

640. MANUFACTURE OR SALE OF A CONTROLLED SUBSTANCE

- A. General Prohibition on Manufacture.** It shall be unlawful for any person to manufacture, deliver, or possess with intent to manufacture or deliver without a pharmacist's license any drug which is controlled under the Controlled Substance Act of 1970, as amended (21U.S.C. § 801 et. seq.) or any substance listed in schedule 1 of the Michigan Uniform Controlled Substances Act, as amended (MCL 333.7212), except as provided in Section 641(D) below, this prohibition does not apply to marijuana. Upon conviction, the offender may be sentenced to imprisonment for not more than 1 year, payment of a fine not to exceed \$5,000, or both.

641. POSSESSION, USE, OR MISUSE OF A CONTROLLED SUBSTANCES

- A. Possession or Use without Prescription.** It shall be unlawful for any person to possess or use, without a valid prescription from a medical doctor, a controlled substance, as defined by the Controlled Substance Act of 1970, as amended from time to time (21 § 801 et. seq.) and any substance listed in schedule 1 (MCL 333.7212) or schedule 2 (MCL 333.7214) of the Michigan Uniform Controlled Substance Act, as they may from time to time be amended. Possession or use of marijuana is not prohibited by this subsection.
- 1. Misuse of Prescription Medication.** It shall be unlawful for any person to misuse a prescription medication by using it in a way not intended or not consistent with the directions of the prescribing doctor. Misuse includes but is not limited to: use in higher dose than prescribed; crushing pills to inject, inhale or drink; use of a medication prescribed to another individual; or taking a medication to feel euphoria or achieve a "high".
 - 2. Prescription Fraud.** It shall be unlawful for any person to obtain, or attempt to obtain, a prescription for medication on behalf of another person, or to induce another person to attempt to obtain a prescribed medication on his or her behalf.
 - 3. Prescription Inhalation.** Any person who shall, for the purpose of causing a condition of intoxication, euphoria, excitement, exhilaration, stupefaction, or dulling of the senses or nervous system, intentionally smell or inhale fumes of any chemical agent, is guilty of a violation of this section.
 - 4. Penalties for Violation.** Upon conviction of violating any of the above subsections, the offender may be sentenced to imprisonment of not more than 6 months, payment of a fine not to exceed \$2,500, or both.
- B. Permitted Manufacture, Process and Sale of Marijuana Limited to Tribal Enterprises.** Wholly owned enterprises of Bay Mills Indian Community are the only authorized entities which may engage in the manufacture, process, packaging, delivery, distribution, or sale of marijuana, but solely to the extent provided under the laws of the Bay Mills Indian Community.
- C. Permitted Possession and Use of Marijuana.** The following acts by a person at least 21 years of age shall not constitute criminal or civil offenses under Tribal law. Further, these acts are not: (i)

grounds for seizure or forfeiture of property, (ii) grounds for arrest, prosecution, or penalty in any manner, (iii) grounds for search or inspection, and (iv) grounds to deny any other right or privilege:

1. Possessing, using or consuming, internally possessing, purchasing, transporting, or processing 2.5 ounces or less of marijuana, except that not more than 15 grams of marijuana may be in the form of marijuana concentrate;
2. Within the person's residence, possessing, storing, and processing not more than 10 ounces of marijuana and any marijuana produced by marijuana plants cultivated on the premises and cultivating not more than 12 marijuana plants for personal use, provided that no more than 12 marijuana plants are possessed, cultivated, or processed on the premises at once;
3. Giving away or otherwise transferring without remuneration to a person at least 21 years of age or older up to 2.5 ounces of marijuana, except that not more than 15 grams of marijuana may be in the form of marijuana concentrate, provided that the transfer is not advertised or promoted to the public.

D. ***Possession and Use of Marijuana in Excess of Authorized Amounts.*** Any person 21 years of age or older, who possess, uses, consumes, internally possess, purchases, transports, gives away, transfers without remuneration, or processes marijuana over the established limits outlined above in subsection D shall be guilty of violating this Code, and may be sentenced to one or more of the following penalties listed below.

1. Imprisonment of not more than three (3) months;
2. Payment of a fine not to exceed \$1,000;
3. Perform one (1) to one hundred fifty (150) hours of community service;
4. Serve one (1) to twelve (12) months of probation;
5. Participate in a drug treatment alternative approved by Bay Mills Tribal Court.

E. ***Distribution to a Person under 21 Years of Age.*** Any person at least 21 years of age who sells, gives, distributes, or helps any person under 21 years of age possess, consume, purchase or otherwise obtain marijuana or marijuana accessories shall be guilty of violating this Code, and may be sentenced to one or more of the following penalties listed below.

1. Imprisonment of not more than one (1) year;
2. Payment of a fine not to exceed \$5,000;
3. Perform one (1) to one hundred fifty (150) hours of community service;

4. Serve one (1) to twelve (12) months of probation.

F. **Possession or Use by a Person between 18 and 21 Years of Age.** Any person under 21 years of age, but at least 18 years old, who possesses, purchases, consumes, obtains, or sells marijuana or marijuana accessories shall be guilty of violating this Code, and may be sentenced to one or more of the following penalties listed below. At sentencing, the Judge shall order the Defendant to complete a mandatory substance abuse assessment.

1. Imprisonment of not more than three (3) months;
2. Payment of a fine not to exceed \$500;
3. Perform One (1) to one hundred fifty (150) hours of community service;
4. Serve one (1) to twelve (12) months of probation;
5. Participate in a drug treatment alternative approved by Bay Mills Tribal Court.

G. **Possession or Use by a Minor.** Any person under 18 years of age who possess, purchases, consumes, obtains, or sells marijuana or marijuana accessories shall be guilty of violating this Code, and may be sentenced to one or more of the following penalties listed below. At sentencing, the Judge shall order the Defendant to complete a mandatory substance abuse assessment.

1. Payment of a fine not to exceed \$500;
2. Perform one (1) to one hundred fifty (150) hours of community service;
3. Serve one (1) to twelve (12) months of probation;
4. Participate in a drug treatment alternative approved by Bay Mills Tribal Court.

If the minor completes all sentencing requirements, the Judge retains the discretion to dismiss all charges against the minor.

H. **Marijuana Accessories.** Notwithstanding any other law or provision of this Code, except as otherwise provided in Section 641(C), the use, manufacture, possession, and purchase of marijuana accessories by a person 21 years of age or older and the distribution or sale of marijuana accessories to a person 21 years of age or older is (i) authorized, (ii) not unlawful, (iii) not an offense, (iv) not grounds for seizing or forfeiting property, (v) not grounds for arrest, prosecution, or penalty in any manner, and (vi) is not grounds to deny any other right or privilege.

I. **Custody and Visitation.** A person shall not be denied custody of or visitation with a minor for conduct that is permitted by this act, unless the person's behavior is such that it creates an unreasonable danger to the minor that can be clearly articulated and substantiated.

- J. ***Marijuana Possession or Use Near School, Play, and Public Housing Grounds Prohibited.*** Marijuana products may not be consumed, possessed, or used within, in or on, or within five hundred (500) feet of, the real property comprising a public or private elementary, vocational, or secondary school, or a public or private college, junior college, or university, or a playground, or housing facility owned by a public housing authority, or within one hundred (100) feet of a public or private park, or other community recreational area.
- K. ***Marijuana Possession or Use in Public Areas or Public View Prohibited.*** Marijuana products may not be consumed, possessed, or used within, in or on, or within any public place, or possess marijuana within the public view of the Bay Mills Indian Community. Public view includes, but is not limited to, carrying marijuana on the body of a person where it is visible to the public. Public places include, but are not limited to: tribal government offices, tribal medical and wellness facilities, tribal businesses and enterprises (except for those authorized to sell marijuana), tribal schools, tribal gymnasiums, tribal parking lots, tribal government vehicles, tribally-owned open spaces. Any violation of this subsection shall constitute a civil infraction punishable by a fine not to exceed seventy-five dollars (\$75).

This Section does not authorize operating, navigating, or being in physical control of any motor vehicle, aircraft, snowmobile, off-road recreational vehicle, or motorboat while under the influence of marijuana; nor does this Section amend or repeal Section 819 of the Bay Mills Motor Vehicle and Parking Code (Chapter VIII of the Tribal Code).

All marijuana related offenses now authorized by these Sections may be vacated by the Bay Mills Tribal Court and shall be governed by Chapter XXII of the Bay Mills Law and Order Code.