

LOWER BRULE SIOUX LAW AND ORDER CODE CONTROLLED SUBSTANCES CODE



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Table of Contents

SECTION 1-4-01. POLICY.....	3
SECTION 1-4-02. DEFINITIONS	3
SECTION 1-4-03. SCHEDULES AND PROHIBITED SUBSTANCES	5
SECTION 1-4-04. PROVISIONS GOVERNING MARIJUANA, OVER-THE-COUNTER DRUGS, PEYOTE AND HEMP.....	6
SECTION 1-4-05. REGULATION OF MANUFACTURE, DISTRIBUTION AND DISPENSING OF CONTROLLED SUBSTANCES.....	8
SECTION 1-4-06. OFFENSES AND PENALTIES.....	8
SECTION 1-4-07. CONDITIONAL DISCHARGE FOR FIRST OFFENSE	9
SECTION 1-4-08. FORFEITURE.....	10
SECTION 1-4-09. SEIZURE	10
SECTION 1-4-10. SEARCH WARRANT.....	10
SECTION 1-4-11. KEEPING PLACE FOR USE OR SALE OF CONTROLLED SUBSTANCES.....	11
SECTION 1-4-12. INHABITING ROOM WHERE CONTROLLED SUBSTANCES ARE ILLEGALLY STORED OR USED.....	11
SECTION 1-4-13. INGESTING SUBSTANCE, EXCEPT ALCOHOLIC BEVERAGES, FOR THE PURPOSE OF BECOMING INTOXICATED-VENUE FOR VIOLATION.....	11
SECTION 1-4-14. POSSESSION, SALE OR DISTRIBUTION OF CERTAIN SUBSTANCES FOR THE PURPOSE OF INTOXICATION.....	11
SECTION 1-4-15. DRUG FREE ZONES.....	11

LOWER BRULE SIOUX TRIBE CONTROLLED SUBSTANCES CODE

SECTION 1-4-01. POLICY

A. The purpose of the Lower Brule Sioux Tribe Controlled Substances Code is to protect tribal members and other residents on the Lower Brule Reservation from dangerous or addictive drugs; to provide treatment for drug abuse or addiction; and to prevent and punish the distribution to others of dangerous or addictive drugs.

B. To implement this policy, the Tribe intends to conform to the prohibitions, definitions, and exemptions in 21 U.S.C. §§ 812 and 813, as amended at 21 C.F.R. Part 1308, except as provided herein.

C. It shall be unlawful for any person to possess, use, sell, manufacture, and/or distribute any controlled substance defined and/or described in the Uniform Controlled Substances Act, 21 U.S.C. § 812 and § 813, as updated at 21 C.F.R. Part 1308, without prior authorization, including but not limited to those prohibited controlled substances listed in Sec. 1-4-03.C. below, except as provided in this Code.

D. It shall be unlawful for any person to knowingly possess a medical drug, including those listed in Schedule V below, unless such substance was obtained directly pursuant to a valid prescription or order from a practitioner while acting in the course of his/her professional practice.

SECTION 1-4-02. DEFINITIONS

Terms used in this code mean:

1. "Controlled Substance" means a drug, substance, or immediate precursor listed in Schedules I through V of this act.
2. "Deliver or Delivery" means the actual or constructive transfer from one person to another of a controlled substance, whether or not there is an agency relationship. For purposes of this act, it also includes an offer to sell a controlled substance. Proof of an offer to sell must be corroborated by a person other than the offeree or by evidence other than a statement of the offeree.

3. "Dispense" means to deliver a controlled substance to an ultimate user or research subject by, or pursuant to the lawful order of a practitioner (in the course of professional practice or research), including the prescribing, administering, packaging, labeling, or compounding necessary to prepare the substance for delivery.
4. "Dispenser" means a person who dispenses.
5. "Distributor" means a person who distributes.
6. "Distribute" means to deliver other than by administering or dispensing a controlled substance.
7. "Marijuana" means and includes all parts of the plant *cannabis sativa*, *cannabis americana*, and *cannabis indica*, whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, or derivative, mixture, or preparation of such plant, its seeds or resins, but shall not include the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture or preparation of such mature stalks except the resin extracted therefrom, fiber, oil, or cake, or the sterilized seed of such plant which is incapable of germination.
8. "Opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability.
9. "Opium poppy" means the plant of the species *Papaver somniferum* L., except its seeds.
10. "Person" means any individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.
11. "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.
12. "Possession" means actual care, custody, control, or management.
13. "Practitioner" means:
 - a. A physician, dentist, veterinarian, scientific investigator, or other persons licensed, registered, or otherwise permitted to distribute, dispense, analyze and conduct research with respect to, or to administer a practice or research in this state; or

- b. A pharmacy, hospital, or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to, or administer a controlled substance in the course of professional practice or research in this state.
- 14. "Production" includes manufacturing, planting, cultivating, growing, or harvesting of a controlled substance.
- 15. "Ultimate User" means a person who has lawfully obtained and possesses a controlled substance for his own use or for the use of a member of his household, for administering to an animal owned by him or a member of his household.

SECTION 1-4-03. SCHEDULES AND PROHIBITED SUBSTANCES

A. The term "controlled substance" means drug or other substance, or immediate precursor, included in schedules I, II, III, IV, or V listed in 21 U.S.C. §§ 812 and 813, and also including future amendments to schedules I through V as may be enacted by Congress, or as listed in current or future schedules issued pursuant to authority vested in the Attorney General of the United States pursuant to 21 U.S.C. § 811, currently listed at 21 C.F.R. Part 1308. The term "controlled substance" does not include distilled spirits, wine, malt beverages, or tobacco.

B. The schedules of controlled substances are described as follows:

- 1. SCHEDULE I.
 - (A) The drug or other substance has a high potential for abuse.
 - (B) The drug or other substance has no currently accepted medical use in treatment in the United States.
 - (C) There is a lack of accepted safety for use of the drug or other substance under medical supervision.
- 2. SCHEDULE II.
 - (A) The drug or other substance has a high potential for abuse.
 - (B) The drug or other substance has a currently accepted medical use in treatment in the United States or a currently accepted medical use with severe restrictions.
 - (C) Abuse of the drug or other substances may lead to severe psychological or physical dependence.
- 3. SCHEDULE III.
 - (A) The drug or other substance has a potential for abuse less than the drugs or other substances in schedules I and II.

(B) The drug or other substance has a currently accepted medical use in treatment in the United States.

(C) Abuse of the drug or other substance may lead to moderate or low physical dependence or high psychological dependence.

4. SCHEDULE IV.

(A) The drug or other substance has a low potential for abuse relative to the drugs or other substances in schedule III.

(B) The drug or other substance has a currently accepted medical use in treatment in the United States.

(C) Abuse of the drug or other substance may lead to limited physical dependence or psychological dependence relative to the drugs or other substances in schedule III.

5. SCHEDULE V.

(A) The drug or other substance has a low potential for abuse relative to the drugs or other substances in schedule IV.

(B) The drug or other substance has a currently accepted medical use in treatment in the United States.

(C) Abuse of the drug or other substance may lead to limited physical dependence or psychological dependence relative to the drugs or other substances in schedule IV.

C. Prohibited substances are listed at 21 U.S.C. §§ 812, 813 and 21 CFR Part 1308. They include but are not limited to the following: any narcotic drug, meaning coca leaves, opium, isonipecaine, amidine, isoamidine, kerobernidene, lysergic acid diethylamide, commonly known as LSD, methamphetamine, fentanyl and any fentanyl-related substance or derivative, or any substance neither chemically nor physically distinguishable from them; and other drugs to which the Federal laws relating to narcotic drugs now apply.

SECTION 1-4-04. PROVISIONS GOVERNING MARIJUANA, OVER-THE-COUNTER DRUGS, PEYOTE AND HEMP

A. Marijuana--

1. Possession and use of cannabis is a violation of the Controlled Substances Act of the Lower Brule Sioux Tribe.

2. Provided however, an individual who is exempt from prosecution in a jurisdiction which recognizes the use of marijuana for medicinal purposes is exempt from prosecution under Section 1-4-01 and-03 provided that the individual produces valid documentation from that jurisdiction which demonstrates that the person is authorized to use marijuana for medical purposes. The documentation shall be presented to the arresting officer at the time of arrest or within 48 hours thereafter and shall be presented to the Lower Brule prosecutor

within 48 hours after presentation to the officer. Falsification of any such documentation is a Class C offense.

3. An individual with a medical marijuana exemption may not possess more than two ounces of marijuana.

4. An individual with a medical marijuana exemption may not possess marijuana at a school, on school property, or at his or her workplace on the Lower Brule Sioux Reservation.

5. Penalties- -

a. An offense under this section is:

1. A petty offense with a mandatory fine of \$25.00 if an individual possesses two ounces or less.
2. A Class D offense if an individual possesses more than two ounces but less than four ounces and said individual shall be punished by:
 - a. A fine not to exceed \$100.00;
 - b. Confinement in the Lower Brule Sioux Tribal jail for a term not to exceed 30 days; or
 - c. Both such fine and imprisonment.
3. A Class C offense if an individual possesses more than four ounces, but less than one pound.
4. A Class B offense if an individual possesses more than one pound but less than two pounds.
5. A Class A offense if a person possesses more than two pounds.

B. Peyote--The provisions of this act providing criminal penalties for the possession and distribution of peyote shall not apply to the use of peyote by members of the Native American Church in bona fide religious ceremonies of the church.

C. Over-the -counter Drugs--A non-narcotic substance is excluded from Schedules I through V if the substance may lawfully be sold over the counter without a prescription. Under the Federal Food, Drug and Cosmetic Act, the Lower Brule Sioux Tribal Council shall have no power to include a non-narcotic substance in Schedules I through V if the substance may lawfully be sold over the counter without a prescription under the Federal Food, Drug and Cosmetic Act.

D. Hemp- Exemption of Cannabis plant material and products made from it that contain tetrahydrocannabinols-- Any processed plant material or animal feed mixture containing any amount of tetrahydrocannabinols (THC) that is both: (1) Made from any portion of a plant of the genus Cannabis excluded from the definition of marijuana under the Controlled Substances Act and (2) not used, or intended for use, for human consumption, is exempted from the application of the Controlled Substances Act and this Code.

SECTION 1-4- 05. REGULATION OF MANUFACTURE, DISTRIBUTION AND DISPENSING OF CONTROLLED SUBSTANCES

a. Registration requirements:

1. Every person who manufactures, distributes, analyzes, or dispenses any controlled substance within the exterior boundaries of the Lower Brule Sioux Indian Reservation must possess a valid registration from the State of South Dakota Board of Pharmacy and a license from the State of South Dakota State Treasurer. Said registrations must be obtained annually and be in compliance with all rules and regulations promulgated by the State of South Dakota.
2. Persons registered with the State of South Dakota to manufacture, distribute, dispense, analyze, or conduct research with controlled substances may possess, manufacture, distribute, dispense, analyze, or conduct research with those substances to the extent authorized by their registration.

SECTION 1-4- 06. OFFENSES AND PENALTIES

1. Unlawful manufacture or delivery of controlled substances:

- a. Except as authorized by this act, a person commits an offense if he knowingly or intentionally manufactures or delivers a controlled substance listed in Schedules I through V.
2. An individual adjudged guilty of manufacturing or delivering under this chapter shall be guilty of a Class A offense.
3. Unlawful possession of controlled substance:
 - a. Except as authorized by this act, a person commits an offense if he knowingly or intentionally possesses a controlled substance listed in Schedules I through V unless the substance was obtained directly from or pursuant to a valid prescription or order of a practitioner while acting in the course of his professional practice.
4. An individual adjudged guilty of possessing a controlled substance under this Chapter shall be guilty of a Class A offense, with the exception of prosecution for any offenses pursuant to 1-4-03, above.

SECTION 1-4- 07. CONDITIONAL DISCHARGE FOR FIRST OFFENSE

- a. If any person who has not previously been convicted of an offense under this act, or subsequent to the effective date of this act, under any statute of the United State or of any state relating to a substance that is defined by this act as a controlled substance, is charged with a violation of this subchapter or is found guilty of violation of this subchapter after trial or on a plea of guilty, the Tribal Court may, without entering a judgment of guilty and with the consent of the defendant, defer further proceedings and place him on probation on such reasonable conditions as it may require and for such period as the Tribal Court may prescribe, except that the probationary period may not exceed two years.
- b. Upon violation of a condition of probation, the Tribal Court may enter an adjudication of guilt, pronounce sentence, and punish the defendant accordingly. The Tribal Court may, in its discretion, dismiss the proceedings against the defendant and discharge him or her from probation before the expiration of the maximum period of the probation.
- c. A discharge or dismissal under this section shall not be deemed a conviction for purposes of disqualifications or disabilities imposed by Tribal Law for conviction of Tribal offense, including any provision for enhanced sentence or punishment

for repeat or habitual offenders. There may only be one discharge and dismissal under this section with respect to any person.

- d. This section shall not be construed to provide an exclusive procedure. Any other procedure provided by the Tribal Law relating to suspension of trial or probation may be followed in the discretion of the Tribal Court.

SECTION 1-4-08. FORFEITURE

- a. The following are subject to forfeiture as authorized by this chapter:
 - 1. All controlled substances that are or have been manufactured, distributed, dispensed, delivered, acquired, obtained, or possessed in violation of this act;
 - 2. All raw materials, products, and equipment of any kind that are used, or intended for use in manufacturing, compounding, processing, delivering, importing or exporting any controlled substance in violation of this act, including weapons;
 - 3. All property that is used or intended for use, as a container for property described in paragraphs 1. or 2. herein.
 - 4. All profits, proceeds, and fruits of the unlawful possession, manufacture, distribution, dispensing, delivery, acquisition of controlled substances prohibited by this Code.
- b. The procedures for forfeiture of property as authorized by this Code will conform to the procedures set forth in the Lower Brule Sioux Tribe Law and Order Code-Rules of Criminal Procedure, Rule 32(7).

SECTION 1-4-09. SEIZURE

Property subject to forfeiture above may be seized by any law enforcement officer under authority of a search warrant.

SECTION 1-4-10. SEARCH WARRANT

A search warrant may be issued to search for and seize controlled substances possessed or manufactured in violation of this Code. The application for the issuance of and the execution of

a search warrant under this Code shall conform to the provisions of the Lower Brule Sioux Tribal Code of Criminal Procedure.

SECTION 1-4-11. KEEPING PLACE FOR USE OR SALE OF CONTROLLED SUBSTANCES

Any person who keeps or maintains a place using controlled drugs or substances for the purpose of using such substances, or which is used for keeping or selling of such substances is guilty of a Class A offense.

SECTION 1-4-12. INHABITING ROOM WHERE CONTROLLED SUBSTANCES ARE ILLEGALLY STORED OR USED

Any person who inhabits a room knowing that any controlled drug or substance is being illegally stored or used therein, is guilty of a Class A offense.

SECTION 1-4-13. INGESTING SUBSTANCE, EXCEPT ALCOHOLIC BEVERAGES, FOR THE PURPOSE OF BECOMING INTOXICATED-VENUE FOR VIOLATION

Any person who intentionally ingests, inhales, or otherwise takes into the body any substance, except alcoholic beverages, for the purpose of becoming intoxicated, unless such substance is prescribed by a practitioner of the medical arts lawfully practicing within the scope of the practitioner's practice, is guilty of a Class A offense. The venue for violation of this section exists in either the jurisdiction in which the substance was ingested, inhaled, or otherwise taken into the body or the jurisdiction in which the substance was detected in the body of the accused.

SECTION 1-4-14. POSSESSION, SALE OR DISTRIBUTION OF CERTAIN SUBSTANCES FOR THE PURPOSE OF INTOXICATION

Any person who possesses with the intent to distribute, sell, or distribute a substance knowing that it is to be used in violation of 1-4-13 of this code is guilty of a Class A offense.

SECTION 1-4-15. DRUG FREE ZONES

Any person who commits a violation of the Lower Brule Controlled Substances Code

1. within one thousand feet of real property comprising a public or private elementary or secondary school or a playground, or public or private youth center, or

2. within five hundred feet of real property comprising a public or private youth center, public or private swimming pool or video arcade facility

is guilty of a Class C offense. It is not a defense to this section that school was not in session or that the alleged offender did not know the distance involved.