



# Unlawful Drug Use Adjudications

## The Connecticut Strategy

The National Instant Criminal Background Check System (NICS) Act Record Improvement Program (NARIP) federal grant implements the provisions of the NICS Improvement Amendments Act (NIAA) of 2007. The State of Connecticut received funds under the NARIP 2011 grant to improve the quality, completeness, and availability of NICS records. One of Connecticut's challenges is to develop accurate NIAA State Estimates with narratives that identify the structural or reporting problems of potential NICS records. State Estimates are provided by the originating agencies who may only understand their responsibility in the overarching process.

Connecticut's NCHIP Official, who oversees and verifies the annual NIAA State Estimates to the U.S. Attorney General, sought to create a shared understanding about how data is transmitted to NCIC, III, and the NICS Index. NARIP 2011 funds were utilized to hire business analysts who developed flow charts for Connecticut's current "AS IS" business processes from the local, state and federal levels for all seven (7) categories of records specified in the NIAA. The documentation is intended to provide a comprehensive understanding of the multiple data sources and reporting paths the data follows, providing a more accurate understanding of where records exist and how data is reported. A thorough examination of all the reporting systems can identify and resolve disparities, leading to more records being made available to NICS.

The seven (7) NIAA categories of records that Connecticut is assessing which may disqualify an individual from possessing or receiving a firearm under federal law are as follows:

- 1) Felony Convictions
- 2) Felony Indictments
- 3) Fugitive from Justice (Warrants)
- 4) Unlawful Drug Use Adjudications
- 5) Mental Health Adjudications
- 6) Protection Orders
- 7) Misdemeanor Crimes of Domestic Violence

This document is a work in progress and part of Connecticut's NICS Record Improvement Plan. The analysis contained in this document focuses on the NIAA Category 4 – Unlawful Drug Use Adjudications.

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NIAA Estimates define **Unlawful Drug Use** as records that may identify a person unlawfully using or addicted to a controlled substance, as demonstrated by specified arrests, convictions, and adjudications that are not protected from disclosure to the Attorney General by federal or state law.

Agencies involved in the *business processes* that have an impact on the quality, completeness, and availability of records submitted under Category 4 are:

### Law Enforcement Agencies

Division of Criminal Justice, Office of the Chief State's Attorney (Prosecutor)

Department of Emergency Services and Public Protection (DESPP)

- Connecticut State Police (CSP)
- State Police Bureau of Identification (SPBI)
- Special Licensing and Firearms Unit (SLFU or State Firearms Unit)

Judicial Branch, Office of the Chief Court Administrator (Judicial)

- Adult Probation and Bail Services (Bail/Probation)
- Court Operations Unit (COU)
- Superior Court for Criminal Matters (Criminal Courts)

Department of Corrections (DOC)

Board Pardons and Paroles (BPP)

Office of Policy and Management

The *systems* below have been identified by Agency as being involved in Category 4:

### Law Enforcement Agencies

- Automated Fingerprint Identification System (AFIS)
- Record Management System (RMS)

Department of Emergency Services and Public Protection (DESPP)

- Automated Fingerprint Identification System (AFIS)
- Computerized Criminal History (CCH or State Repository)
- Connecticut On-Line Law Enforcement Communications Technology (COLLECT) Special Licensing Administrative Entry (SLAE)
- CSP's Record Management System (RMS)

Judicial Branch (Judicial)

- Centralized Infractions Bureau (CIB)
- Criminal Motor Vehicle System (CRMVS)
- Protection Order Registry Administrative Reporting Module (POR-ARM)

Department of Corrections (DOC)

- Parole Case Management System

U.S. Department of Justice (USDOJ)

- Integrated Automated Fingerprint Identification System (IAFIS)
- Interstate Identification Index (III)
- National Instant Criminal Background Check System (NICS)

### Unlawful Drug Use by Possession

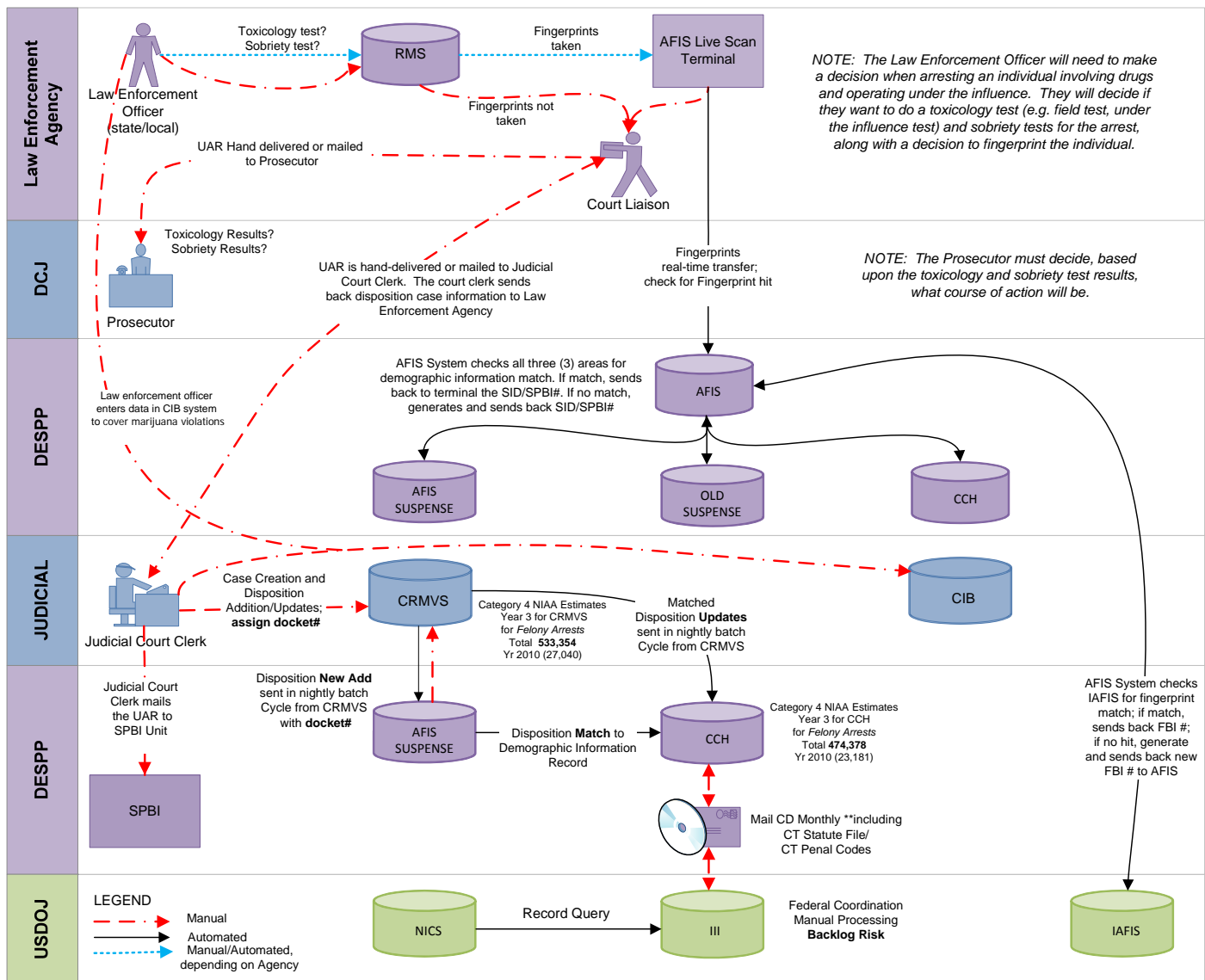
In Connecticut, many Unlawful Drug Use firearms disqualification may be established by actual possession of a controlled substance at the time of an arrest or citation from a law enforcement officer, or by a finding of guilt or responsibility for an offense involving the actual possession of a controlled substance.

The following is a list of pertinent circumstances that relate to establishing Unlawful Drug Use by Possession:

- Arrests for use or possession of a controlled substance within the past year (regardless of offense type, toxicology test required).
- Convictions for use or possession of a controlled substance within the past year (regardless of offense type).
- Persons who test positive for or admit to use of a controlled substance within the past year.
- Seized substance tests positive for a controlled substance.
- Convictions for possession of drug paraphernalia within the past year (toxicology test required).
- Multiple arrests for use or possession of a controlled substance within the past five (5) years if the most recent arrest occurred within the past year.

### Arrest and Disposition Life Cycle – Arrests Involving Drugs

The business and system’s process diagram below shows the *Arrest and Disposition Life Cycle*, which includes the business and system related activities.



For purposes of the NIAA Estimates, these records were broken down as summarized below:

- *Felony Arrests* occur when an individual has been arrested for the use or possession of a controlled substance and operating under the influence. The total NIAA estimates for Felony Arrest records (Year 3) in CRMVS are 533,354 and in CCH 474,378, as shown in the diagram on the previous page.
- *Non-Felony Arrests* occur when an individual has been arrested on a misdemeanor for the use or possession of a controlled substance. The total NIAA estimates for Non-Felony Arrest records (Year 3) in CRMVS are 325,250; year 2010 is 18,793. The total NIAA estimates for Non-Felony Arrest records (Year 3) in CCH are 308,019; year 2010 is 19,324.
- *Non-Felony Convictions* occur when an individual has been convicted on a misdemeanor for use or possession of a controlled substance. These records are **not** included in the NIAA estimates for *Category 1 – Felony Convictions*. The total NIAA estimates for Non-Felony Convictions' records (Year 3) in CRMVS are 156,504; year 2010 is 6,851. The total NIAA estimates for Non-Felony Arrests' records (Year 3) in CCH are 72,843; year 2010 is 3,615.

### Business Process Description

Before booking the individual (e.g. RMS, AFIS, etc), the law enforcement agency will decide whether to conduct a toxicology test on the drugs. If the drugs don't test positive as a controlled substance, the arrest cannot be used for NICS purposes, and in many cases, neither can the conviction. An arrest or conviction that is more than one (1) year old generally cannot serve as an unlawful drug use disqualification.

The business processes for felony arrests are the same as those described in the *Arrest and Disposition Life Cycle* found in *Category 1 – Felony Convictions*.

Most felony convictions can be identified by statute number or penal code section in both systems; however, some felony convictions must be identified by a combination of convictions, statutes, or other code sections. In order to avoid duplication with NIAA records identified in Category 1, unlawful drug use records are identified by their statute number, offense type, and offense class. For 2011, there are a total of 49 statute sections, subsections, and abbreviated and interim code descriptions for all drug offenses in the State of Connecticut. The list of Drug Offense Statutes and code descriptions are *shown in APPENDIX A* of this document.

### Other Adjudications, Including Diversion Programs, Sobriety Tests, and Admissions of Use

The following section describes the *Other Adjudications, Including Diversion Programs, Sobriety Tests, and Admissions of Use Processes*, which includes the business and system related.

Connecticut's NICS Record Improvement Task Force has identified four (4) events involving use of a controlled substance, but computer records are incomplete or unavailable, and preliminary assessments indicate that the records generally are not available to NICS. The four (4) events are:

- Diversion Programs
- Law Enforcement Sobriety Test
- Bail/Probation Positive Test and Admissions
- DOC/Parole Positive Test and Admissions

For purposes of the NIAA Estimates, these records were broken down as:

*Felony/Non-Felony Adjudications* occur when an individual receives court orders imposing any of the following: pretrial diversion, drug diversion, probation without judgment, adjudication withheld, probation or parole conditions, or sentencing conditions which include mandatory drug treatment programs.

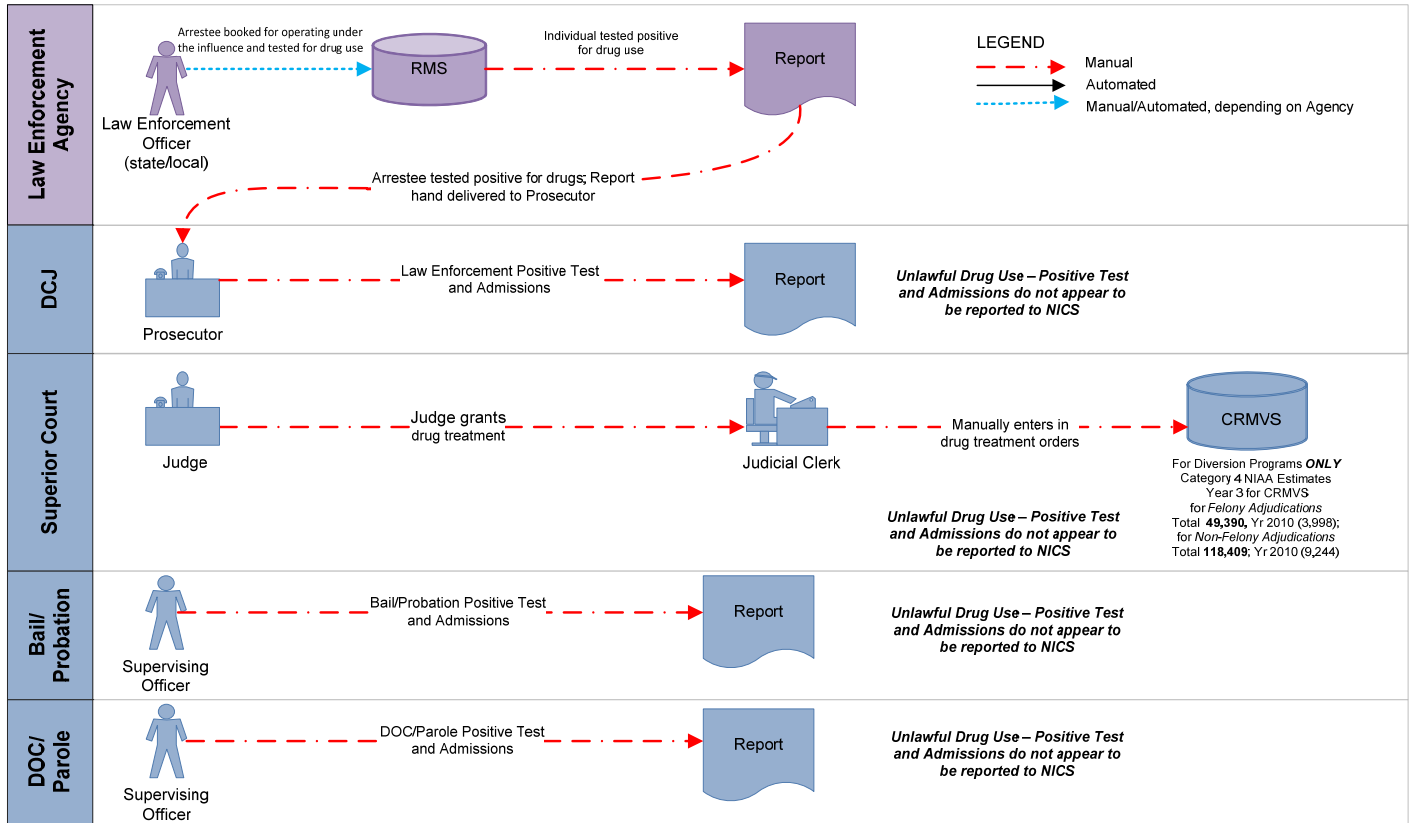
### Business Process Description

#### *Diversion Programs*

In any criminal or motor vehicle matter, the Superior Court may grant or order a defendant's participation in a drug treatment program. For eligibility or participation in such programs, it may involve an admission or other adjudication involving unlawful drug use. If a judge grants or orders participation in any drug treatment program (*e.g. probation or parole conditions, etc.*), the court clerk will enter an associated program code in CRMVS to facilitate the court scheduling. In addition, the court clerk will send the unlawful drug treatment program order to Bail/Probation and DOC/Parole.

The drug treatment program information entered in CRMVS is not available through CCH, and not being complete enough to support actual NICS reporting. However, for purposes of NIAA estimates, CRMVS data was used in an effort to begin assessing the scope and frequency of drug treatment programs. The NIAA estimates for CRMVS are reflected in the diagram on the following page.

The business and system’s process diagram for *Other Adjudications, Including Diversion Programs, Sobriety Tests, and Admissions of Use* is shown below.



**Law Enforcement Sobriety Test**

When an individual is arrested for operating a motor vehicle or boat while under the influence of alcohol or drugs, the law enforcement agency may give the individual a sobriety test. If the sobriety test shows unlawful drug use, the law enforcement agency may give a paper report with the test results to the prosecutor as part of the arrest process. Connecticut’s NICS Record Improvement Task Force is planning to schedule an assessment in this area, but it does not appear that a record of the positive test is available to NICS.

**Bail/Probation Positive Test and Admissions**

The Bail/Probation supervising officer may test certain individuals under bail or probation supervision for unlawful drug use. If the individual has tested positive for unlawful drug use or the individual has admitted to recent use of an unlawful drug, the supervising officer may document the tests and admission. Connecticut’s NICS Record Improvement Task Force is planning to schedule an assessment in this area, but it does not appear that a record of the positive test is available to NICS.

**DOC/Parole Positive Test and Admissions**

The DOC/Parole supervising officer may test certain individuals under DOC or Parole supervision for unlawful drug use. If the individual has tested positive for unlawful drug use or the individual has admitted to recent use of an unlawful drug, the supervising officer may document the tests and admission. Connecticut’s NICS Record Improvement Task Force is planning to schedule an assessment in this area, but it does not appear that a record of the positive test is available to NICS.

NOTE: Some unlawful drug charges may be handled as youthful offender proceedings in the adult criminal courts if the offender is under 18 years of age at the time of the incident. Youthful offender adjudication is not a conviction under state law, or for purposes of NICS, so youthful offender adjudications were not included in the NIAA estimates for this category of record. However, a youthful offender may still be prohibited from possessing firearms for unlawful drug use.

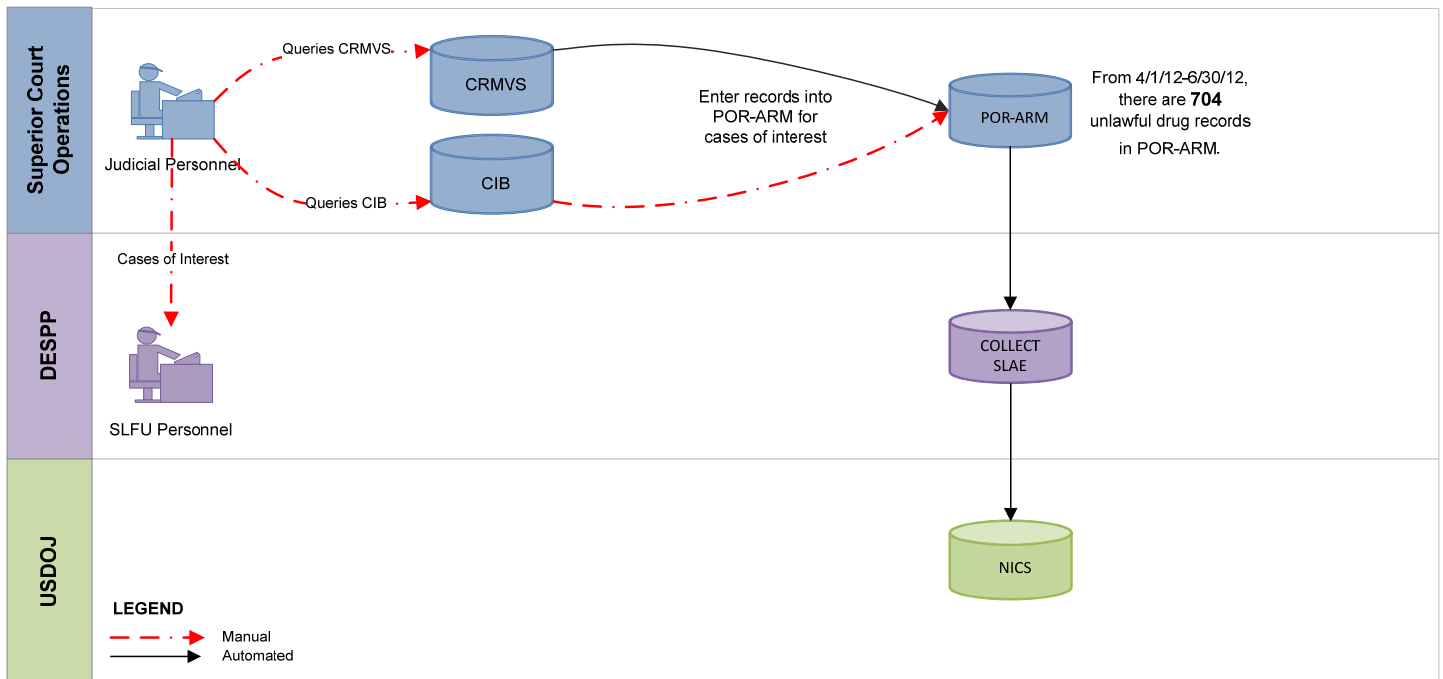
### Challenges

- Adjudication records are not maintained in CCH. This makes disposition records difficult to reconcile in CCH and CRMVS if the case involved a diversion “adjudication” program. If the disposition records are not available in CCH, this record information has **not** been made available to III and NICS.
- All four (4) unlawful drug events do not appear to be reported to NICS and an assessment is recommended in this area (*Diversion Program, Law Enforcement Sobriety Test, Bail/Probation Positive Test and Admissions, and DOC/Parole Positive Test and Admissions*).
- Arrest and conviction records that establish actual drug possession should be made available to NICS through III.
- Unlawful drug arrest and conviction records that are *not* fingerprint supported will not be available in III and NICS. This requires manual intervention to make these records available to the federal systems.
- Unlawful drug arrest records that are not fingerprint supported will cause significant delays in the availability, accuracy, completeness, and quality of the unlawful drug conviction record being available to NICS.
- It appears that some unlawful drug arrests are *not* fingerprint supported because of limitations in staffing and equipment, and agency policies among the law enforcement agencies.

### Interim Remedial Measures

From the challenges summarized above, Connecticut’s NICS Record Improvement Task Force recognizes that many arrest and conviction records are not available to NICS through III. With assistance under the NCHIP grant, the Judicial Branch and the SLFU implemented an interim manual process for validating and reporting certain conviction records to NICS that are not available through III. As of June 30, 2012, more than 2,600 unlawful drug use records were made available to NICS through this process.

The business and systems process diagram of interim processes is shown below:



## APPENDIX A - List of Drug Offense Statutes

OFFENSES	STATUTE	FULL NAME	OFFENSE TYPE	OFFENSE	STATUS	COMMENT
1	21a-245	VIO RESTRICTED SUBSTANCES	Felony	Unclassified	Active	
2	21a-266(a)(1)	OBTN CNTRLD DRUG-FRAUD	Felony	Unclassified	Active	
3	21a-266(a)(2)	OBTN CNTRLD DRUG-FORGED P	Felony	Unclassified	Active	
4	21a-266(a)(3)	OBTN CNTRLD DRUG-CONCEAL	Felony	Unclassified	Active	
5	21a-266(a)(4)	OBTN CNTRLD DRUG-FLS NAME	Felony	Unclassified	Active	
6	21a-266(h)	ILL OBTN DRUGS-SECOND DOC	Felony	Unclassified	Active	
7	21a-266(d)	ILL OBTN DRUGS BY FALSE T	Felony	Unclassified	Active	
8	21a-266(e)	ILL ISSUE FALSE PRESCRIPT	Felony	Unclassified	Active	
9	21a-266(f)	ILL USE FALSE PRESCRIPT L	Felony	Unclassified	Active	
10	21a-266(g)	ILL ALTER PRESCRIPTION	Felony	Unclassified	Active	
11	21a-267(c)	NON-STDNT POS DRG PARA NR	Felony	Unclassified	Active	
12	21a-277	IL SALE MANUF.CONTR DRUGS	Felony	Unclassified	Active	
13	21a-277(a)	SALE OF HALLUCINOGEN/NARC	Felony	Unclassified	Active	
14	21a-277(a)**+	POSS W/INTENT (3RD OFF)	Felony	Unclassified	Active	
15	21a-277(a)+	POSSESS W/INTENT TO SELL/	Felony	Unclassified	Active	
16	21a-277(b)	SALE OF CONTROLLED SUBSTA	Felony	Unclassified	Active	
17	21a-277(b)**	DISPENSE CONTROLLED SUBST	Felony	Unclassified	Active	
18	21a-277(b)*+	POSSESS W/INTENT (SBS OFF	Felony	Unclassified	Active	
19	21a-277(b)+	POSSESS W/INTENT TO SELL/	Felony	Unclassified	Active	
20	21a-277(c)	OPERATION OF DRUG FACTORY	Felony	Unclassified	Active	
21	21a-277(c)*	OPN OF DRUG FACTORY (SBS	Felony	Unclassified	Active	
22	21a-278(a)	SALE OF CERTAIN ILLEGAL D	Felony	Unclassified	Active	
23	21a-278(a)+	POSSESS W/INTENT TO SELL/	Felony	Unclassified	Active	
24	21a-278(b)	SALE OF CERTAIN ILLEGAL D	Felony	Unclassified	Active	
25	21a-278(b)*	SALE CERTAIN ILL DRG (SBS	Felony	Unclassified	Active	
26	21a-278(b)*+	POSSESS W/INTENT (SBS OFF	Felony	Unclassified	Active	
27	21a-278(b)+	POSSESS W/INTENT TO SELL/	Felony	Unclassified	Active	
28	21a-278a(a)	DIST CONT SUB TO PERSON <	Felony	Unclassified	Active	
29	21a-278a(b)	CNT SUB WI 1500' SCH/HSG/	Felony	Unclassified	Active	
30	21a-279	ILLEGAL POSSESSION OF NAR X	Felony	Unclassified	Active	
31	21a-279(a)	POSSESSION OF NARCOTICS	Felony	Unclassified	Active	
32	21a-279(b)	POSS HALLUCINOGEN/>4 OZ M	Felony	Unclassified	Active	
33	21a-279(c)*	POSS HALLUCINOGEN /<4 OZ M (Subsequent Offense)	Felony	Unclassified	Active	[PA11-71-Sec 2]
34	21a-279(d)	NONSTDNT-DRGS NR SCH/HSG/	Felony	Unclassified	Active	
35	21a-267(b)	DELIVERY OF DRUG PARAPHER	Misdemeanor	A	Active	[PA11-71-Sec 3]
36	21a-	USE OF DRUG PARAPHERNALIA	Misdemeanor	C	Active	[PA11-71-Sec 3]
37	21a-93	VIO UNIFORM DRUG/COSMETIC	Misdemeanor	Unclassified	Active	
38	21a-93*	VIO DRUG/COSMETC ACT (SBS	Misdemeanor	Unclassified	Active	
39	21a-93**	VIO DRUG/CSMTC ACT-FRAUD	Misdemeanor	Unclassified	Active	
40	21a-108	OBTAINING DRUGS ILLEGALLY	Misdemeanor	Unclassified	Active	
41	21a-108(1)	ILL OBTN PRCRPTN DRUG-FRA	Misdemeanor	Unclassified	Active	
42	21a-108(2)	ILL SALE PRESCRIPTION DRU	Misdemeanor	Unclassified	Active	
43	21a-279(c)	POSS HALLUCINOGEN /<4 OZ M (First Offense)	Misdemeanor	Unclassified	Active	[PA11-71-Sec 2]
44	21a-	Possess drug paraphernalia < 1/2 ounce marijuana	Infraction		Active	[New PA 11-71-3]
45	21a-	Delivery drug paraphernalia < 1/2 ounce marijuana	Infraction		Active	[New PA 11-71-3]
46	21a-279a(a)(1)	POSS CNTRLD SBSTNC/<4 OZ (First Offense)	Violation		Active	[New PA11-71-Sec 1]
47	21a-	POSS CNTRLD SBSTNC/<4 OZ (Subsequent Offense)	Violation		Active	[New PA11-71-Sec 1]
48	PA11-71(1)(a)(1)	POSS CNTRLD SBSTNC/<4 OZ (First Offense)	Violation		Active	[New PA11-71-Sec 1]
49	PA11-71(1)(a)(2)	POSS CNTRLD SBSTNC/<4 OZ (Subsequent Offense)	Violation		Active	[New PA11-71-Sec 1]