent to distribute, or possession of a designer drug. Nothing in this section shall be construed to apply to a person who manufactures or distributes a substance in conformance with the provisions of an approved new drug application or an exemption for investigational use within the meaning of section 505 of the Federal Food, Drug and Cosmetic Act (21 U.S.C. § 355). For purposes of this section, no new drug shall be introduced or delivered for introduction except upon approval of an application pursuant to section 505 of the Federal Food, Drug and Cosmetic Act.

(37) The possession by any person, other than a registrant, of more than thirty doses labeled as a dispensed prescription or more than three trade packages of any anabolic steroids listed in section 4(3)(vii).

(38) The unlawful manufacture of methamphetamine or phencyclidine or their salts, isomers and salts of isomers, whenever the existence of such salts, isomers or salts of isomers is possible within the specific chemical designation:

(i) in a structure where any child under 18 years of age is present;
or

(ii) where the manufacturing of methamphetamine or phencyclidine causes any child under 18 years of age to suffer bodily injury.

Penalties:

(b) Any person who violates any of the provisions of clauses (1) through (11), (13) and (15) through (20) or (37) of subsection (a) shall be guilty of a

misdemeanor, and except for clauses (4), (6), (7), (8), (9) and (19) shall, on conviction thereof, be sentenced to imprisonment not exceeding one year or to pay a fine not exceeding five thousand dollars (\$5,000), or both, and for clauses (4), (6), (7), (8), (9) and (19) shall, on conviction thereof, be sentenced to imprisonment not exceeding three years or to pay a fine not exceeding five thousand dollars (\$5,000), or both; but, if the violation is committed after a prior conviction of such person for a violation of this act under this section has become final, such person shall be sentenced to imprisonment not exceeding three years or to pay a fine not exceeding twenty-five thousand dollars (\$25,000), or both.

(c) Any person who violates the provisions of clauses (21), (22) and (24) of subsection (a) shall be guilty of a misdemeanor, and shall, on conviction thereof, be punished only as follows:

(1) Upon conviction of the first such offense, he shall be sentenced to imprisonment not exceeding six months, or to pay a fine not exceeding ten thousand dollars (\$10,000), or both.

(2) Upon conviction of the second and subsequent offense, he shall be sentenced to imprisonment not exceeding two years, or to pay a fine not exceeding twenty-five thousand dollars (\$25,000), or both.

(d) Any person who knowingly or intentionally violates clause (23) of subsection (a) is guilty of a misdemeanor and upon conviction thereof shall be sentenced to imprisonment not exceeding three years, or to pay a fine not exceeding fifteen thousand dollars (\$15,000), or both.

(e) Any person who violates clauses (25) through (29) of subsection (a) is guilty of a misdemeanor and upon conviction shall be sentenced to imprisonment not exceeding three years, or to pay a fine not exceeding twenty-five thousand dollars (\$25,000), or both.

(f) Any person who violates clause (12), (14) or (30) of subsection (a) with respect to:

(1) A controlled substance or counterfeit substance classified in Schedule I or II which is a narcotic drug, is guilty of a felony and upon conviction thereof shall be sentenced to imprisonment not exceeding fifteen years, or to pay a fine not exceeding two hundred fifty thousand dollars (\$250,000), or both or such larger amount as is sufficient to exhaust the assets utilized in and the profits obtained from the illegal activity.

(1.1) Phencyclidine; methamphetamine, including its salts, isomers and salts of isomers; coca leaves and any salt, compound, derivative or preparation of coca leaves; any salt, compound, derivative or preparation of the preceding which is chemically equivalent or identical with any of these substances, except decocanized coca leaves or extract of coca leaves, which extracts do not contain cocaine or ecgonine; and marihuana in a quantity in excess of one thousand (1,000) pounds, is guilty of a felony and upon conviction thereof shall be sentenced to imprisonment not exceeding ten years, or to pay a fine not exceeding one hundred thousand dollars (\$100,000), or both, or such larger amount as is sufficient to exhaust the assets utilized in and the profits obtained from the illegal manufacture or distribution of these substances.

(2) Any other controlled substance or counterfeit substance classified in Schedule I, II, or III, is guilty of a felony and upon conviction thereof shall be sentenced to imprisonment not exceeding five years, or to pay a fine not exceeding fifteen thousand dollars (\$15,000), or both.

(3) A controlled substance or counterfeit substance classified in Schedule IV, is guilty of a felony and upon conviction thereof shall be sentenced to imprisonment not exceeding three years, or to pay a fine not exceeding ten thousand dollars (\$10,000), or both.

(4) A controlled substance or counterfeit substance classified in Schedule V, is guilty of a misdemeanor and upon conviction thereof shall be sentenced to imprisonment not exceeding one year, or to pay a fine not exceeding five thousand dollars (\$5,000), or both.

(g) Any person who violates clause (31) of subsection (a) is guilty of a misdemeanor and upon conviction thereof shall be sentenced to imprisonment not exceeding thirty days, or to pay a fine not exceeding five hundred dollars (\$500), or both.

(h) Any penalty imposed for violation of this act shall be in addition to, and not in lieu of, any civil or administrative penalty or sanction authorized by

law.

(i) Any person who violates clauses (32), (33) and (34) of subsection (a) is guilty of a misdemeanor and upon conviction thereof shall be sentenced to pay a fine not exceeding two thousand five hundred dollars (\$2,500) or to imprisonment not exceeding one (1) year, or both. Any person who violates clause (33) by delivering drug paraphernalia to a person under eighteen (18) years of age who is three (3) or more years his junior shall be guilty of a misdemeanor of the second degree and upon conviction thereof shall be sentenced to pay a fine not exceeding five thousand dollars (\$5,000) or to imprisonment not exceeding two (2) years, or both.

(j) Any person who violates any provisions of subclause (i) or (ii) or (iii) of clause (35) of subsection (a) is guilty of a felony, and upon conviction thereof shall be sentenced to imprisonment not exceeding five years, or to pay a fine not exceeding ten thousand dollars (\$10,000), or both.

(k) Any person convicted of manufacture of amphetamine, its salts, optical isomers and salts of its optical isomers; methamphetamine, its salts, isomers and salts of isomers; or phenylacetone and phenyl-2-propanone shall be sentenced to at least two years of total confinement without probation, parole or work release, notwithstanding any other provision of this act or other statute to the contrary.

(l) Any person who violates clause (36) is guilty of a felony and upon conviction thereof shall be sentenced to imprisonment not exceeding fifteen years or to pay a fine not exceeding two hundred fifty thousand dollars (\$250,000), or both.

(m) Repealed.
1993, June 28, P.L. 137, No. 33, § 7, effective in 60 days.

(n) Any person who violates subsection (a)(12), (14), (16), (30) or (34) with respect to gamma hydroxybutyric acid, any salt, compound derivative or preparation of gamma hydroxybutyric acid, including any isomers, esters and ethers and salts of isomers, or esters and ethers of gamma hydroxybutyric acid, except gamma-butyrolactone (GBL), whenever the

existence of such isomers, esters, ethers or salts is possible within the specific chemical designation, is guilty of a felony and upon conviction thereof shall be sentenced to imprisonment not exceeding fifteen years, or to pay a fine not exceeding two hundred fifty thousand dollars (\$250,000), or both, or such larger amount as is sufficient to exhaust the assets utilized in and the profits obtained from the illegal activity.

(o) Any person who violates subsection (a)(12), (14) or (30) with respect to 3,4-methylenedioxyamphetamine (MDA); 3, 4-methylenedioxymethamphetamine (MDMA); 5-methoxy-3, 4-methylenedioxyamphetamine (MMDA); 3,4-methylenedioxy-N-ethylamphetamine; N-hydroxy-3,4-methylenedioxyamphetamine; or their salts, isomers and salts of isomers, whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation, is guilty of a felony and upon conviction thereof shall be sentenced to imprisonment not exceeding fifteen years or to pay a fine not exceeding two hundred fifty thousand dollars (\$250,000), or both, or such larger amount as is sufficient to exhaust the assets utilized in and the profits obtained from the illegal activity.

(p) (1) Any person who violates subsection (a)(38)(i) is guilty of a felony of the third degree and upon conviction thereof shall be sentenced to not more than seven years in prison and a fine of not more than twenty-five thousand dollars (\$25,000), or such larger amount as is sufficient to exhaust the assets utilized in and the profits obtained from the illegal activity.

(2) Any person who violates subsection (a)(38)(ii) is guilty of a felony of the second degree and upon conviction thereof shall be sentenced to not more than ten years in prison and a fine of not more than fifty thousand dollars (\$50,000), or such larger amount as is sufficient to exhaust the assets utilized in and the profits obtained from the illegal activity.