

**DISTRICT OF COLUMBIA OFFICIAL CODE**  
**TITLE 48. FOOD AND DRUGS**  
**SUBTITLE III. ILLEGAL DRUGS**  
**CHAPTER 9. CONTROLLED SUBSTANCES**  
**UNIT A. CONTROLLED SUBSTANCES ACT**

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SUBCHAPTER V. ENFORCEMENT AND ADMINISTRATIVE PROVISIONS

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**SUBCHAPTER V. ENFORCEMENT AND ADMINISTRATIVE PROVISIONS**

**§ 48-905.01. Cooperative arrangements; confidentiality**

(a) The Mayor shall cooperate with the Board of Education, federal agencies, and other state agencies in discharging the Mayor's responsibilities concerning traffic in controlled substances and in suppressing the abuse of controlled substances. To this end, the Mayor may:

- (1) Arrange for the exchange of general information among governmental officials concerning the general use and abuse of controlled substances; and
- (2) Coordinate and cooperate in training programs concerning controlled substance law enforcement within the District of Columbia.

(b) Results, information, and evidence received from the D.E.A. relating to the regulatory functions of this chapter, including results of inspections conducted by it, may be relied and acted upon by the Mayor in the exercise of the Mayor's regulatory functions under this chapter.

(c) (1) A practitioner engaged in medical practice or research shall not nor shall be compelled to:

- (A) Furnish to the Mayor the name or identity of a patient or research subject without the prior consent of the patient or research subject; or

(B) Furnish the name or identity of an individual that the practitioner is obligated to keep confidential in any civil, criminal, administrative, legislative, or other proceedings in the District of Columbia without prior consent of such individual.

(2) This section per se shall not limit, in a criminal investigation or prosecution or in an administrative proceeding by the Commission on Licensure to Practice the Healing Art in the District of Columbia, the authority to subpoena dispensing logs or other records of a practitioner containing information concerning the sale, prescription, or distribution of controlled substances under this chapter. The court may order sealed any information furnished without consent, pursuant to the provisions of this subsection.

**§ 48-905.02. Forfeitures**

(a) The following are subject to forfeiture:

(1) All controlled substances which have been manufactured, distributed, dispensed, or acquired in violation of this chapter;

(2) All raw materials, products, and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, or delivering any controlled substance in violation of this chapter;

(3) All property which is used, or intended for use, as a container for property described in paragraph (1) or (2) of this subsection;

(4) All conveyances, including aircraft, vehicles or vessels, which are used, or intended for use, to transport, or in any manner to facilitate the transportation, for the purpose of sale or receipt of property described in paragraph (1) or (2) of this subsection; provided, that:

(A) No conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this chapter;

(B) No conveyance is subject to forfeiture under this section by reason of any act or omission established by the owner thereof to have been committed or omitted without his or her knowledge or consent;

(C) Repealed; or

(D) A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if he or she neither had knowledge of nor consented to the act or omission;

(5) All books, records, and research products and materials, including formulas, microfilm, tapes, and data, which are used, or intended for use, in violation of this chapter;

(6) All cash or currency which has been used, or intended for use, in violation of this chapter;

(7) Everything of value furnished or intended to be furnished in exchange for a controlled substance in violation of this chapter, all proceeds traceable to such an exchange, and all moneys, negotiable instruments, or securities used or intended to be used to facilitate any violation of this chapter.

(A) No property shall be forfeited under this paragraph, to the extent of the interest of an owner, by reason of any act or omission established by the owner to have been committed or omitted without the owner's knowledge or consent; and

(B) All moneys, coins and currency found in close proximity to forfeitable controlled substances, forfeitable drug manufacturing or distributing paraphernalia or records of the importation, manufacture, or distribution of controlled substances, are presumed to be forfeitable under this paragraph. The burden of proof is upon any claimant of the property to rebut this presumption; and

(8) Any real property that is used or intended to be used in any manner to commit or facilitate the commission of a violation of this chapter, except that:

(A) No real property shall be forfeited under this paragraph by reason of an act or omission established by the owner to have been committed or omitted without the knowledge and consent of the owner;

(B) Real property shall not be subject to forfeiture for a violation of § 48-904.01(d); and

(C) The forfeiture of real property encumbered by a bona fide security interest shall be subject to the interest of the secured party if the secured party had no

knowledge and did not consent to the act or omission that constituted a violation of this chapter.

(a-1) All moneys, coins and currency forfeited pursuant to this chapter shall be deposited as provided in § 23-527 [sic].

(b) Property subject to forfeiture under this chapter may be seized by law enforcement officials, as designated by the Mayor, or designated civilian employees of the Metropolitan Police Department, upon process issued by the Superior Court of the District of Columbia having jurisdiction over the property, or without process if authorized by other law.

(c) In the event of seizure pursuant to subsection (b) of this section, proceedings under subsection (d) of this section shall be instituted promptly.

(d) (1) All controlled substances, the lawful possession of which is not established or the title to which cannot be ascertained, which come into the custody of law-enforcement officials of the District of Columbia, or any designated civilian employees of the Metropolitan Police Department, shall be delivered promptly to the United States Department of Justice or its delegate for disposal, except that controlled substances which may be needed as evidence in any criminal or administrative proceeding pursuant to the provisions of this chapter or the provisions of any federal controlled substances law shall, upon delivery to the United States Department of Justice, not be so disposed of until the public official in charge of prosecuting any violation under this chapter shall certify that such controlled substances are no longer needed as evidence.

(2) Property, other than controlled substances, taken or detained under this section shall not be subject to replevin, but is deemed to be in the custody of the Mayor.

When property is seized under this chapter, the Mayor shall:

(A) Place the property under seal;

(B) Remove the property to a place designated by the Mayor; or

(C) Remove the property to an appropriate location for disposition in accordance with law.

(3) (A) After a proper showing of probable cause for the seizure is made, the Mayor shall cause notice of the seizure of property, other than controlled substances, and the Mayor's intention to forfeit and sell or otherwise dispose of the property in

accordance with this chapter to be published for at least 2 successive weeks in a local newspaper of general circulation. In addition, the Mayor shall provide written notice of the seizure together with information on the applicable procedures for claiming the property to each party who is known or in the exercise of reasonable diligence should be known by the Mayor to have a right of claim to the seized property. Notice to each party shall be by registered or certified mail, return receipt requested.

(B) Any person claiming the property may, at any time within 30 days from the date of receipt of notice of seizure, file with the Mayor a claim stating his or her interest in the property. Upon the filing of a claim, the claimant shall give a bond to the District government in the penal sum of \$ 2,500 or 10% of the fair market value of the claimed property (as appraised by the Chief of the Metropolitan Police Department), whichever is lower, but not less than \$ 250, with sureties to be approved by the Mayor. In case of forfeiture of the claimed property, the costs and expenses of the forfeiture proceedings shall be deducted from the bonds. Any costs that exceed the amount of the bond shall be paid by the claimant. In determining the fair market value of the property seized, the Chief of the Metropolitan Police Department shall consider any verifiable and reasonable evidence of value that the claimant may present. The balance of the proceeds shall be transferred to the Drug Interdiction and Demand Reduction Fund ("Fund") created by subchapter VII of this chapter. The Fund shall remain available until expended regardless of the expiration of the fiscal year in which the proceeds were collected. The Fund shall be distributed in the following descending order of priority:

- (i) To fund law enforcement activities of the Metropolitan Police Department of the District of Columbia, except that, beginning October 1, 1990, not more than 49% of the total amount deposited to the Fund in the immediately preceding quarter-year period shall be used for this purpose in the next succeeding quarter-year period; and
- (ii) To provide grants to fund community-based drug education, prevention, and demand reduction programs;

(C) If a claim and bond (or application for a waiver of bond) are not filed within 30 days of receipt of notice, and if either the property seized has a value of less than \$ 250,000 or the property seized is a conveyance subject to forfeiture under the provisions of paragraph (a)(4) of this section, the Mayor,

after determining that the property is forfeitable under this chapter, shall declare the property forfeited and shall dispose of the property in accordance with the provisions of paragraph (4) of this subsection. If the Mayor determines that the seized property is not forfeitable under this chapter and is not otherwise subject to forfeiture, the Mayor shall return the property to its rightful owner.

(D) If it appears to the Mayor that any property seized under this paragraph is liable to perish, waste, or be greatly reduced in value by the keeping, or that the expense of keeping is disproportionate to the value of the property, the Mayor may proceed to advertise and sell the property at auction or otherwise dispose of the property under rules promulgated by the Mayor.

(E) If the property seized is not forfeited or disposed of in accordance with subparagraphs (C) and (D) of this paragraph, the Mayor shall request the Corporation Counsel to apply to the Superior Court of the District of Columbia for forfeiture of the property in accordance with the rules of the Superior Court of the District of Columbia.

(F) Whenever any person who has an interest in forfeited property files with the Mayor, either before or after the sale or disposition of property, a petition for remission or mitigation of the forfeiture, the Mayor shall remit or mitigate the forfeiture upon the terms and conditions as the Mayor deems reasonable if the Mayor finds:

(i) That the forfeiture was incurred without willful negligence or without any intention on the part of the petitioner to violate the law; or

(ii) That mitigating circumstances justify the remission or mitigation of the forfeiture.

(G) In all suits or actions brought for forfeiture of any property seized under this chapter when the property is claimed by any person, the burden of proof shall be on the claimant once the Mayor has established probable cause as provided in subsection (a) of this section.

(H) The Mayor shall, pursuant to subchapter I of Chapter 5 of Title 2, issue proposed rules to implement the provisions of this paragraph. The proposed rules shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If

the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within this 45-day review period, the proposed rules shall be deemed approved. Nothing in this section shall affect any requirements imposed upon the Mayor by subchapter I of Chapter 5 of Title 2.

(4) When property, other than controlled substances, is forfeited under the Mayor shall:

(A) Retain it for official use;

(B) Sell that which is not required by law to be destroyed and which is not harmful to the public. All proper expenses of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising, and court costs shall be deducted from the proceeds. The balance of the proceeds shall be used, and shall remain available until expended regardless of the expiration of the fiscal year in which they were collected, to finance law enforcement activities of the Metropolitan Police Department of the District of Columbia, with any remaining balance used to finance programs which shall serve to rehabilitate drug addicts, educate citizens, or prevent drug addiction;

(C) Remove the property for disposition in accordance with law; or

(D) Forward it to the D.E.A. for disposition.

(e) During the course of any civil forfeiture proceeding pursuant to this section, which involves real property, the Mayor shall file a notice of the proceeding with the Recorder of Deeds. The notice shall include the legal description of the property and indicate that civil forfeiture is being sought. The Recorder of Deeds shall record the notice against the title of any real property for which civil forfeiture is being sought. Upon resolution of the proceeding, the Recorder of Deeds shall be notified of the disposition of the action.

#### **§ 48-905.03. Burden of proof**

(a) It is not necessary for the prosecution to negate any exemption or exception in this chapter in any complaint, information, indictment, or other pleading or in any trial, hearing, or other proceeding under this chapter. The burden of proof of any exemption or exception is upon the person claiming it.

(b) In the absence of proof that a person is the duly authorized holder of an appropriate

registration or order form issued under this chapter, he or she is presumed not to be the holder of the registration or form. The burden of proof is upon him or her to rebut the presumption.

**§ 48-905.04. Educational programs; research purposes**

(a) The Mayor shall establish and operate an educational program consisting of films, lectures, panel discussions, or whatever other educational device the Mayor deems necessary and appropriate to enlighten persons on the habitual use of controlled substances in general and to instill in persons participating in such a program a respect for the law and legal institutions.

(b) The Mayor shall cooperate with the Board of Education in preparing similar programs for school children with the purpose of preventing their abuse of controlled substances.

(c) The Mayor shall prepare and operate similar and appropriate programs for children found to be delinquent for violation of the provisions of this chapter.

(d) The Mayor may authorize the possession and distribution of controlled substances by persons engaged in research. Possession and distribution of controlled substances by such persons, in the course of their research and to the extent of the authorization, does not violate the provisions of this chapter.

**§ 48-905.05. Administrative inspections**

(a) The Mayor may make administrative inspections of controlled premises in accordance with the following provisions:

(1) For purposes of this section only, the term "controlled premises" means:

(A) Places where persons registered or exempted from registration requirements under this chapter are required to keep records; and

(B) Places including factories, warehouses, establishments, and conveyances in which persons registered or exempted from registration requirements under this chapter are permitted to hold, manufacture, compound, process, sell, deliver, or otherwise dispose of any controlled substance.

(2) When authorized by an administrative inspection warrant issued pursuant to subsection (b) of this section, an officer, an employee designated by the Mayor, or a designated civilian employee of the Metropolitan Police Department, upon presenting the warrant and appropriate credentials to the owner, operator, or agent in charge, may enter controlled premises for the purpose of conducting an administrative inspection.



(3) When authorized by an administrative inspection warrant, an officer or employee designated by the Mayor may:

(A) Inspect and copy records required by this chapter to be kept;

(B) Inspect, within reasonable limits and in a reasonable manner, controlled premises and all pertinent equipment, finished and unfinished material, containers and labeling found therein, and, except as provided in paragraph (5) of this subsection, all other things therein, including records, files, papers, processes, controls, and facilities bearing on violation of this chapter; and

(C) Inventory any stock of any controlled substance therein and obtain samples thereof.

(4) This section does not prevent the inspection without a warrant of books and records pursuant to an administrative subpoena issued in accordance with § 48-905.07 nor does it prevent entries and administrative inspections, including seizures of property, without a warrant:

(A) If the owner, operator, or agent in charge of the controlled premises consents;

(B) In situations presenting imminent danger to health or safety;

(C) In situations involving inspection of conveyances if there is reasonable cause to believe that the mobility of the conveyance makes it impracticable to obtain a warrant;

(D) In any other exceptional or emergency circumstance where time or opportunity to apply for a warrant is lacking; or

(E) In all other situations in which a warrant is not constitutionally required.

(5) An inspection authorized by this section shall not extend to financial data, sales data, other than shipment data, or pricing data unless the owner, operator, or agent in charge of the controlled premises consents in writing.

(b) Issuance and execution of administrative inspection warrants shall be as follows:

(1) A judge of the Superior Court of the District of Columbia, upon proper oath or affirmation showing probable cause, may issue warrants for the purpose of

conducting administrative inspections authorized by this chapter or rules hereunder, and seizures of property appropriate to the inspections. For purposes of the issuance of administrative inspection warrants, probable cause exists upon showing a valid public interest in the effective enforcement of this chapter or rules hereunder, sufficient to justify administrative inspection of the area, premises, building, or conveyance in the circumstances specified in the application for the warrant.

(2) A warrant shall issue only upon an affidavit of a designated officer or employee having knowledge of the facts alleged, sworn to before the judge and establishing the grounds for issuing the warrant. If the judge is satisfied that grounds for the issuance of the warrant exist or that there is probable cause to believe they exist, a warrant shall be issued identifying the area, premises, building, or conveyance to be inspected, the purpose of the inspection, and, if appropriate, the type of property to be inspected, if any. The warrant shall:

(A) State the grounds for its issuance and the name of each person whose affidavit has been taken in support thereof;

(B) Be directed to a person authorized and designated by the Mayor to execute it;

(C) Command the person to whom it is directed to inspect the area, premises, building, or conveyance identified for the purpose specified and, if appropriate, direct the seizure of the property specified;

(D) Identify the item or types of property to be seized, if any; and

(E) Direct that it be served during normal business hours and designate the judge to whom it shall be returned.

(3) A warrant issued pursuant to this section must be executed and returned within 10 days of its date unless, upon a showing of a need for additional time, the Court orders otherwise. If property is seized pursuant to a warrant, a copy shall be given to the person from whom or from whose premises the property is taken, together with a receipt for the property taken. The return of the warrant shall be made promptly, accompanied by a written inventory of any property taken. The inventory shall be made in the presence of the person executing the warrant and of the person from whose possession or premises the property was taken, if present, or in the presence of at least one person other than the person executing the warrant. A copy of the inventory shall be delivered to the person from whom or from whose premises the

property was taken and to the applicant for the warrant.

**§ 48-905.06. Chemist reports**

In a proceeding for a violation of this chapter, the official report of chain of custody and of analysis of a controlled substance performed by a chemist charged with an official duty to perform such analysis, when attested to by that chemist and by the officer having legal custody of the report and accompanied by a certificate under seal that the officer has legal custody, shall be admissible in evidence as evidence of the facts stated therein and the results of that analysis. A copy of the certificate must be furnished upon demand by the defendant or his or her attorney in accordance with the rules of the Superior Court of the District of Columbia or, if no demand is made, no later than 5 days prior to trial. In the event that the defendant or his or her attorney subpoenas the chemist for examination, the subpoena shall be without fee or cost and the examination shall be as on cross-examination.

**§ 48-905.07. Mayoral subpoenas**

(a) In any investigation relating to the Mayor's functions under this subchapter with respect to controlled substances, the Mayor may subpoena witnesses, compel the attendance and testimony of witnesses, and require the production of any records (including books, papers, documents, and other tangible things which constitute or contain evidence) which the Mayor finds relevant or material to the investigation. The attendance of witnesses and the production of records may be required from any place in the District of Columbia. Witnesses summoned under this section shall be paid the same fees and mileage that are paid witnesses in the Superior Court of the District of Columbia.

(b) A subpoena issued under this section may be served by any person designated in the subpoena to serve it. Service upon a natural person may be made by personal delivery of the subpoena to that person. Service may be made upon a domestic or foreign corporation or upon a partnership or other unincorporated association which is subject to suit under a common name, by delivering the subpoena to an officer, to a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process. The affidavit of the person serving the subpoena entered on a true copy thereof by the person serving it shall be proof of service.

(c) In the case of contumacy by or refusal to obey a subpoena issued to any person, the Mayor may invoke the aid of any District of Columbia court within the jurisdiction of which the investigation is carried on or of which the subpoenaed person is an inhabitant, or in which the subpoenaed person carries on business or may be found, to compel compliance with the subpoena. The court may issue an order requiring the subpoenaed person to appear before the Mayor to produce records, if so ordered, or to give testimony touching the matter under investigation. Any failure to obey the order of the court may be punished by the court as a

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contempt thereof.