CHAPTER 961

UNIFORM CONTROLLED SUBSTANCES ACT

NOTE: See Chapter 161, 1993−94 Stats., for detailed notes on actions by the Controlled Substances Board. (Chapter 961 was renumbered from ch. 161 by 1995 Wis. Act 448.)

961.001 Declaration of intent. The legislature finds that the abuse of controlled substances constitutes a serious problem for society. As a partial solution, these laws regulating controlled substances have been enacted with penalties. The legislature, recognizing a need for differentiation among those who would violate these laws makes this declaration of legislative intent:

(1g) Many of the controlled substances included in this chapter have useful and legitimate medical and scientific purposes and are necessary to maintain the health and general welfare of the people of this state.

(1m) The manufacture, distribution, delivery, possession and use of controlled substances for other than legitimate purposes have a substantial and detrimental effect on the health and general welfare of the people of this state.

(1r) Persons who illicitly traffic commercially in controlled substances constitute a substantial menace to the public health and safety. The possibility of lengthy terms of imprisonment must exist as a deterrent to trafficking by such persons. Upon conviction for trafficking, such persons should be sentenced in a manner which will deter further trafficking by them, protect the public from their pernicious activities, and restore them to legitimate and socially useful endeavors.

(2) Persons who habitually or professionally engage in commercial trafficking in controlled substances and prescription drugs should, upon conviction, be sentenced to substantial terms of imprisonment to shield the public from their predatory acts. However, persons addicted to or dependent on controlled substances should, upon conviction, be sentenced in a manner most likely to produce rehabilitation.

(3) Upon conviction, persons who casually use or experiment with controlled substances should receive special treatment geared toward rehabilitation. The sentencing of casual users and experimenters should be such as will best induce them to shun further contact with controlled substances and to develop acceptable alternatives to drug abuse.

History: 1971 c. 219; 1995 a. 448 ss. 107 to 110, 462, 463; Stats. 1995 s. 961.001.

SUBCHAPTER I

DEFINITIONS

961.01 Definitions. As used in this chapter:

(1) "Administer", unless the context otherwise requires, means to apply a controlled substance, whether by injection, inhalation, ingestion or any other means, to the body of a patient or research subject by:

(a) A practitioner or, in the practitioner's presence, by the practitioner's authorized agent; or

(b) The patient or research subject at the direction and in the presence of the practitioner.

(2) "Agent", unless the context otherwise requires, means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor or dispenser. "Agent" does not include a common or contract carrier, public warehouse keeper or employee of the carrier or warehouse keeper while acting in the usual and lawful course of the carrier's or warehouse keeper's business.

(2m) (a) "Anabolic steroid" means any drug or hormonal substance, chemically or pharmacologically related to testosterone, except estrogens, progestin, and corticosteroids, that promotes muscle growth. The term includes all of the substances included in s. 961.18 (7), and any of their esters, isomers, esters of isomers, salts and salts of esters, isomers and esters of isomers, that are theoretically possible within the specific chemical designation, and if such esters, isomers, esters of isomers, salts and salts of esters, isomers and esters of isomers promote muscle growth.

(b) Except as provided in par. (c), the term does not include an anabolic steroid which is expressly intended for administration through implants to cattle or other nonhuman species and which has been approved by the United States Secretary of Health and Human Services for such administration.

(c) If a person prescribes, dispenses or distributes such steroid for human use, such person shall be considered to have prescribed, dispensed or distributed an anabolic steroid within the meaning of par. (a).

(4) "Controlled substance" means a drug, substance or immediate precursor included in schedules I to V of subch. II.

(4m) (a) "Controlled substance analog" means a substance the chemical structure of which is substantially similar to the chemical structure of a controlled substance included in schedule I or II and:

1. Which has a stimulant, depressant, narcotic or hallucinogenic effect on the central nervous system substantially similar to the stimulant, depressant, narcotic or hallucinogenic effect on the central nervous system of a controlled substance included in schedule I or II; or

2. With respect to a particular individual, which the individual represents or intends to have a stimulant, depressant, narcotic or hallucinogenic effect on the central nervous system substantially similar to the stimulant, depressant, narcotic or hallucinogenic effect on the central nervous system of a controlled substance included in schedule I or II.

(b) "Controlled substance analog" does not include:

1. A controlled substance;

2. A substance for which there is an approved new drug application;

3. A substance with respect to which an exemption is in effect for investigational use by a particular person under 21 USC 355 to the extent that conduct with respect to the substance is permitted by the exemption; or

4. Any substance to the extent not intended for human consumption before an exemption takes effect with respect to the substance.

(5) "Counterfeit substance" means a controlled substance which, or the container or labeling of which, without authorization, bears the trademark, trade name or other identifying mark, imprint, number or device, or any likeness thereof, of a manufacturer, distributor or dispenser other than the person who in fact manufactured, distributed or dispensed the substance.

(6) "Deliver" or "delivery", unless the context otherwise requires, means the actual, constructive or attempted transfer from one person to another of a controlled substance or controlled substance analog, whether or not there is any agency relationship.

(7) "Dispense" means to deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling or compounding necessary to prepare the substance for that delivery.

(8) "Dispenser" means a practitioner who dispenses.

(9) "Distribute" means to deliver other than by administering or dispensing a controlled substance or controlled substance analog.

(10) "Distributor" means a person who distributes.

(10m) "Diversion" means the transfer of any controlled substance from a licit to an illicit channel of distribution or use.

(11) (a) "Drug" means any of the following:

1. A substance recognized as a drug in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States or official National Formulary or any supplement to any of them.

2. A substance intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in humans or animals.

3. A substance, other than food, intended to affect the structure or any function of the body of humans or animals.

4. A substance intended for use as a component of any article specified in subd. 1., 2. or 3.

(b) "Drug" does not include devices or their components, parts or accessories.

(11m) "Drug enforcement administration" means the drug enforcement administration of the U.S. department of justice or its successor agency.

(12) "Immediate precursor" means a substance which the controlled substances board has found to be and by rule designates as being the principal compound commonly used or produced primarily for use, and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail or limit manufacture.

(12g) "Isomer" means an optical isomer, but in ss. 961.14 (2) (er) and (qs) and 961.16 (2) (b) 1. "isomer" includes any geometric isomer; in ss. 961.14 (2) (cg), (tg) and (xm) and 961.20 (4) (am) "isomer" includes any positional isomer; and in ss. 961.14 (2) (rj) and (4) and 961.18 (2m) "isomer" includes any positional or geometric isomer.

(12m) "Jail or correctional facility" means any of the following:

(a) A Type 1 prison, as defined in s. 301.01 (5).

(b) A jail, as defined in s. 302.30.

(c) A house of correction.

(d) A Huber facility under s. 303.09.

(e) A lockup facility, as defined in s. 302.30.

(f) A work camp under s. 303.10.

(13) "Manufacture" means the production, preparation, propagation, compounding, conversion or processing of, or to produce, prepare, propagate, compound, convert or process, a controlled substance or controlled substance analog, directly or indirectly, by extraction from substances of natural origin, chemical synthesis or a combination of extraction and chemical synthesis, including to package or repackage or the packaging or repackaging of the substance, or to label or to relabel or the labeling or relabeling of its container. "Manufacture" does not mean to prepare, compound, package, repackage, label or relabel or the preparation, compounding, packaging, repackaging, labeling or relabeling of a controlled substance:

(a) By a practitioner as an incident to the practitioner's administering or dispensing of a controlled substance in the course of the practitioner's professional practice; or

(b) By a practitioner, or by the practitioner's authorized agent under the practitioner's supervision, for the purpose of, or as an incident to, research, teaching or chemical analysis and not for sale.

(14) "Marijuana" means all parts of the plants of the genus Cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin, including tetrahydrocannabinols. "Marijuana" does

include the mature stalks if mixed with other parts of the plant, but does not include fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil or cake or the sterilized seed of the plant which is incapable of germination.

(14m) "Multiunit public housing project" means a public housing project that includes 4 or more dwelling units in a single parcel or in contiguous parcels.

(15) "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(a) Opium and substances derived from opium, and any compound, derivative or preparation of opium or substances derived from opium, including any of their salts, isomers and salts of isomers that are theoretically possible within the specific chemical designation. The term does not include the isoquinoline alkaloids of opium.

(bm) Synthetic opiate, and any derivative of synthetic opiate, including any of their isomers, esters, ethers, esters and ethers of isomers, salts and salts of isomers, esters, ethers and esters and ethers of isomers that are theoretically possible within the specific chemical designation.

(c) Opium poppy, poppy straw and concentrate of poppy straw.

(d) Any compound, mixture or preparation containing any quantity of any substance included in pars. (a) to (c).

(16) "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. "Opiate" includes opium, substances derived from opium and synthetic opiates. "Opiate" does not include, unless specifically scheduled as a controlled substance under s. 961.11, the dextrorotatory isomer of 3−methoxy−N−methylmorphinan and its salts (dextromethorphan). "Opiate" does include the racemic and levorotatory forms of dextromethorphan.

(17) "Opium poppy" means any plant of the species Papaver somniferum L., except its seeds.

(18) "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.

(19) "Practitioner" means:

(a) A physician, advanced practice nurse, dentist, veterinarian, podiatrist, optometrist, scientific investigator or, subject to s. 448.21 (3), a physician assistant, or other person licensed, registered, certified or otherwise permitted to distribute, dispense, conduct research with respect to, administer or use in teaching or chemical analysis a controlled substance in the course of professional practice or research in this state.

(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.

(20) "Production", unless the context otherwise requires, includes the manufacturing of a controlled substance or controlled substance analog and the planting, cultivating, growing or harvesting of a plant from which a controlled substance or controlled substance analog is derived.

(20g) "Public housing project" means any housing project or development administered by a housing authority, as defined in s. 16.30 (2).

(20h) "Public transit vehicle" means any vehicle used for providing transportation service to the general public.

(20i) "Scattered−site public housing project" means a public housing project that does not include 4 or more dwelling units in a single parcel or in contiguous parcels.

(21) "Ultimate user" means an individual who lawfully possesses a controlled substance for that individual's own use or for the use of a member of that individual's household or for administering to an animal owned by that individual or by a member of that individual's household.

(21m) "Vehicle" has the meaning given in s. 939.22 (44).

(22) "Youth center" means any center that provides, on a regular basis, recreational, vocational, academic or social services activities for persons younger than 21 years old or for those persons and their families.

History: 1971 c. 219; 1979 c. 89; 1981 c. 200, 206; 1983 a. 500 s. 43; 1989 a. 31; CSB 2.21; 1993 a. 87, 129, 138, 184, 281, 482; 1995 a. 281 s. 2; 1995 a. 448 ss. 112 to 143, 247, 248, 464 to 468; Stats. 1995 s. 961.01; 1997 a. 35 s. 338; 1997 a. 67; 1999 a. 85.

A constructive delivery under sub. (6) may be found if a single actor leaves a substance somewhere for later retrieval by another. State v. Wilson, 180 Wis. 2d 414, 509 N.W.2d 128 (Ct. App. 1993).

Day care centers are a subset of "youth centers" as defined in s. 961.01(22) and come within the definition of places listed in s. 961.49 (2). State v. Van Riper, 222 Wis. 2d 197, 586 N.W.2d 198 (Ct. App. 1998).

SUBCHAPTER II

STANDARDS AND SCHEDULES

961.11 Authority to control. (1) The controlled substances board shall administer this subchapter and may add substances to or delete or reschedule all substances listed in the schedules in ss. 961.14, 961.16, 961.18, 961.20 and 961.22 pursuant to the rule−making procedures of ch. 227.

(1m) In making a determination regarding a substance, the board shall consider the following:

(a) The actual or relative potential for abuse;

(b) The scientific evidence of its pharmacological effect, if known;

(c) The state of current scientific knowledge regarding the substance;

(d) The history and current pattern of abuse;

(e) The scope, duration and significance of abuse;

(f) The risk to the public health;

(g) The potential of the substance to produce psychological or physical dependence liability; and

(h) Whether the substance is an immediate precursor of a substance already controlled under this chapter.

(1r) The controlled substances board may consider findings of the federal food and drug administration or the drug enforcement administration as prima facie evidence relating to one or more of the determinative factors.

(2) After considering the factors enumerated in sub. (1m), the controlled substances board shall make findings with respect to them and promulgate a rule controlling the substance upon finding that the substance has a potential for abuse.

(3) The controlled substances board, without regard to the findings required by sub. (2) or ss. 961.13, 961.15, 961.17, 961.19 and 961.21 or the procedures prescribed by subs. (1), (1m), (1r) and (2), may add an immediate precursor to the same schedule in which the controlled substance of which it is an immediate precursor is included or to any other schedule. If the board designates a substance as an immediate precursor, substances which are precursors of the controlled precursor shall not be subject to control solely because they are precursors of the controlled precursor.

(4) If a substance is designated, rescheduled or deleted as a controlled substance under federal law and notice thereof is given to the controlled substances board, the board by affirmative action shall similarly treat the substance under this chapter after the expiration of 30 days from the date of publication in the federal register of a final order designating the substance as a controlled substance or rescheduling or deleting the substance or from the date of issuance of an order of temporary scheduling under 21 USC 811 (h), unless within that 30−day period, the board or an interested party objects to the treatment of the substance. If no objection is made, the board shall promulgate, without making the determinations or

findings required by subs. (1), (1m), (1r) and (2) or s. 961.13, 961.15, 961.17, 961.19 or 961.21, a final rule, for which notice of proposed rule making is omitted, designating, rescheduling, temporarily scheduling or deleting the substance. If an objection is made the board shall publish notice of receipt of the objection and the reasons for objection and afford all interested parties an opportunity to be heard. At the conclusion of the hearing, the board shall make a determination with respect to the treatment of the substance as provided in subs. (1), (1m), (1r) and (2) and shall publish its decision, which shall be final unless altered by statute. Upon publication of an objection to the treatment by the board, action by the board under this chapter is stayed until the board promulgates a rule under sub. (2).

(4m) The controlled substances board, by rule and without regard to the requirements of sub. (1m), may schedule a controlled substance analog as a substance in schedule I regardless of whether the substance is substantially similar to a controlled substance in schedule I or II, if the board finds that scheduling of the substance on an emergency basis is necessary to avoid an imminent hazard to the public safety and the substance is not included in any other schedule or no exemption or approval is in effect for the substance under 21 USC 355. Upon receipt of notice under s. 961.25, the board shall initiate scheduling of the controlled substance analog on an emergency basis under this subsection. The scheduling of a controlled substance analog under this subsection expires one year after the adoption of the scheduling rule. With respect to the finding of an imminent hazard to the public safety, the board shall consider whether the substance has been scheduled on a temporary basis under federal law or factors under sub. (1m) (d), (e) and (f), and may also consider clandestine importation, manufacture or distribution, and, if available, information concerning the other factors under sub. (1m). The board may not promulgate a rule under this subsection until it initiates a rule−making proceeding under subs. (1), (1m), (1r) and (2) with respect to the controlled substance analog. A rule promulgated under this subsection lapses upon the conclusion of the rule−making proceeding initiated under subs. (1), (1m), (1r) and (2) with respect to the substance.

(5) The authority of the controlled substances board to control under this section does not extend to intoxicating liquors, as defined in s. 139.01 (3), to fermented malt beverages as defined in s. 125.02, or to tobacco.

(6) (a) The controlled substances board shall not have authority to control a nonnarcotic substance if the substance may, under the federal food, drug and cosmetic act and the laws of this state, be lawfully sold over the counter without a prescription.

(b) If the board finds that any nonnarcotic substance barred from control under this chapter by par. (a) is dangerous to or is being so used as to endanger the public health and welfare, it may request the department of justice in the name of the state to seek a temporary restraining order or temporary injunction under ch. 813 to either ban or regulate the sale and possession of the substance. The order or injunction shall continue until the adjournment of the legislature convened next following its issuance. In making its findings as to nonnarcotic substances under this paragraph, the board shall consider the items specified in sub. (1m).

History: 1971 c. 219, 307; Sup. Ct. Order, 67 Wis. 2d 585, 774 (1975); 1981 c. 79 s. 18; 1983 a. 189 s. 329 (13); 1995 a. 448 ss. 145 to 152, 469, 470; Stats. 1995 s. 961.11.

Cross Reference: See also CSB, Wis. adm. code.

961.115 Native American Church exemption. This chapter does not apply to the nondrug use of peyote and mescaline in the bona fide religious ceremonies of the Native American Church.

History: 1971 c. 219; 1995 a. 448 s. 153; Stats. 1995 s. 961.115.

Because the exemption is based upon the unique cultural heritage of Native Americans, it is not an unconstitutional classification. State v. Peck, 143 Wis. 2d 624, 422 N.W.2d 160 (Ct. App. 1988).

961.12 Nomenclature. The controlled substances listed in or added to the schedules in ss. 961.14, 961.16, 961.18, 961.20 and 961.22 may be listed or added by any official, common, usual, chemical or trade name used for the substance.

History: 1971 c. 219; 1995 a. 448 s. 154; Stats. 1995 s. 961.12.

961.13 Schedule I tests. (1m) The controlled substances board shall add a substance to schedule I upon finding that the substance:

(a) Has high potential for abuse;

(b) Has no currently accepted medical use in treatment in the United States; and

(c) Lacks accepted safety for use in treatment under medical supervision.

(2m) The controlled substances board may add a substance to schedule I without making the findings required under sub. (1m) if the substance is controlled under schedule I of 21 USC 812 (c) by a federal agency as the result of an international treaty, convention or protocol.

History: 1971 c. 219; 1995 a. 448 ss. 155, 156, 471; Stats. 1995 s. 961.13.

961.14 Schedule I. Unless specifically excepted by state or federal law or regulation or more specifically included in another schedule, the following controlled substances are listed in schedule I:

(2) SYNTHETIC OPIATES. Any material, compound, mixture or preparation which contains any quantity of any of the following synthetic opiates, including any of their isomers, esters, ethers, esters and ethers of isomers, salts and salts of isomers, esters, ethers and esters and ethers of isomers that are theoretically possible within the specific chemical designation:

(a) Acetyl−alpha−methylfentanyl (N−[1−(1−methyl−2−phenylethyl)−4−piperidinyl]−N−phenylacetamide);

(ag) Acetylmethadol;

(am) Allylprodine;

(b) Alphacetylmethadol (except levo−alphacetylmethadol (LAAM));

(bm) Alphameprodine;

(c) Alphamethadol;

(cd) Alpha−methylfentanyl (N−[1−(1−methyl−2−phenylethyl)−4−piperidinyl]−N−phenylpropanamide);

(cg) Alpha−methylthiofentanyl (N−{1−[1−methyl−2−(2−thienyl)ethyl]−4−piperidinyl}−N−phenylpropanamide);

(cm) Benzethidine;

(d) Betacetylmethadol;

(dg) Beta−hydroxyfentanyl (N−[1−(2−hydroxy−2−phenylethyl)−4−piperidinyl]−N−phenylpropanamide);

(dm) Betameprodine;

(e) Betamethadol;

(em) Betaprodine;

(er) Beta−hydroxy−3−methylfentanyl (N−[1−(2−hydroxy−2−phenylethyl)−3−methyl−4−piperidinyl]−N−phenylpropanamide);

(f) Clonitazene;

(fm) Dextromoramide;

(gm) Diampromide;

(h) Diethylthiambutene;

(hg) Difenoxin;

(hm) Dimenoxadol;

(j) Dimepheptanol;

(jm) Dimethylthiambutene;

(k) Dioxaphetyl butyrate;

(km) Dipipanone;

(m) Ethylmethylthiambutene;

(mm) Etonitazene;

(n) Etoxeridine;

(nm) Furethidine;

(p) Hydroxypethidine;

(pm) Ketobemidone;

(q) Levomoramide;

(qm) Levophenacylmorphan;

(qs) 3−methylfentanyl (N−[3−methyl−1−(2−phenylethyl)−4−piperidinyl]−N−phenylpropanamide);

(r) Morpheridine;

(rg) MPPP (1−methyl−4−phenyl−4−propionoxypiperidine);

(rj) 3−methylthiofentanyl (N−{3−methyl−1−[2−(2−thienyl)ethyl]−4−piperidinyl}−N−phenylpropanamide);

(rm) Noracymethadol;

(s) Norlevorphanol;

(sm) Normethadone;

(t) Norpipanone;

(tg) Para−fluorofentanyl (N−[1−(2−phenylethyl)−4−piperidinyl]−N−(4−fluorophenyl)propanamide);

(tm) Phenadoxone;

(u) Phenampromide;

(um) Phenomorphan;

(v) Phenoperidine;

(vg) PEPAP (1−(2−phenylethyl)−4−phenyl−4−acetoxypiperidine);

(vm) Piritramide;

(w) Proheptazine;

(wm) Properidine;

(wn) Propiram;

(x) Racemoramide;

(xm) Thiofentanyl (N−{1−[2−(2−thienyl)ethyl]−4−piperidinyl}−N−phenylpropanamide);

(xr) Tilidine;

(y) Trimeperidine.

(3) SUBSTANCES DERIVED FROM OPIUM. Any material, compound, mixture or preparation which contains any quantity of any of the following substances derived from opium, including any of their salts, isomers and salts of isomers that are theoretically possible within the specific chemical designation:

(a) Acetorphine;

(b) Acetyldihydrocodeine;

(c) Benzylmorphine;

(d) Codeine methylbromide;

(e) Codeine−N−oxide;

(f) Cyprenorphine;

(g) Desomorphine;

(h) Dihydromorphine;

(hm) Drotebanol;

(j) Etorphine, except its hydrochloride salts;

(k) Heroin;

(m) Hydromorphinol;

(n) Methyldesorphine;

(p) Methyldihydromorphine;

(q) Morphine methylbromide;

(r) Morphine methylsulfonate;

(s) Morphine−N−oxide;

(t) Myrophine;

(u) Nicocodeine;

(v) Nicomorphine;

(w) Normorphine;

(x) Pholcodine;

(y) Thebacon.

(4) HALLUCINOGENIC SUBSTANCES. Any material, compound, mixture or preparation which contains any quantity of any of the following hallucinogenic substances, including any of their salts, isomers and salts of isomers that are theoretically possible within the specific chemical designation, in any form including a substance, salt, isomer or salt of an isomer contained in a plant, obtained from a plant or chemically synthesized:

(a) 3,4−methylenedioxyamphetamine, commonly known as "MDA";

(ag) 3,4−methylenedioxyethylamphetamine, commonly known as "MDE";

(am) 3,4−methylenedioxymethamphetamine, commonly known as "MDMA";

(ar) N−hydroxy−3,4−methylenedioxyamphetamine;

(b) 5−methoxy−3,4−methylenedioxyamphetamine;

(bm) 4−ethyl−2,5−dimethoxyamphetamine, commonly known as "DOET";

(c) 3,4,5−trimethoxyamphetamine;

(cm) Alpha−ethyltryptamine;

(d) Bufotenine;

(e) Diethyltryptamine;

(f) Dimethyltryptamine;

(g) 4−methyl−2,5−dimethoxyamphetamine, commonly known as "STP";

(h) Ibogaine;

(j) Lysergic acid diethylamide, commonly known as "LSD";

(m) Mescaline, in any form, including mescaline contained in peyote, obtained from peyote or chemically synthesized;

(mn) Parahexyl (3−hexyl−1−hydroxy−7, 8, 9, 10−tetrahydro−6, 6, 9−trimethyl−6H−dibenzo(b, d)pyran);

(n) Phencyclidine, commonly known as "PCP";

(p) N−ethyl−3−piperidyl benzilate;

(q) N−methyl−3−piperidyl benzilate;

(r) Psilocybin;

(s) Psilocin;

(t) Tetrahydrocannabinols, commonly known as "THC", in any form including tetrahydrocannabinols contained in marijuana, obtained from marijuana or chemically synthesized;

(u) 1−[1−(2−thienyl)cyclohexyl]piperidine, which is the thiophene analog of phencyclidine;

(ud) 1−[1−(2−thienyl)cyclohexyl]pyrrolidine, which is the thiophene pyrrolidine analog of phencyclidine;

(ug) N−ethyl−1−phenylcyclohexylamine, which is the ethylamine analog of phencyclidine;

(ur) 1−(1−phenylcyclohexyl)pyrrolidine, which is the pyrrolidine analog of phencyclidine;

(v) 2,5−dimethoxyamphetamine;

(w) 4−bromo−2,5−dimethoxyamphetamine, commonly known as "DOB";

(wg) 4−bromo−2,5−dimethoxy−beta−phenylethylamine, commonly known as "2C−B" or "Nexus";

(x) 4−methoxyamphetamine.

(5) DEPRESSANTS. Any material, compound, mixture or preparation which contains any quantity of any of the following substances having a depressant effect on the central nervous system, including any of their salts, isomers and salts of isomers that are theoretically possible within the specific chemical designation:

(ag) Gamma−hydroxybutyric acid (commonly known as gamma hydroxybutyrate or "GHB") and gamma−butyrolactone.

(am) Mecloqualone.

(b) Methaqualone.

(6) IMMEDIATE PRECURSORS. Any material, compound, mixture or preparation which contains any quantity of any of the following substances or their salts:

(a) Immediate precursors to phencyclidine:

1. 1−phenylcyclohexylamine.

2. 1−piperidinocyclohexanecarbonitrile.

(7) STIMULANTS. Any material, compound, mixture or preparation which contains any quantity of any of the following substances having a stimulant effect on the central nervous system,

including any of their salts, isomers and salts of isomers that are theoretically possible within the specific chemical designation:

(ag) Cathinone.

(am) Aminorex.

(b) Fenethylline.

(c) N−ethylamphetamine.

(d) 4−methylaminorex.

(e) N,N−dimethylamphetamine.

(L) Methcathinone.

(p) 4−methylthioamphetamine, commonly known as "4−MTA."

History: 1971 c. 219; 1981 c. 206; CSB 2.16, 2.15, 2.17, 2.18, 2.19, 2.20; 1989 a. 121; CSB 2.21; 1993 a. 98, 118; CSB 2.22; 1995 a. 225; 1995 a. 448 ss. 157 to 165; Stats. 1995 s. 961.14; 1997 a. 220; 1999 a. 21; 2001 a. 16.

NOTE: See 1979−80 Statutes and 1993−94 Statutes for notes on actions by controlled substances board under s. 161.11 (1), 1993 Stats.

A chemical test need not be specifically for marijuana in order to be probative beyond a reasonable doubt. State v. Wind, 60 Wis. 2d 267, 208 N.W.2d 357 (1973).

THC is properly classified as Schedule I substance. State v. Olson, 127 Wis. 2d 412, 380 N.W.2d 375 (Ct. App. 1985).

Stems and branches supporting marijuana leaves or buds are not "mature stalks" under sub. (14). State v. Martinez, 210 Wis. 2d 397, 563 N.W.2d 922 (Ct. App. 1997).

961.15 Schedule II tests. (1m) The controlled substances board shall add a substance to schedule II upon finding that:

(a) The substance has high potential for abuse;

(b) The substance has currently accepted medical use in treatment in the United States, or currently accepted medical use with severe restrictions; and

(c) The abuse of the substance may lead to severe psychological or physical dependence.

(2m) The controlled substances board may add a substance to schedule II without making the findings required under sub. (1m) if the substance is controlled under schedule II of 21 USC 812 (c) by a federal agency as the result of an international treaty, convention or protocol.

History: 1971 c. 219; 1995 a. 448 ss. 166, 167, 472; Stats. 1995 s. 961.15.

961.16 Schedule II. Unless specifically excepted by state or federal law or regulation or more specifically included in another schedule, the following controlled substances are listed in schedule II:

(2) SUBSTANCES OF PLANT ORIGIN. Any material, compound, mixture or preparation which contains any quantity of any of the following substances in any form, including a substance contained in a plant, obtained from a plant, chemically synthesized or obtained by a combination of extraction from a plant and chemical synthesis:

(a) Opium and substances derived from opium, and any salt, compound, derivative or preparation of opium or substances derived from opium. Apomorphine, dextrorphan, nalbuphine, butorphanol, nalmefene, naloxone and naltrexone and their respective salts and the isoquinoline alkaloids of opium and their respective salts are excluded from this paragraph. The following substances, and any of their salts, isomers and salts of isomers that are theoretically possible within the specific chemical designation, are included in this paragraph:

1. Opium, including raw opium, opium extracts, opium fluid extracts, powdered opium, granulated opium and tincture of opium.

2. Opium poppy and poppy straw.

3. Concentrate of poppy straw, which is the crude extract of poppy straw in either liquid, solid or powder form containing the phenanthrene alkaloids of the opium poppy.

4. Codeine.

4m. Dihydrocodeine.

4r. Dihydroetorphine.

5. Ethylmorphine.

6. Etorphine hydrochloride.

7. Hydrocodone, also known as dihydrocodeinone.

8. Hydromorphone, also known as dihydromorphinone.

9. Metopon.

10. Morphine.

11. Oxycodone.

12. Oxymorphone.

13. Thebaine.

(b) Coca leaves and any salt, compound, derivative or preparation of coca leaves. Decocainized coca leaves or extractions which do not contain cocaine or ecgonine are excluded from this paragraph. The following substances and any of their salts, esters, isomers and salts of esters and isomers that are theoretically possible within the specific chemical designation, are included in this paragraph:

1. Cocaine.

2. Ecgonine.

(3) SYNTHETIC OPIATES. Any material, compound, mixture or preparation which contains any quantity of any of the following synthetic opiates, including any of their isomers, esters, ethers, esters and ethers of isomers, salts and salts of isomers, esters, ethers and esters and ethers of isomers that are theoretically possible within the specific chemical designation:

(a) Alfentanil;

(am) Alphaprodine;

(b) Anileridine;

(c) Bezitramide;

(cm) Carfentanil;

(e) Diphenoxylate;

(f) Fentanyl;

(g) Isomethadone;

(gm) Levo−alphacetylmethadol (LAAM);

(h) Levomethorphan;

(j) Levorphanol;

(k) Meperidine, also known as pethidine;

(m) Meperidine—Intermediate—A, 4−cyano−1−methyl−4−phenylpiperidine;

(n) Meperidine—Intermediate—B, ethyl−4−phenylpiperidine− 4−carboxylate;

(p) Meperidine—Intermediate—C, 1−methyl−4−phenylpiperidine−4−carboxylic acid;

(q) Metazocine;

(r) Methadone;

(s) Methadone—Intermediate, 4−cyano−2−dimethylamino−4, 4−diphenylbutane;

(t) Moramide—Intermediate, 2−methyl−3−morpholino−1, 1−diphenylpropanecarboxylic acid;

(u) Phenazocine;

(v) Piminodine;

(w) Racemethorphan;

(x) Racemorphan;

(xm) Remifentanil;

(y) Sufentanil.

(5) STIMULANTS. Any material, compound, mixture, or preparation which contains any quantity of any of the following substances having a stimulant effect on the central nervous system, including any of their salts, isomers and salts of isomers that are theoretically possible within the specific chemical designation:

(a) Amphetamine.

(b) Methamphetamine.

(c) Phenmetrazine.

(d) Methylphenidate.

(7) DEPRESSANTS. Any material, compound, mixture, or preparation which contains any quantity of any of the following substances having a depressant effect on the central nervous system,

including any of their salts, isomers and salts of isomers that are theoretically possible within the specific chemical designation:

(a) Amobarbital;

(am) Glutethimide;

(b) Pentobarbital;

(c) Secobarbital.

(8) IMMEDIATE PRECURSORS. Any material, compound, mixture or preparation which contains any quantity of the following substances:

(a) An immediate precursor to amphetamine or methamphetamine:

1. Phenylacetone, commonly known as "P2P".

(10) HALLUCINOGENIC SUBSTANCES. (b) Nabilone (another name for nabilone is (+)−trans−3− (1,1−dimethylheptyl)−6, 6a, 7, 8, 10, 10a−hexahydro−1−hydroxy −6, 6−dimethyl−9H−dibenzo [b,d] pyran−9−one).

History: 1971 c. 219; 1981 c. 6, 206; CSB 2.16, 2.17, 2.19; 1989 a. 121; CSB 2.21; 1993 a. 98; CSB 2.22; 1995 a. 448 ss. 168 to 178, 473; Stats. 1995 s. 961.16; CSB 2.25; CSB 2.26.

NOTE: See 1979−80 Statutes and 1993−94 Statutes for notes on actions by controlled substances board under s. 161.11 (1), 1993 Stats.

At a preliminary hearing, the state must show that a substance was probably l−cocaine rather than d−cocaine. State v. Russo, 101 Wis. 2d 206, 303 N.W.2d 846 (Ct. App. 1981).

961.17 Schedule III tests. (1m) The controlled substances board shall add a substance to schedule III upon finding that:

(a) The substance has a potential for abuse less than the substances included in schedules I and II;

(b) The substance has currently accepted medical use in treatment in the United States; and

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

(2m) The controlled substances board may add a substance to schedule III without making the findings required under sub. (1m) if the substance is controlled under schedule III of 21 USC 812 (c) by a federal agency as the result of an international treaty, convention or protocol.

History: 1971 c. 219; 1995 a. 448 ss. 179, 180, 474; Stats. 1995 s. 961.17.

961.18 Schedule III. Unless specifically excepted by state or federal law or regulation or more specifically included in another schedule, the following controlled substances are listed in schedule III:

(2m) STIMULANTS. Any material, compound, mixture, or preparation which contains any quantity of any of the following substances having a stimulant effect on the central nervous system, including any of their salts, isomers and salts of isomers that are theoretically possible within the specific chemical designation:

(a) Benzphetamine;

(b) Chlorphentermine;

(c) Clortermine;

(e) Phendimetrazine.

(3) DEPRESSANTS. Any material, compound, mixture or preparation which contains any quantity of any of the following substances having a depressant effect on the central nervous system, including any of their salts, isomers and salts of isomers that are theoretically possible within the specific chemical designation:

(a) Any substance which contains a derivative of barbituric acid;

(b) Chlorhexadol;

(d) Lysergic acid;

(e) Lysergic acid amide;

(f) Methyprylon;

(h) Sulfondiethylmethane;

(j) Sulfonethylmethane;

(k) Sulfonmethane;

(km) Tiletamine and Zolazepam in combination;

(m) Any compound, mixture, or preparation containing any of the following drugs and one or more other active medicinal ingredients not included in any schedule:

1. Amobarbital.
2. Secobarbital.
3. Pentobarbital.

(n) Any of the following drugs in suppository dosage form approved by the federal food and drug administration for marketing only as a suppository:

1. Amobarbital.
2. Secobarbital.
3. Pentobarbital.

(4) OTHER SUBSTANCES. Any material, compound, mixture or preparation which contains any quantity of any of the following substances, including any of their salts, isomers and salts of isomers that are theoretically possible within the specific chemical designation:

(ak) Ketamine.

(an) Nalorphine.

(4m) HALLUCINOGENIC SUBSTANCES. Dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in a U.S. food and drug administration approved drug product. (Other names for dronabinol are (6aR−trans)−6a, 7, 8, 10a−tetrahydro−6, 6. 9−trimethyl−3−pentyl−6H−dibenzo(b, d)pyran−1−ol, and (−) −delta−9−(trans)−tetrahydrocannabinol.)

(5) NARCOTIC DRUGS. Any material, compound, mixture or preparation containing any of the following narcotic drugs or their salts, isomers or salts of isomers, calculated as the free anhydrous base or alkaloid, in limited quantities as follows:

(a) Not more than 1.8 grams of codeine per 100 milliliters or per 100 grams or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium.

(b) Not more than 1.8 grams of codeine per 100 milliliters or per 100 grams or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(c) Not more than 300 milligrams of hydrocodone per 100 milliliters or per 100 grams or not more than 15 milligrams per dosage unit, with a four−fold or greater quantity of an isoquinoline alkaloid of opium.

(d) Not more than 300 milligrams of hydrocodone per 100 milliliters or per 100 grams or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(e) Not more than 1.8 grams of dihydrocodeine per 100 milliliters or per 100 grams or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(f) Not more than 300 milligrams of ethylmorphine per 100 milliliters or per 100 grams or not more than 15 milligrams per dosage unit, with one or more ingredients in recognized therapeutic amounts.

(g) Not more than 500 milligrams of opium per 100 milliliters or per 100 grams, or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(h) Not more than 50 milligrams of morphine per 100 milliliters or per 100 grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(6) EXCEPTIONS. The controlled substances board may except by rule any compound, mixture or preparation containing any stimulant or depressant substance included in sub. (2m) or (3) from the application of all or any part of this chapter if the compound, mixture or preparation contains one or more active medicinal ingredients not having a stimulant or depressant effect on the

central nervous system, and if the admixtures are included therein in combinations, quantity, proportion or concentration that vitiate the potential for abuse of the substances which have a stimulant or depressant effect on the central nervous system.

(7) ANABOLIC STEROIDS. Any material, compound, mixture, or preparation containing any quantity of any of the following anabolic steroids, including any of their esters, isomers, esters of isomers, salts and salts of esters, isomers and esters of isomers that are theoretically possible within the specific chemical designation:

(a) Boldenone;
(b) 4−chlorotestosterone, which is also called clostebol;
(c) Dehydrochloromethyltestosterone;
(d) 4−dihydrotestosterone, which is also called stanolone;
(e) Drostanolone;
(f) Ethylestrenol;
(g) Fluoxymesterone;
(h) Formebulone, which is also called fromebolone;
(i) Mesterolone;
(j) Methandienone, which is also called methandrostenolone;
(k) Methandriol;
(L) Methenolone;
(m) Methyltestosterone;
(n) Mibolerone;
(o) Nandrolone;
(p) Norethandrolone;
(q) Oxandrolone;
(r) Oxymesterone;
(s) Oxymetholone;
(t) Stanozolol;
(u) Testolactone;
(v) Testosterone;
(w) Trenbolone.

History: 1971 c. 219; 1981 c. 6; 1981 c. 206 ss. 32 to 40, 57; CSB 2.19, 2.21; 1995 a. 448 ss. 181 to 200, 475, 476; Stats. 1995 s. 961.18; 1997 a. 220; CSB 2.25.

NOTE: See 1993−94 Statutes for notes on actions by controlled substances board under s. 161.11 (1), 1993 Stats.

961.19 Schedule IV tests. (1m) The controlled substances board shall add a substance to schedule IV upon finding that:

(a) The substance has a low potential for abuse relative to substances included in schedule III;

(b) The substance has currently accepted medical use in treatment in the United States; and

(c) Abuse of the substance may lead to limited physical dependence or psychological dependence relative to the substances included in schedule III.

(2m) The controlled substances board may add a substance to schedule IV without making the findings required under sub. (1m) if the substance is controlled under schedule IV of 21 USC 812 (c) by a federal agency as the result of an international treaty, convention or protocol.

History: 1971 c. 219; 1995 a. 448 ss. 201, 202, 477; Stats. 1995 s. 961.19.

961.20 Schedule IV. Unless specifically excepted by state or federal law or regulation or more specifically included in another schedule, the following controlled substances are listed in schedule IV:

(2) DEPRESSANTS. Any material, compound, mixture or preparation which contains any quantity of any of the following substances having a depressant effect on the central nervous system, including any of their salts, isomers and salts of isomers that are theoretically possible within the specific chemical designation:

(a) Alprazolam;
(am) Barbital;
(ar) Bromazepam;
(av) Camazepam;
(b) Chloral betaine;
(c) Chloral hydrate;
(cd) Clobazam;
(cg) Clotiazepam;
(cm) Chlordiazepoxide;
(cn) Clonazepam;
(co) Cloxazolam;
(cp) Clorazepate;
(cq) Delorazepam;
(cr) Diazepam;
(cs) Dichloralphenazone;
(cu) Estazolam;
(d) Ethchlorvynol;
(e) Ethinamate;
(ed) Ethyl loflazepate;
(eg) Fludiazepam;
(ej) Flunitrazepam;
(em) Flurazepam;
(eo) Halazepam;
(ep) Haloxazolam;
(eq) Ketazolam;
(er) Lorazepam;
(es) Loprazolam;
(eu) Lormetazepam;
(ew) Mebutamate;
(ey) Medazepam;
(f) Methohexital;
(g) Meprobamate;
(h) Methylphenobarbital, which is also called mephobarbital;
(hg) Midazolam;
(hh) Nimetazepam;
(hj) Nitrazepam;
(hk) Nordiazepam;
(hm) Oxazepam;
(hr) Oxazolam;
(j) Paraldehyde;
(k) Petrichloral;
(m) Phenobarbital;
(md) Pinazepam;
(mg) Prazepam;
(mm) Quazepam;
(n) Temazepam;
(ng) Tetrazepam;
(nm) Triazolam;
(o) Zaleplon;
(p) Zolpidem.

(2m) STIMULANTS. Any material, compound, mixture, or preparation which contains any quantity of any of the following substances having a stimulant effect on the central nervous system, including any of their salts, isomers and salts of isomers that are theoretically possible within the specific chemical designation:

(a) Diethylpropion.
(ad) Cathine.
(ag) N,N−dimethyl−1,2−diphenylethylamine, commonly known as “SPA”.
(ak) Ephedrine, if ephedrine is the only active medicinal ingredient or if there are only therapeutically insignificant quantities of another active medicinal ingredient.
(ar) Fencamfamine.
(at) Fenproporex.
(bm) Mazindol.

(br) Mefenorex.

(bu) Modafinil.

(c) Pemoline, including its organometallic complexes and chelates.

(d) Phentermine.

(e) Pipradrol.

(f) Sibutramine.

(3) NARCOTIC DRUGS CONTAINING NONNARCOTIC ACTIVE MEDICINAL INGREDIENTS. Any compound, mixture or preparation containing any of the following narcotic drugs or their salts, isomers or salts of isomers, in limited quantities as set forth below, calculated as the free anhydrous base or alkaloid, which also contains one or more nonnarcotic, active medicinal ingredients in sufficient proportion to confer upon the compound, mixture or preparation valuable medicinal qualities other than those possessed by the narcotic drug alone:

(a) Not more than 1.0 milligrams of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.

(4) OTHER SUBSTANCES. Any material, compound, mixture or preparation which contains any quantity of any of the following substances or their salts:

(a) Dextropropoxyphene (Alpha−(+)−4−dimethylamino−1, 2−diphenyl−3−methyl−2−propionoxybutane).

(am) Fenfluramine, including any of its isomers and salts of isomers.

(b) Pentazocine, including any of its isomers and salts of isomers.

(c) Butorphanol, including any of its isomers and salts of isomers.

(5) EXCEPTIONS. The controlled substances board may except by rule any compound, mixture or preparation containing any depressant substance included in sub. (2) from the application of all or any part of this chapter if the compound, mixture or preparation contains one or more active medicinal ingredients not having a depressant effect on the central nervous system, and if the admixtures are in combinations, quantity, proportion or concentration that vitiate the potential for abuse of the substances which have a depressant effect on the central nervous system.

History: 1971 c. 219; 1979 c. 32; 1981 c. 206 ss. 34m, 41 to 52; CSB 2.15, 2.19, 2.21; 1993 a. 468; 1995 a. 448 ss. 203 to 220, 478, 479; Stats. 1995 s. 961.20; CSB 2.24, 2.25, 2.28.

NOTE: See 1979−80 Statutes and 1993−94 Statutes for notes on actions by controlled substances board under s. 161.11 (1), 1993 Stats.

961.21 Schedule V tests. (1m) The controlled substances board shall add a substance to schedule V upon finding that:

(a) The substance has low potential for abuse relative to the controlled substances included in schedule IV;

(b) The substance has currently accepted medical use in treatment in the United States; and

(c) The substance has limited physical dependence or psychological dependence liability relative to the controlled substances included in schedule IV.

(2m) The controlled substances board may add a substance to schedule V without making the findings required by sub. (1m) if the substance is controlled under schedule V of 21 USC 811 (c) by a federal agency as the result of an international treaty, convention or protocol.

History: 1971 c. 219; 1995 a. 448 ss. 221, 222, 480; Stats. 1995 s. 961.21.

961.22 Schedule V. Unless specifically excepted by state or federal law or regulation or more specifically included in another schedule, the following controlled substances are listed in schedule V:

(1m) NARCOTIC DRUGS. Any material, compound, mixture or preparation containing any quantity of any of the following substances, including any of their salts, isomers and salts of isomers that are theoretically possible within the specific chemical designation:

(a) Buprenorphine.

(2) NARCOTIC DRUGS CONTAINING NONNARCOTIC ACTIVE MEDICINAL INGREDIENTS. Any compound, mixture or preparation containing any of the following narcotic drugs or their salts, isomers or salts of isomers, in limited quantities as set forth below, calculated as the free anhydrous base or alkaloid, which also contains one or more nonnarcotic, active medicinal ingredients in sufficient proportion to confer upon the compound, mixture or preparation, valuable medicinal qualities other than those possessed by the narcotic drug alone:

(a) Not more than 200 milligrams of codeine per 100 milliliters or per 100 grams.

(b) Not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams.

(c) Not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams.

(d) Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit.

(e) Not more than 100 milligrams of opium per 100 milliliters or per 100 grams.

(f) Not more than 0.5 milligrams of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.

(3) STIMULANTS. Any material, compound, mixture or preparation which contains any quantity of any of the following substances having a stimulant effect on the central nervous system, including any of their salts, isomers and salts of isomers that are theoretically possible within the specific chemical designation:

(a) Pyrovalerone.

History: 1971 c. 219; 1981 c. 206; CSB 2.15; 1985 a. 135; CSB 2.17; 1995 a. 448 ss. 223 to 227, 481; Stats. 1995 s. 961.22.

961.23 Dispensing of schedule V substances. The dispensing of schedule V substances is subject to the following conditions:

(1) That they be dispensed and sold in good faith as a medicine, and not for the purpose of evading this chapter.

(2) That they be sold at retail only by a registered pharmacist when sold in a retail establishment.

(3) That, when sold in a retail establishment, they bear the name and address of the establishment on the immediate container of said preparation.

(4) That any person purchasing such a substance at the time of purchase present to the seller that person's correct name and address. The seller shall record the name and address and the name and quantity of the product sold. The purchaser and the seller shall sign the record of this transaction. The giving of a false name or false address by the purchaser shall be prima facie evidence of a violation of s. 961.43 (1) (a).

(5) That no person may purchase more than 8 ounces of a product containing opium or more than 4 ounces of a product containing any other schedule V substance within a 48−hour period without the authorization of a physician, dentist or veterinarian nor may more than 8 ounces of a product containing opium or more than 4 ounces of a product containing any other schedule V substance be in the possession of any person other than a physician, dentist, veterinarian or pharmacist at any time without the authorization of a physician, dentist or veterinarian.

History: 1971 c. 219; 1973 c. 12 s. 37; 1981 c. 206; 1993 a. 482; 1995 a. 448 s. 228; Stats. 1995 s. 961.23.

961.24 Publishing of updated schedules. The controlled substances board shall publish updated schedules annually. The failure of the controlled substances board to publish an updated schedule under this section is not a defense in any administrative or judicial proceeding under this chapter.

History: 1971 c. 219; 1993 a. 213; 1995 a. 448 s. 229; Stats. 1995 s. 961.24.

961.25 Controlled substance analog treated as a schedule I substance. A controlled substance analog, to the extent it is intended for human consumption, shall be treated, for the purposes of this chapter, as a substance included in schedule I, unless a different treatment is specifically provided. No later than 60 days after the commencement of a prosecution concerning a controlled substance analog, the district attorney shall provide the controlled substances board with information relevant to emergency scheduling under s. 961.11 (4m). After a final determination by the controlled substances board that the controlled substance analog should not be scheduled, no prosecution relating to that substance as a controlled substance analog may be commenced or continued.

History: 1995 a. 448.

SUBCHAPTER III

REGULATION OF MANUFACTURE, DISTRIBUTION AND DISPENSING OF CONTROLLED SUBSTANCES

961.31 Rules. The pharmacy examining board may promulgate rules relating to the manufacture, distribution and dispensing of controlled substances within this state.

History: 1971 c. 219; 1995 a. 448 s. 231; Stats. 1995 s. 961.31.

Cross Reference: See also ch. Phar 8, Wis. adm. code.

961.32 Possession authorization. (1) Persons registered under federal law to manufacture, distribute, dispense or conduct research with controlled substances may possess, manufacture, distribute, dispense or conduct research with those substances in this state to the extent authorized by their federal registration and in conformity with the other provisions of this chapter.

(2) The following persons need not be registered under federal law to lawfully possess controlled substances in this state:

(a) An agent or employee of any registered manufacturer, distributor or dispenser of any controlled substance if the agent or employee is acting in the usual course of the agent's or employee's business or employment;

(b) A common or contract carrier or warehouse keeper, or an employee thereof, whose possession of any controlled substance is in the usual course of business or employment;

(c) An ultimate user or a person in possession of any controlled substance pursuant to a lawful order of a practitioner or in lawful possession of a schedule V substance.

(d) Any person exempted under federal law, or for whom federal registration requirements have been waived.

History: 1971 c. 219, 336; 1983 a. 500 s. 43; 1993 a. 482; 1995 a. 448 s. 232; Stats. 1995 s. 961.32.

A doctor or dentist who dispenses drugs to a patient within the course of professional practice is not subject to criminal liability. State v. Townsend, 107 Wis. 2d 24, 318 N.W.2d 361 (1982).

961.335 Special use authorization. (1) Upon application the controlled substances board may issue a permit authorizing a person to manufacture, obtain, possess, use, administer or dispense a controlled substance for purposes of scientific research, instructional activities, chemical analysis or other special uses, without restriction because of enumeration. No person shall engage in any such activity without a permit issued under this section, except that an individual may be designated and authorized to receive the permit for a college or university department, research unit or similar administrative organizational unit and students, laboratory technicians, research specialists or chemical analysts under his or her supervision may be permitted possession and use of controlled substances for these purposes without obtaining an individual permit.

(2) A permit issued under this section shall be valid for one year from the date of issue.

(3) The fee for a permit under this section shall be an amount determined by the controlled substances board but shall not exceed $25. No fee may be charged for permits issued to employees of state agencies or institutions.

(4) Permits issued under this section shall be effective only for and shall specify:

(a) The name and address of the permittee.

(b) The nature of the project authorized by the permit.

(c) The controlled substances to be used in the project, by name if included in schedule I, and by name or schedule if included in any other schedule.

(d) Whether dispensing to human subjects is authorized.

(5) A permit shall be effective only for the person, substances and project specified on its face and for additional projects which derive directly from the stated project. Upon application, a valid permit may be amended to add a further activity or to add further substances or schedules to the project permitted thereunder. The fee for such amendment shall be determined by the controlled substances board but shall not exceed $5.

(6) Persons who possess a valid permit issued under this section are exempt from state prosecution for possession and distribution of controlled substances to the extent of the authorization.

(7) The controlled substances board may authorize persons engaged in research on the use and effects of controlled substances to withhold the names and other identifying characteristics of individuals who are the subjects of research. Persons who obtain this authorization are not compelled in any civil, criminal, administrative, legislative or other proceeding to identify or to identify to the board the individuals who are the subjects of research for which the authorization was obtained.

(8) The controlled substances board may promulgate rules relating to the granting of special use permits including, but not limited to, requirements for the keeping and disclosure of records other than those that may be withheld under sub. (7), submissions of protocols, filing of applications and suspension or revocation of permits.

(9) The controlled substances board may suspend or revoke a permit upon a finding that there is a violation of the rules of the board.

History: 1971 c. 219; 1975 c. 110, 199; 1977 c. 26; 1995 a. 448 s. 233; Stats. 1995 s. 961.335.

961.34 Controlled substances therapeutic research. Upon the request of any practitioner, the controlled substances board shall aid the practitioner in applying for and processing an investigational drug permit for marijuana under 21 USC 355 (i). If the federal food and drug administration issues an investigational drug permit, the controlled substances board shall approve which pharmacies can distribute the marijuana to patients upon written prescription. Only pharmacies located within hospitals are eligible to receive the marijuana for distribution. The controlled substances board shall also approve which practitioners can write prescriptions for the marijuana.

History: 1981 c. 193; 1983 a. 189 s. 329 (18); 1985 a. 146 s. 8; 1995 a. 448 ss. 16 to 19; Stats. 1995 s. 961.34.

961.36 Controlled substances board duties relating to diversion control and prevention, compliance with controlled substances law and advice and assistance. (1) The controlled substances board shall regularly prepare and make available to state regulatory, licensing and law enforcement agencies descriptive and analytic reports on the potential for diversion and actual patterns and trends of distribution, diversion and abuse within the state of certain controlled substances the board selects that are listed in s. 961.16, 961.18, 961.20 or 961.22.

(1m) At the request of the department of regulation and licensing or a board, examining board or affiliated credentialing board in the department of regulation and licensing, the controlled substances board shall provide advice and assistance in matters

related to the controlled substances law to the department or to the board, examining board or affiliated credentialing board in the department making the request for advice or assistance.

(2) The controlled substances board shall enter into written agreements with local, state and federal agencies to improve the identification of sources of diversion and to improve enforcement of and compliance with this chapter and other laws and regulations pertaining to unlawful conduct involving controlled substances. An agreement must specify the roles and responsibilities of each agency that has information or authority to identify, prevent or control drug diversion and drug abuse. The board shall convene periodic meetings to coordinate a state diversion prevention and control program. The board shall assist and promote cooperation and exchange of information among agencies and with other states and the federal government.

(3) The controlled substances board shall evaluate the outcome of its program under this section and shall annually submit a report to the chief clerk of each house of the legislature, for distribution to the legislature under s. 13.172 (3), on its findings with respect to its effect on distribution and abuse of controlled substances, including recommendations for improving control and prevention of the diversion of controlled substances.

History: 1981 c. 200; 1987 a. 186; 1995 a. 305 ss. 2, 3; 1995 a. 448 s. 234; Stats. 1995 s. 961.36; 1997 a. 35 s. 339.

961.38 Prescriptions. (1g) In this section, "medical treatment" includes dispensing or administering a narcotic drug for pain, including intractable pain.

(1r) Except when dispensed directly by a practitioner, other than a pharmacy, to an ultimate user, no controlled substance included in schedule II may be dispensed without the written prescription of a practitioner.

(2) In emergency situations, as defined by rule of the pharmacy examining board, schedule II drugs may be dispensed upon oral or electronic prescription of a practitioner, reduced promptly to writing and filed by the pharmacy. Prescriptions shall be retained in conformity with rules of the pharmacy examining board promulgated under s. 961.31. No prescription for a schedule II substance may be refilled.

(3) Except when dispensed directly by a practitioner, other than a pharmacy, to an ultimate user, a controlled substance included in schedule III or IV, which is a prescription drug, shall not be dispensed without a written, oral or electronic prescription of a practitioner. The prescription shall not be filled or refilled except as designated on the prescription and in any case not more than 6 months after the date thereof, nor may it be refilled more than 5 times, unless renewed by the practitioner.

(4) A substance included in schedule V may be distributed or dispensed only for a medical purpose, including medical treatment or authorized research.

(4g) A practitioner may dispense or deliver a controlled substance to or for an individual or animal only for medical treatment or authorized research in the ordinary course of that practitioner's profession.

(4r) A pharmacist is immune from any civil or criminal liability and from discipline under s. 450.10 for any act taken by the pharmacist in reliance on a reasonable belief that an order purporting to be a prescription was issued by a practitioner in the usual course of professional treatment or in authorized research.

(5) No practitioner shall prescribe, orally, electronically or in writing, or take without a prescription a controlled substance included in schedule I, II, III or IV for the practitioner's own personal use.

History: 1971 c. 219; 1975 c. 190, 421; 1977 c. 203; 1995 a. 448 ss. 235 to 240, 483 to 485; Stats. 1995 s. 961.38; 1997 a. 27.

961.39 Limitations on optometrists. An optometrist who is certified under s. 449.18:

(1) May not prescribe or administer a controlled substance included in schedule I or II.

(2) May prescribe or administer only those controlled substances included in schedules III, IV and V that are permitted for prescription or administration under the rules promulgated under s. 449.18 (8).

(3) Shall include with each prescription order all of the following:

(a) A statement that he or she is certified under s. 449.18.

(b) The indicated use of the controlled substance included in schedule III, IV or V so prescribed.

(4) May not dispense other than by prescribing or administering.

History: 1989 a. 31; 1995 a. 448 s. 241; Stats. 1995 s. 961.39.

961.395 Limitation on advanced practice nurses. (1) An advanced practice nurse who is certified under s. 441.16 may prescribe controlled substances only as permitted by the rules promulgated under s. 441.16 (3).

(2) An advanced practice nurse certified under s. 441.16 shall include with each prescription order the advanced practice nurse prescriber certification number issued to him or her by the board of nursing.

(3) An advanced practice nurse certified under s. 441.16 may dispense a controlled substance only by prescribing or administering the controlled substance or as otherwise permitted by the rules promulgated under s. 441.16 (3).

History: 1995 a. 448.

SUBCHAPTER IV

OFFENSES AND PENALTIES

961.41 Prohibited acts A—penalties. (1) MANUFACTURE, DISTRIBUTION OR DELIVERY. Except as authorized by this chapter, it is unlawful for any person to manufacture, distribute or deliver a controlled substance or controlled substance analog. Any person who violates this subsection is subject to the following penalties:

NOTE: Sub. (1) (intro.) is shown as amended eff. 2−1−03 by 2001 Wis. Act 109. Prior to 2−1−03 it reads:

(1) MANUFACTURE, DISTRIBUTION OR DELIVERY. Except as authorized by this chapter, it is unlawful for any person to manufacture, distribute or deliver a controlled substance or controlled substance analog. Any person who violates this subsection with respect to:

(a) *Schedule I and II narcotic drugs generally.* Except as provided in par. (d), if a person violates this subsection with respect to a controlled substance included in schedule I or II which is a narcotic drug, or a controlled substance analog of a controlled substance included in schedule I or II which is a narcotic drug, the person is guilty of a Class E felony.

NOTE: Par. (a) is shown as amended eff. 2−1−03 by 2001 Wis. Act 109. Prior to 2−1−03 it reads:

(a) Except as provided in par. (d), a controlled substance included in schedule I or II which is a narcotic drug, or a controlled substance analog of a controlled substance included in schedule I or II which is a narcotic drug, may be fined not more than $25,000 or imprisoned for not more than 22 years and 6 months or both.

(b) *Schedule I, II, and III nonnarcotic drugs generally.* Except as provided in pars. (cm) and (e) to (hm), if a person violates this subsection with respect to any other controlled substance included in schedule I, II, or III, or a controlled substance analog of any other controlled substance included in schedule I or II, the person is guilty of a Class H felony.

NOTE: Par. (b) is shown as amended eff. 2−1−03 by 2001 Wis. Act 109. Prior to 2−1−03 it reads:

(b) Except as provided in pars. (cm) and (e) to (hm), any other controlled substance included in schedule I, II or III, or a controlled substance analog of any other controlled substance included in schedule I or II, may be fined not more than $15,000 or imprisoned for not more than 7 years and 6 months or both.

(cm) *Cocaine and cocaine base.* If the person violates this subsection with respect to cocaine or cocaine base, or a controlled substance analog of cocaine or cocaine base, and the amount manufactured, distributed, or delivered is:

1g. One gram or less, the person is guilty of a Class G felony.

1r. More than one gram but not more than 5 grams, the person is guilty of a Class F felony.

2. More than 5 grams but not more than 15 grams, the person is guilty of a Class E felony.

3. More than 15 grams but not more than 40 grams, the person is guilty of a Class D felony.

4. More than 40 grams, the person is guilty of a Class C felony.

NOTE: Par. (cm) is shown as affected eff. 2−1−03 by 2001 Wis. Act 109. Prior to 2−1−03 it reads:

(cm) Cocaine or cocaine base, or a controlled substance analog of cocaine or cocaine base, is subject to the following penalties if the amount manufactured, distributed or delivered is:

1. Five grams or less, the person shall be fined not more than $500,000 and may be imprisoned for not more than 15 years.

2. More than 5 grams but not more than 15 grams, the person shall be fined not more than $500,000 and shall be imprisoned for not less than one year nor more than 22 years and 6 months.

3. More than 15 grams but not more than 40 grams, the person shall be fined not more than $500,000 and shall be imprisoned for not less than 3 years nor more than 30 years.

4. More than 40 grams but not more than 100 grams, the person shall be fined not more than $500,000 and shall be imprisoned for not less than 5 years nor more than 45 years.

5. More than 100 grams, the person shall be fined not more than $500,000 and shall be imprisoned for not less than 10 years nor more than 45 years.

(d) *Heroin.* If the person violates this subsection with respect to heroin or a controlled substance analog of heroin and the amount manufactured, distributed or delivered is:

1. Three grams or less, the person is guilty of a Class F felony.

2. More than 3 grams but not more than 10 grams, the person is guilty of a Class E felony.

3. More than 10 grams but not more than 50 grams, the person is guilty of a Class D felony.

4. More than 50 grams, the person is guilty of a Class C felony.

NOTE: Par. (d) is shown as affected eff. 2−1−03 by 2001 Wis. Act 109. Prior to 2−1−03 it reads:

(d) Heroin or a controlled substance analog of heroin is subject to the following penalties if the amount manufactured, distributed or delivered is:

1. Three grams or less, the person shall be fined not less than $1,000 nor more than $200,000 and may be imprisoned for not more than 22 years and 6 months.

2. More than 3 grams but not more than 10 grams, the person shall be fined not less than $1,000 nor more than $250,000 and shall be imprisoned for not less than 6 months nor more than 22 years and 6 months.

3. More than 10 grams but not more than 50 grams, the person shall be fined not less than $1,000 nor more than $500,000 and shall be imprisoned for not less than one year nor more than 22 years and 6 months.

4. More than 50 grams but not more than 200 grams, the person shall be fined not less than $1,000 nor more than $500,000 and shall be imprisoned for not less than 3 years nor more than 22 years and 6 months.

5. More than 200 grams but not more than 400 grams, the person shall be fined not less than $1,000 nor more than $500,000 and shall be imprisoned for not less than 5 years nor more than 22 years and 6 months.

6. More than 400 grams, the person shall be fined not less than $1,000 nor more than $1,000,000 and shall be imprisoned for not less than 10 years nor more than 45 years.

(e) *Phencyclidine, amphetamine, methamphetamine, and methcathinone.* If the person violates this subsection with respect to phencyclidine, amphetamine, methamphetamine, or methcathinone, or a controlled substance analog of phencyclidine, amphetamine, methamphetamine, or methcathinone, and the amount manufactured, distributed, or delivered is:

1. Three grams or less, the person is guilty of a Class F felony.

2. More than 3 grams but not more than 10 grams, the person is guilty of a Class E felony.

3. More than 10 grams but not more than 50 grams, the person is guilty of a Class D felony.

4. More than 50 grams, the person is guilty of a Class C felony.

NOTE: Par. (e) is shown as affected eff. 2−1−03 by 2001 Wis. Act 109. Prior to 2−1−03 it reads:

(e) Phencyclidine, amphetamine or methcathinone, or a controlled substance analog of phencyclidine, amphetamine or methcathinone, is subject to the following penalties if the amount manufactured, distributed or delivered is:

1. Three grams or less, the person shall be fined not less than $1,000 nor more than $200,000 and may be imprisoned for not more than 7 years and 6 months.

2. More than 3 grams but not more than 10 grams, the person shall be fined not less than $1,000 nor more than $250,000 and shall be imprisoned for not less than 6 months nor more than 7 years and 6 months.

3. More than 10 grams but not more than 50 grams, the person shall be fined not less than $1,000 nor more than $500,000 and shall be imprisoned for not less than one year nor more than 22 years and 6 months.

4. More than 50 grams but not more than 200 grams, the person shall be fined not less than $1,000 nor more than $500,000 and shall be imprisoned for not less than 3 years nor more than 22 years and 6 months.

5. More than 200 grams but not more than 400 grams, the person shall be fined not less than $1,000 nor more than $500,000 and shall be imprisoned for not less than 5 years nor more than 22 years and 6 months.

6. More than 400 grams, the person shall be fined not less than $1,000 nor more than $1,000,000 and shall be imprisoned for not less than 10 years nor more than 45 years.

(em) Methamphetamine or a controlled substance analog of methamphetamine is subject to the following penalties if the amount manufactured, distributed or delivered is:

1. Three grams or less, the person shall be fined not less than $1,000 nor more than $200,000 and may be imprisoned for not more than 22 years and 6 months.

2. More than 3 grams but not more than 10 grams, the person shall be fined not less than $1,000 nor more than $250,000 and shall be imprisoned for not less than 6 months nor more than 22 years and 6 months.

3. More than 10 grams but not more than 50 grams, the person shall be fined not less than $1,000 nor more than $500,000 and shall be imprisoned for not less than one year nor more than 22 years and 6 months.

4. More than 50 grams but not more than 200 grams, the person shall be fined not less than $1,000 nor more than $500,000 and shall be imprisoned for not less than 3 years nor more than 22 years and 6 months.

5. More than 200 grams but not more than 400 grams, the person shall be fined not less than $1,000 nor more than $500,000 and shall be imprisoned for not less than 5 years nor more than 22 years and 6 months.

6. More than 400 grams, the person shall be fined not less than $1,000 nor more than $1,000,000 and shall be imprisoned for not less than 10 years nor more than 45 years.

NOTE: Par. (em) is repealed eff. 2−1−03 by 2001 Wis. Act 109.

(f) *Lysergic acid diethylamide.* If the person violates this subsection with respect to lysergic acid diethylamide or a controlled substance analog of lysergic acid diethylamide and the amount manufactured, distributed, or delivered is:

1. One gram or less, the person is guilty of a Class G felony.

2. More than one gram but not more than 5 grams, the person is guilty of a Class F felony.

3. More than 5 grams, the person is guilty of a Class E felony.

NOTE: Par. (f) is shown as amended eff. 2−1−03 by 2001 Wis. Act 109. Prior to 2−1−03 it reads:

(f) Lysergic acid diethylamide or a controlled substance analog of lysergic acid diethylamide is subject to the following penalties if the amount manufactured, distributed or delivered is:

1. One gram or less, the person shall be fined not less than $1,000 nor more than $200,000 and may be imprisoned for not more than 7 years and 6 months.

2. More than one gram but not more than 5 grams, the person shall be fined not less than $1,000 nor more than $250,000 and shall be imprisoned for not less than 6 months nor more than 7 years and 6 months.

3. More than 5 grams, the person shall be fined not less than $1,000 nor more than $500,000 and shall be imprisoned for not less than one year nor more than 22 years and 6 months.

(g) *Psilocin and psilocybin.* If the person violates this subsection with respect to psilocin or psilocybin, or a controlled substance analog of psilocin or psilocybin, and the amount manufactured, distributed or delivered is:

1. One hundred grams or less, the person is guilty of a Class G felony.

2. More than 100 grams but not more than 500 grams, the person is guilty of a Class F felony.

3. More than 500 grams, the person is guilty of a Class E felony.

NOTE: Par. (g) is shown as amended eff. 2−1−03 by 2001 Wis. Act 109. Prior to 2−1−03 it reads:

(g) Psilocin or psilocybin, or a controlled substance analog of psilocin or psilocybin, is subject to the following penalties if the amount manufactured, distributed or delivered is:

1. One hundred grams or less, the person shall be fined not less than $1,000 nor more than $200,000 and may be imprisoned for not more than 7 years and 6 months.

2. More than 100 grams but not more than 500 grams, the person shall be fined not less than $1,000 nor more than $250,000 and shall be imprisoned for not less than 6 months nor more than 7 years and 6 months.

3. More than 500 grams, the person shall be fined not less than $1,000 nor more than $500,000 and shall be imprisoned for not less than one year nor more than 22 years and 6 months.

(h) *Tetrahydrocannabinols.* If the person violates this subsection with respect to tetrahydrocannabinols, included under s. 961.14 (4) (t), or a controlled substance analog of tetrahydrocannabinols, and the amount manufactured, distributed or delivered is:

1. Two hundred grams or less, or 4 or fewer plants containing tetrahydrocannabinols, the person is guilty of a Class I felony.

2. More than 200 grams but not more than 1,000 grams, or more than 4 plants containing tetrahydrocannabinols but not more than 20 plants containing tetrahydrocannabinols, the person is guilty of a Class H felony.

3. More than 1,000 grams but not more than 2,500 grams, or more than 20 plants containing tetrahydrocannabinols but not more than 50 plants containing tetrahydrocannabinols, the person is guilty of a Class G felony.

4. More than 2,500 grams but not more than 10,000 grams, or more than 50 plants containing tetrahydrocannabinols but not more than 200 plants containing tetrahydrocannabinols, the person is guilty of a Class F felony.

5. More than 10,000 grams, or more than 200 plants containing tetrahydrocannabinols, the person is guilty of a Class E felony.

NOTE: Par. (h) is shown as affected eff. 2−1−03 by 2001 Wis. Act 109. Prior to 2−1−03 it reads:

(h) Tetrahydrocannabinols, included under s. 961.14 (4) (t), or a controlled substance analog of tetrahydrocannabinols, is subject to the following penalties if the amount manufactured, distributed or delivered is:

1. Five hundred grams or less, or 10 or fewer plants containing tetrahydrocannabinols, the person shall be fined not less than $500 nor more than $25,000 and may be imprisoned for not more than 4 years and 6 months.

2. More than 500 grams but not more than 2,500 grams, or more than 10 plants containing tetrahydrocannabinols but not more than 50 plants containing tetrahydrocannabinols, the person shall be fined not less than $1,000 nor more than $50,000 and shall be imprisoned for not less than 3 months nor more than 7 years and 6 months.

3. More than 2,500 grams, or more than 50 plants containing tetrahydrocannabinols, the person shall be fined not less than $1,000 nor more than $100,000 and shall be imprisoned for not less than one year nor more than 15 years.

(hm) *Certain other schedule I controlled substances and ketamine.* If the person violates this subsection with respect to gamma−hydroxybutyric acid, gamma−butyrolactone, 3,4−methylenedioxymethamphetamine, 4−bromo−2,5−dimethoxy−beta−phenylethylamine, 4−methylthioamphetamine, ketamine, or a controlled substance analog of gamma−hydroxybutyric acid, gamma−butyrolactone, 3,4−methylenedioxymethamphetamine, 4−bromo−2,5−dimethoxy−beta−phenylethylamine,or 4−methylthioamphetamine and the amount manufactured, distributed, or delivered is:

1. Three grams or less, the person is guilty of a Class F felony.

2. More than 3 grams but not more than 10 grams, the person is guilty of a Class E felony.

3. More than 10 grams but not more than 50 grams, the person is guilty of a Class D felony.

4. More than 50 grams, the person is guilty of a Class C felony.

NOTE: Par. (hm) is shown as affected eff. 2−1−03 by 2001 Wis. Act 109. Prior to 2−1−03 it reads:

(hm) Gamma−hydroxybutyric acid, gamma−butyrolactone, 3,4−methylenedioxymethamphetamine, 4−bromo−2,5−dimethoxy−beta−phenylethylamine, 4−methylthioamphetamine, ketamine, or a controlled substance analog of gamma−hydroxybutyric acid, gamma−butyrolactone, 3,4−methylenedioxymethamphetamine, 4−bromo−2,5−dimethoxy−beta−phenylethylamine, or 4−methylthioamphetamine is subject to the following penalties if the amount manufactured, distributed, or delivered is:

1. Three grams or less, the person shall be fined not less than $1,000 nor more than $200,000 and may be imprisoned for not more than 7 years and 6 months.

2. More than 3 grams but not more than 10 grams, the person shall be fined not less than $1,000 nor more than $250,000 and shall be imprisoned for not less than 6 months nor more than 7 years and 6 months.

3. More than 10 grams but not more than 50 grams, the person shall be fined not less than $1,000 nor more than $500,000 and shall be imprisoned for not less than one year nor more than 22 years and 6 months.

4. More than 50 grams but not more than 200 grams, the person shall be fined not less than $1,000 nor more than $500,000 and shall be imprisoned for not less than 3 years nor more than 22 years and 6 months.

5. More than 200 grams but not more than 400 grams, the person shall be fined not less than $1,000 nor more than $500,000 and shall be imprisoned for not less than 5 years nor more than 22 years and 6 months.

6. More than 400 grams, the person shall be fined not less than $1,000 nor more than $500,000 and shall be imprisoned for not less than 10 years nor more than 45 years.

(i) *Schedule IV drugs generally.* Except as provided in par. (im), if a person violates this subsection with respect to a substance included in schedule IV, the person is guilty of a Class H felony.

NOTE: Par. (i) is shown as amended eff. 2−1−03 by 2001 Wis. Act 109. Prior to 2−1−03 it reads:

(i) Except as provided in par. (im), a substance included in schedule IV, may be fined not more than $10,000 or imprisoned for not more than 4 years and 6 months or both.

(im) *Flunitrazepam.* If a person violates this subsection with respect to flunitrazepam and the amount manufactured, distributed, or delivered is:

1. Three grams or less, the person is guilty of a Class F felony.

2. More than 3 grams but not more than 10 grams, the person is guilty of a Class E felony.

3. More than 10 grams but not more than 50 grams, the person is guilty of a Class D felony.

4. More than 50 grams, the person is guilty of a Class C felony.

NOTE: Par. (im) is shown as affected eff. 2−1−03 by 2001 Wis. Act 109. Prior to 2−1−03 it reads:

(im) Flunitrazepam is subject to the following penalties if the amount manufactured, distributed, or delivered is:

1. Three grams or less, the person shall be fined not less than $1,000 nor more than $200,000 and may be imprisoned for not more than 7 years and 6 months.

2. More than 3 grams but not more than 10 grams, the person shall be fined not less than $1,000 nor more than $250,000 and shall be imprisoned for not less than 6 months nor more than 7 years and 6 months.

3. More than 10 grams but not more than 50 grams, the person shall be fined not less than $1,000 nor more than $500,000 and shall be imprisoned for not less than one year nor more than 22 years and 6 months.

4. More than 50 grams but not more than 200 grams, the person shall be fined not less than $1,000 nor more than $500,000 and shall be imprisoned for not less than 3 years nor more than 22 years and 6 months.

5. More than 200 grams but not more than 400 grams, the person shall be fined not less than $1,000 nor more than $500,000 and shall be imprisoned for not less than 5 years nor more than 22 years and 6 months.

6. More than 400 grams, the person shall be fined not less than $1,000 nor more than $500,000 and shall be imprisoned for not less than 10 years nor more than 45 years.

(j) *Schedule V drugs.* If a person violates this subsection with respect to a substance included in schedule V, the person is guilty of a Class I felony.

NOTE: Par. (j) is shown as amended eff. 2−1−03 by 2001 Wis. Act 109. Prior to 2−1−03 it reads:

(j) A substance included in schedule V, may be fined not more than $5,000 or imprisoned for not more than 2 years or both.

(1m) POSSESSION WITH INTENT TO MANUFACTURE, DISTRIBUTE OR DELIVER. Except as authorized by this chapter, it is unlawful for any person to possess, with intent to manufacture, distribute or deliver, a controlled substance or a controlled substance analog. Intent under this subsection may be demonstrated by, without limitation because of enumeration, evidence of the quantity and monetary value of the substances possessed, the possession of manufacturing implements or paraphernalia, and the activities or statements of the person in possession of the controlled substance or a controlled substance analog prior to and after the alleged violation. Any person who violates this subsection is subject to the following penalties:

NOTE: Sub. (1m) (intro.) is shown as amended eff. 2−1−03 by 2001 Wis. Act 109. Prior to 2−1−03 it reads:

(1m) POSSESSION WITH INTENT TO MANUFACTURE, DISTRIBUTE OR DELIVER. **Except as authorized by this chapter, it is unlawful for any person to possess, with intent to manufacture, distribute or deliver, a controlled substance or a controlled substance analog. Intent under this subsection may be demonstrated by, without limitation because of enumeration, evidence of the quantity and monetary value of the substances possessed, the possession of manufacturing implements or paraphernalia, and the activities or statements of the person in possession of the controlled substance or a controlled substance analog prior to and after the alleged violation. Any person who violates this subsection with respect to:**

(a) *Schedule I and II narcotic drugs generally.* Except as provided in par. (d), if a person violates this subsection with respect to a controlled substance included in schedule I or II which is a narcotic drug or a controlled substance analog of a controlled substance included in schedule I or II which is a narcotic drug, the person is guilty of a Class E felony.

NOTE: Par. (a) is shown as amended eff. 2−1−03 by 2001 Wis. Act 109. Prior to 2−1−03 it reads:

(a) Except as provided in par. (d), a controlled substance included in schedule I or II which is a narcotic drug or a controlled substance analog of a controlled substance included in schedule I or II which is a narcotic drug, may be fined not more than $25,000 or imprisoned for not more than 22 years and 6 months or both.

(b) *Schedule I, II, and III nonnarcotic drugs generally.* Except as provided in pars. (cm) and (e) to (hm), if a person violates this subsection with respect to any other controlled substance included in schedule I, II, or III, or a controlled substance analog of any other controlled substance included in schedule I or II, the person is guilty of a Class H felony.

NOTE: Par. (b) is shown as amended eff. 2−1−03 by 2001 Wis. Act 109. Prior to 2−1−03 it reads:

(b) Except as provided in pars. (cm) and (e) to (hm), any other controlled substance included in schedule I, II or III, or a controlled substance analog of any other controlled substance included in schedule I or II, may be fined not more than $15,000 or imprisoned for not more than 7 years and 6 months or both.

(cm) *Cocaine and cocaine base.* If a person violates this subsection with respect to cocaine or cocaine base, or a controlled substance analog of cocaine or cocaine base, and the amount possessed, with intent to manufacture, distribute or deliver, is:

1g. One gram or less, the person is guilty of a Class G felony.

1r. More than one gram but not more than 5 grams, the person is guilty of a Class F felony.

2. More than 5 grams but not more than 15 grams, the person is guilty of a Class E felony.

3. More than 15 grams but not more than 40 grams, the person is guilty of a Class D felony.

4. More than 40 grams, the person is guilty of a Class C felony.

NOTE: Par. (cm) is shown as affected eff. 2−1−03 by 2001 Wis. Act 109. Prior to 2−1−03 it reads:

(cm) Cocaine or cocaine base, or a controlled substance analog of cocaine or cocaine base, is subject to the following penalties if the amount possessed, with intent to manufacture, distribute or deliver, is:

1. Five grams or less, the person shall be fined not more than $500,000 and may be imprisoned for not more than 15 years.

2. More than 5 grams but not more than 15 grams, the person shall be fined not more than $500,000 and shall be imprisoned for not less than one year nor more than 22 years and 6 months.

3. More than 15 grams but not more than 40 grams, the person shall be fined not more than $500,000 and shall be imprisoned for not less than 3 years nor more than 30 years.

4. More than 40 grams but not more than 100 grams, the person shall be fined not more than $500,000 and shall be imprisoned for not less than 5 years nor more than 45 years.

5. More than 100 grams, the person shall be fined not more than $500,000 and shall be imprisoned for not less than 10 years nor more than 45 years.

(d) *Heroin.* If a person violates this subsection with respect to heroin or a controlled substance analog of heroin and the amount possessed, with intent to manufacture, distribute or deliver, is:

1. Three grams or less, the person is guilty of a Class F felony.

2. More than 3 grams but not more than 10 grams, the person is guilty of a Class E felony.

3. More than 10 grams but not more than 50 grams, the person is guilty of a Class D felony.

4. More than 50 grams, the person is guilty of a Class C felony.

NOTE: Par. (d) is shown as affected eff. 2−1−03 by 2001 Wis. Act 109. Prior to 2−1−03 it reads:

(d) Heroin or a controlled substance analog of heroin is subject to the following penalties if the amount possessed, with intent to manufacture, distribute or deliver, is:

1. Three grams or less, the person shall be fined not less than $1,000 nor more than $100,000 and may be imprisoned for not more than 22 years and 6 months.

2. More than 3 grams but not more than 10 grams, the person shall be fined not less than $1,000 nor more than $200,000 and shall be imprisoned for not less than 6 months nor more than 22 years and 6 months.

3. More than 10 grams but not more than 50 grams, the person shall be fined not less than $1,000 nor more than $500,000 and shall be imprisoned for not less than one year nor more than 22 years and 6 months.

4. More than 50 grams but not more than 200 grams, the person shall be fined not less than $1,000 nor more than $500,000 and shall be imprisoned for not less than 3 years nor more than 22 years and 6 months.

5. More than 200 grams but not more than 400 grams, the person shall be fined not less than $1,000 nor more than $500,000 and shall be imprisoned for not less than 5 years nor more than 22 years and 6 months.

6. More than 400 grams, the person shall be fined not less than $1,000 nor more than $1,000,000 and shall be imprisoned for not less than 10 years nor more than 45 years.

(e) *Phencyclidine, amphetamine, methamphetamine, and methcathinone.* If a person violates this subsection with respect to phencyclidine, amphetamine, methamphetamine, or methcathinone, or a controlled substance analog of phencyclidine, amphetamine, methamphetamine, or methcathinone, and the amount possessed, with intent to manufacture, distribute, or deliver, is:

1. Three grams or less, the person is guilty of a Class F felony.

2. More than 3 grams but not more than 10 grams, the person is guilty of a Class E felony.

3. More than 10 grams but not more than 50 grams, the person is guilty of a Class D felony.

4. More than 50 grams, the person is guilty of a Class C felony.

NOTE: Par. (e) is shown as affected eff. 2−1−03 by 2001 Wis. Act 109. Prior to 2−1−03 it reads:

(e) Phencyclidine, amphetamine or methcathinone, or a controlled substance analog of phencyclidine, amphetamine or methcathinone, is subject to the following penalties if the amount possessed, with intent to manufacture, distribute or deliver, is:

1. Three grams or less, the person shall be fined not less than $1,000 nor more than $100,000 and may be imprisoned for not more than 7 years and 6 months.

2. More than 3 grams but not more than 10 grams, the person shall be fined not less than $1,000 nor more than $200,000 and shall be imprisoned for not less than 6 months nor more than 7 years and 6 months.

3. More than 10 grams but not more than 50 grams, the person shall be fined not less than $1,000 nor more than $500,000 and shall be imprisoned for not less than one year nor more than 22 years and 6 months.

4. More than 50 grams but not more than 200 grams, the person shall be fined not less than $1,000 nor more than $500,000 and shall be imprisoned for not less than 3 years nor more than 22 years and 6 months.

5. More than 200 grams but not more than 400 grams, the person shall be fined not less than $1,000 nor more than $500,000 and shall be imprisoned for not less than 5 years nor more than 22 years and 6 months.

6. More than 400 grams, the person shall be fined not less than $1,000 nor more than $1,000,000 and shall be imprisoned for not less than 10 years nor more than 45 years.

(em) Methamphetamine or a controlled substance analog of methamphetamine is subject to the following penalties if the amount possessed, with intent to manufacture, distribute or deliver, is:

1. Three grams or less, the person shall be fined not less than $1,000 nor more than $200,000 and may be imprisoned for not more than 22 years and 6 months.

2. More than 3 grams but not more than 10 grams, the person shall be fined not less than $1,000 nor more than $250,000 and shall be imprisoned for not less than 6 months nor more than 22 years and 6 months.

3. More than 10 grams but not more than 50 grams, the person shall be fined not less than $1,000 nor more than $500,000 and shall be imprisoned for not less than one year nor more than 22 years and 6 months.

4. More than 50 grams but not more than 200 grams, the person shall be fined not less than $1,000 nor more than $500,000 and shall be imprisoned for not less than 3 years nor more than 22 years and 6 months.

5. More than 200 grams but not more than 400 grams, the person shall be fined not less than $1,000 nor more than $500,000 and shall be imprisoned for not less than 5 years nor more than 22 years and 6 months.

6. More than 400 grams, the person shall be fined not less than $1,000 nor more than $1,000,000 and shall be imprisoned for not less than 10 years nor more than 45 years.

NOTE: Par. (em) is repealed eff. 2−1−03 by 2001 Wis. Act 109.

(f) *Lysergic acid diethylamide.* If a person violates this subsection with respect to lysergic acid diethylamide or a controlled substance analog of lysergic acid diethylamide and the amount possessed, with intent to manufacture, distribute or deliver, is:

1. One gram or less, the person is guilty of a Class G felony.

2. More than one gram but not more than 5 grams, the person is guilty of a Class F felony.

3. More than 5 grams, the person is guilty of a Class E felony.

NOTE: Par. (f) is shown as amended eff. 2−1−03 by 2001 Wis. Act 109. Prior to 2−1−03 it reads:

(f) Lysergic acid diethylamide or a controlled substance analog of lysergic acid diethylamide is subject to the following penalties if the amount possessed, with intent to manufacture, distribute or deliver, is:

1. One gram or less, the person shall be fined not less than $1,000 nor more than $100,000 and may be imprisoned for not more than 7 years and 6 months.

2. More than one gram but not more than 5 grams, the person shall be fined not less than $1,000 nor more than $200,000 and shall be imprisoned for not less than 6 months nor more than 7 years and 6 months.

3. More than 5 grams, the person shall be fined not less than $1,000 nor more than $500,000 and shall be imprisoned for not less than one year nor more than 22 years and 6 months.

(g) *Psilocin and psilocybin.* If a person violates this subsection with respect to psilocin or psilocybin, or a controlled substance analog of psilocin or psilocybin, and the amount possessed, with intent to manufacture, distribute or deliver, is:

1. One hundred grams or less, the person is guilty of a Class G felony.

2. More than 100 grams but not more than 500 grams, the person is guilty of a Class F felony.

3. More than 500 grams, the person is guilty of a Class E felony.

NOTE: Par. (g) is shown as amended eff. 2−1−03 by 2001 Wis. Act 109. Prior to 2−1−03 it reads:

(g) Psilocin or psilocybin, or a controlled substance analog of psilocin or psilocybin, is subject to the following penalties if the amount possessed, with intent to manufacture, distribute or deliver, is:

1. One hundred grams or less, the person shall be fined not less than $1,000 nor more than $100,000 and may be imprisoned for not more than 7 years and 6 months.

2. More than 100 grams but not more than 500 grams, the person shall be fined not less than $1,000 nor more than $200,000 and shall be imprisoned for not less than 6 months nor more than 7 years and 6 months.

3. More than 500 grams, the person shall be fined not less than $1,000 nor more than $500,000 and shall be imprisoned for not less than one year nor more than 22 years and 6 months.

(h) *Tetrahydrocannabinols.* If a person violates this subsection with respect to tetrahydrocannabinols, included under s. 961.14 (4) (t), or a controlled substance analog of tetrahydrocannabinols, and the amount possessed, with intent to manufacture, distribute, or deliver, is:

1. Two hundred grams or less, or 4 or fewer plants containing tetrahydrocannabinols, the person is guilty of a Class I felony.

2. More than 200 grams but not more than 1,000 grams, or more than 4 plants containing tetrahydrocannabinols but not more than 20 plants containing tetrahydrocannabinols, the person is guilty of a Class H felony.

3. More than 1,000 grams but not more than 2,500 grams, or more than 20 plants containing tetrahydrocannabinols but not more than 50 plants containing tetrahydrocannabinols, the person is guilty of a Class G felony.

4. More than 2,500 grams but not more than 10,000 grams, or more than 50 plants containing tetrahydrocannabinols but not more than 200 plants containing tetrahydrocannabinols, the person is guilty of a Class F felony.

5. More than 10,000 grams, or more than 200 plants containing tetrahydrocannabinols, the person is guilty of a Class E felony.

NOTE: Par. (h) is shown as affected eff. 2−1−03 by 2001 Wis. Act 109. Prior to 2−1−03 it reads:

(h) Tetrahydrocannabinols, included under s. 961.14 (4) (t), or a controlled substance analog of tetrahydrocannabinols, is subject to the following penalties if the amount possessed, with intent to manufacture, distribute or deliver, is:

1. Five hundred grams or less, or 10 or fewer plants containing tetrahydrocannabinols, the person shall be fined not less than $500 nor more than $25,000 and may be imprisoned for not more than 4 years and 6 months.

2. More than 500 grams but not more than 2,500 grams, or more than 10 plants containing tetrahydrocannabinols but not more than 50 plants containing tetrahydrocannabinols, the person shall be fined not less than $1,000 nor more than $50,000 and shall be imprisoned for not less than 3 months nor more than 7 years and 6 months.

3. More than 2,500 grams, or more than 50 plants containing tetrahydrocannabinols, the person shall be fined not less than $1,000 nor more than $100,000 and shall be imprisoned for not less than one year nor more than 15 years.

(hm) *Certain other schedule I controlled substances and ketamine.* If the person violates this subsection with respect to gamma−hydroxybutyric acid, gamma−butyrolactone, 3,4−methylenedioxymethamphetamine 4−bromo−2,5−dimethoxy−beta−phenylethylamine, 4−methylthioamphetamine, ketamine, or a controlled substance analog of gamma−hydroxybutyric acid, gamma−butyrolactone, 3,4−methylenedioxymethamphetamine 4−bromo−2,5−dimethoxy−beta−phenylethylamine, or 4−methylthioamphetamine is subject to the following penalties if the amount possessed, with intent to manufacture, distribute, or deliver, is:

1. Three grams or less, the person is guilty of a Class F felony.

2. More than 3 grams but not more than 10 grams, the person is guilty of a Class E felony.

3. More than 10 grams but not more than 50 grams, the person is guilty of a Class D felony.

4. More than 50 grams, the person is guilty of a Class C felony.

NOTE: Par. (hm) is shown as affected eff. 2−1−03 by 2001 Wis. Act 109. Prior to 2−1−03 it reads:

(hm) Gamma−hydroxybutyric acid, gamma−butyrolactone, 3,4−methylenedioxymethamphetamine 4−bromo−2,5−dimethoxy−beta−phenylethylamine, 4−methylthioamphetamine, ketamine, or a controlled substance analog of gamma−hydroxybutyric acid, gamma−butyrolactone, 3,4−methylenedioxymethamphetamine 4−bromo−2,5−dimethoxy−beta−phenylethylamine, or 4−methylthioamphetamine is subject to the following penalties if the amount possessed, with intent to manufacture, distribute, or deliver is:

1. Three grams or less, the person shall be fined not less than $1,000 nor more than $200,000 and may be imprisoned for not more than 7 years and 6 months.

2. More than 3 grams but not more than 10 grams, the person shall be fined not less than $1,000 nor more than $250,000 and shall be imprisoned for not less than 6 months nor more than 7 years and 6 months.

3. More than 10 grams but not more than 50 grams, the person shall be fined not less than $1,000 nor more than $500,000 and shall be imprisoned for not less than one year nor more than 22 years and 6 months.

4. More than 50 grams but not more than 200 grams, the person shall be fined not less than $1,000 nor more than $500,000 and shall be imprisoned for not less than 3 years nor more than 22 years and 6 months.

5. More than 200 grams but not more than 400 grams, the person shall be fined not less than $1,000 nor more than $500,000 and shall be imprisoned for not less than 5 years nor more than 22 years and 6 months.

6. More than 400 grams, the person shall be fined not less than $1,000 nor more than $500,000 and shall be imprisoned for not less than 10 years nor more than 45 years.

(i) *Schedule IV drugs generally.* Except as provided in par. (im), if a person violates this subsection with respect to a substance included in schedule IV, the person is guilty of a Class H felony.

NOTE: Par. (i) is shown as amended eff. 2−1−03 by 2001 Wis. Act 109. Prior to 2−1−03 it reads:

(i) Except as provided in par. (im), a substance included in schedule IV, may be fined not more than $10,000 or imprisoned for not more than 4 years and 6 months or both.

(im) *Flunitrazepam.* If a person violates this subsection with respect to flunitrazepam and the amount possessed, with intent to manufacture, distribute, or deliver, is:

1. Three grams or less, the person is guilty of a Class F felony.

2. More than 3 grams but not more than 10 grams, the person is guilty of a Class E felony.

3. More than 10 grams but not more than 50 grams, the person is guilty of a Class D felony.

4. More than 50 grams, the person is guilty of a Class C felony.

NOTE: Par. (im) is shown as affected eff. 2−1−03 by 2001 Wis. Act 109. Prior to 2−1−03 it reads:

(im) Flunitrazepam is subject to the following penalties if the amount possessed, with intent to manufacture, distribute, or deliver, is:

1. Three grams or less, the person shall be fined not less than $1,000 nor more than $200,000 and may be imprisoned for not more than 7 years and 6 months.

2. More than 3 grams but not more than 10 grams, the person shall be fined not less than $1,000 nor more than $250,000 and shall be imprisoned for not less than 6 months nor more than 7 years and 6 months.

3. More than 10 grams but not more than 50 grams, the person shall be fined not less than $1,000 nor more than $500,000 and shall be imprisoned for not less than one year nor more than 22 years and 6 months.

4. More than 50 grams but not more than 200 grams, the person shall be fined not less than $1,000 nor more than $500,000 and shall be imprisoned for not less than 3 years nor more than 22 years and 6 months.

5. More than 200 grams but not more than 400 grams, the person shall be fined not less than $1,000 nor more than $500,000 and shall be imprisoned for not less than 5 years nor more than 22 years and 6 months.

6. More than 400 grams, the person shall be fined not less than $1,000 nor more than $500,000 and shall be imprisoned for not less than 10 years nor more than 45 years.

(j) *Schedule V drugs.* If a person violates this subsection with respect to a substance included in schedule V, the person is guilty of a Class I felony.

NOTE: Par. (j) is shown as amended eff. 2−1−03 by 2001 Wis. Act 109. Prior to 2−1−03 it reads:

(j) A substance included in schedule V, may be fined not more than $5,000 or imprisoned for not more than 2 years or both.

(1n) PIPERIDINE POSSESSION. (a) No person may possess any quantity of piperidine or its salts with the intent to use the piperidine or its salts to manufacture a controlled substance or controlled substance analog in violation of this chapter.

(b) No person may possess any quantity of piperidine or its salts if he or she knows or has reason to know that the piperidine or its salts will be used to manufacture a controlled substance or controlled substance analog in violation of this chapter.

(c) A person who violates par. (a) or (b) is guilty of a Class F felony.

NOTE: Par. (c) is shown as amended eff. 2−1−03 by 2001 Wis. Act 109. Prior to 2−1−03 it reads:

(c) A person who violates par. (a) or (b) may be fined not more than $250,000 or imprisoned for not more than 15 years or both.

(1q) PENALTY RELATING TO TETRAHYDROCANNABINOLS IN CERTAIN CASES. Under s. 961.49 (2), 1999 stats., and subs. (1) (h) and (1m) (h), if different penalty provisions apply to a person depending on whether the weight of tetrahydrocannabinols or the number of plants containing tetrahydrocannabinols is considered, the greater penalty provision applies.

NOTE: Sub. (1q) is shown as amended eff. 2−1−03 by 2001 Wis. Act 109. Prior to 2−1−03 it reads:

(1q) PENALTY RELATING TO TETRAHYDROCANNABINOLS IN CERTAIN CASES. Under subs. (1) (h) and (1m) (h) and s. 961.49 (2), if different penalty provisions apply to a person depending on whether the weight of tetrahydrocannabinols or the number of plants containing tetrahydrocannabinols is considered, the greater penalty provision applies.

(1r) DETERMINING WEIGHT OF SUBSTANCE. In determining amounts under s. 961.49 (2) (b), 1999 stats., and subs. (1) and (1m), an amount includes the weight of cocaine, cocaine base, heroin, phencyclidine, lysergic acid diethylamide, psilocin, psilocybin, amphetamine, methamphetamine, methcathinone or tetrahydrocannabinols or any controlled substance analog of any of these substances together with any compound, mixture, diluent, plant material or other substance mixed or combined with the controlled substance or controlled substance analog. In addition, in determining amounts under subs. (1) (h) and (1m) (h), the amount of tetrahydrocannabinols means anything included under s. 961.14 (4) (t) and includes the weight of any marijuana.

NOTE: Sub. (1r) is shown as amended eff. 2−1−03 by 2001 Wis. Act 109. Prior to 2−1−03 it reads:

(1r) DETERMINING WEIGHT OF SUBSTANCE. In determining amounts under subs. (1) and (1m) and s. 961.49 (2) (b), an amount includes the weight of cocaine, cocaine base, heroin, phencyclidine, lysergic acid diethylamide, psilocin, psilocybin, amphetamine, methamphetamine, methcathinone or tetrahydrocannabinols or any controlled substance analog of any of these substances together with any compound, mixture, diluent, plant material or other substance mixed or combined with the controlled substance or controlled substance analog. In addition, in determining amounts under subs. (1) (h) and (1m) (h), the amount of tetrahydrocannabinols means anything included under s. 961.14 (4) (t) and includes the weight of any marijuana.

(1x) CONSPIRACY. Any person who conspires, as specified in s. 939.31, to commit a crime under sub. (1) (cm) to (h) or (1m) (cm) to (h) is subject to the applicable penalties under sub. (1) (cm) to (h) or (1m) (cm) to (h).

(2) COUNTERFEIT SUBSTANCES. Except as authorized by this chapter, it is unlawful for any person to create, manufacture, distribute, deliver or possess with intent to distribute or deliver, a counterfeit substance. Any person who violates this subsection is subject to the following penalties:

(a) *Counterfeit schedule I and II narcotic drugs.* If a person violates this subsection with respect to a counterfeit substance included in schedule I or II which is a narcotic drug, the person is guilty of a Class E felony.

(b) *Counterfeit schedule I, II, III, and IV drugs.* Except as provided in pars. (bm) and (cm), if a person violates this subsection with respect to any other counterfeit substance included in schedule I, II, III, or IV, the person is guilty of a Class H felony.

(bm) A counterfeit substance that is a counterfeit of phencyclidine, methamphetamine, lysergic acid diethylamide, gamma−hydroxybutyric acid, gamma−butyrolactone, 3,4−methylenedioxymethamphetamine 4−bromo−2,5−dimethoxy−beta−phenylethyl− amine, 4−methylthioamphetamine, or ketamine is punishable by the applicable fine and imprisonment for manufacture, distribution, delivery, or possession with intent to manufacture, distribute, or deliver, of the genuine controlled substance under sub. (1) or (1m).

(cm) *Counterfeit flunitrazepam.* A counterfeit substance which is flunitrazepam, is punishable by the applicable fine and imprisonment for manufacture, distribution, delivery, or possession with intent to manufacture, distribute, or deliver, of the genuine controlled substance under sub. (1) or (1m).

(d) *Counterfeit schedule V drugs.* If a person violates this subsection with respect to a counterfeit substance included in schedule V, the person is guilty of a Class I felony.

NOTE: Sub. (2) is shown as affected eff. 2−1−03 by 2001 Wis. Act 109. Prior to 2−1−03 it reads:

(2) COUNTERFEIT SUBSTANCES. Except as authorized by this chapter, it is unlawful for any person to create, manufacture, distribute, deliver or possess with intent to distribute or deliver, a counterfeit substance. Any person who violates this subsection with respect to:

(a) A counterfeit substance included in schedule I or II which is a narcotic drug, may be fined not more than $25,000 or imprisoned for not more than 22 years and 6 months or both.

(b) Except as provided in pars. (a) and (bm), any counterfeit substance included in schedule I, II or III, may be fined not more than $15,000 or imprisoned for not more than 7 years and 6 months or both.

(bm) A counterfeit substance that is a counterfeit of phencyclidine, methamphetamine, lysergic acid diethylamide, gamma−hydroxybutyric acid, gamma−butyrolactone, 3,4−methylenedioxymethamphetamine 4−bromo−2,5−dimethoxy−beta−phenylethyl− amine, 4−methylthioamphetamine, or ketamine is punishable by the applicable fine and imprisonment for manufacture, distribution, delivery, or possession with intent to manufacture, distribute, or deliver, of the genuine controlled substance under sub. (1) or (1m).

(c) Except as provided in par. (cm), a counterfeit substance included in schedule IV, may be fined not more than $10,000 or imprisoned for not more than 4 years and 6 months or both.

(cm) A counterfeit substance which is flunitrazepam, is punishable by the applicable fine and imprisonment for manufacture, distribution, delivery, or possession with intent to manufacture, distribute, or deliver, of the genuine controlled substance under sub. (1) or (1m).

(d) A counterfeit substance included in schedule V, may be fined not more than $5,000 or imprisoned for not more than 2 years or both.

(3g) POSSESSION. No person may possess or attempt to possess a controlled substance or a controlled substance analog unless the person obtains the substance or the analog directly from, or pursuant to a valid prescription or order of, a practitioner who is acting in the course of his or her professional practice, or unless the person is otherwise authorized by this chapter to possess the substance or the analog. Any person who violates this subsection is subject to the following penalties:

(am) *Schedule I and II narcotic drugs.* If a person possesses a controlled substance included in schedule I or II which is a narcotic drug, or possesses a controlled substance analog of a controlled substance included in schedule I or II which is a narcotic drug, the person is guilty of a Class I felony.

(b) *Other drugs generally.* Except as provided in pars. (c), (d), (e) and (f), if the person possesses or attempts to possess a controlled substance or controlled substance analog, other than a controlled substance included in schedule I or II that is a narcotic drug or a controlled substance analog of a controlled substance included in schedule I or II that is a narcotic drug, the person is guilty of a misdemeanor, punishable under s. 939.61.

(c) *Cocaine and cocaine base.* If a person possess or attempts to possess cocaine or cocaine base, or a controlled substance analog of cocaine or cocaine base, the person shall be fined not more than $5,000 and may be imprisoned for not more than one year in the county jail upon a first conviction and is guilty of a Class I felony for a 2nd or subsequent offense. For purposes of this paragraph, an offense is considered a 2nd or subsequent offense if, prior to the offender's conviction of the offense, the offender has at any time been convicted of any felony or misdemeanor under this chapter or under any statute of the United States or of any state relating to controlled substances, controlled substance analogs, narcotic drugs, marijuana, or depressant, stimulant, or hallucinogenic drugs.

(d) *Certain hallucinogenic and stimulant drugs.* If a person possesses or attempts to possess lysergic acid diethylamide, phencyclidine, amphetamine, methamphetamine, methcathinone, psilocin or psilocybin, or a controlled substance analog of lysergic acid diethylamide, phencyclidine, amphetamine, methamphet-

amine, methcathinone, psilocin or psilocybin, the person may be fined not more than $5,000 or imprisoned for not more than one year in the county jail or both upon a first conviction and is guilty of a Class I felony for a 2nd or subsequent offense. For purposes of this paragraph, an offense is considered a 2nd or subsequent offense if, prior to the offender's conviction of the offense, the offender has at any time been convicted of any felony or misdemeanor under this chapter or under any statute of the United States or of any state relating to controlled substances, controlled substance analogs, narcotic drugs, marijuana, or depressant, stimulant, or hallucinogenic drugs.

(e) *Tetrahydrocannabinols.* If a person possesses or attempts to possess tetrahydrocannabinols included under s. 961.14 (4) (t), or a controlled substance analog of tetrahydrocannabinols, the person may be fined not more than $1,000 or imprisoned for not more than 6 months or both upon a first conviction and is guilty of a Class I felony for a 2nd or subsequent offense. For purposes of this paragraph, an offense is considered a 2nd or subsequent offense if, prior to the offender's conviction of the offense, the offender has at any time been convicted of any felony or misdemeanor under this chapter or under any statute of the United States or of any state relating to controlled substances, controlled substance analogs, narcotic drugs, marijuana, or depressant, stimulant, or hallucinogenic drugs.

(f) *Gamma−hydroxybutyric acid, gamma−butyrolactone, ketamine, or flunitrazepam.* If a person possesses or attempts to possess gamma−hydroxybutyric acid, gamma−butyrolactone, ketamine or flunitrazepam, the person is guilty of a Class H felony.

NOTE: Sub. (3g) is shown as affected eff. 2−1−03 by 2001 Wis. Act 109. Prior to 2−1−03 it reads:

(3g) POSSESSION. **No person may possess or attempt to possess a controlled substance or a controlled substance analog unless the person obtains the substance or the analog directly from, or pursuant to a valid prescription or order of, a practitioner who is acting in the course of his or her professional practice, or unless the person is otherwise authorized by this chapter to possess the substance or the analog. Any person who violates this subsection is subject to the following penalties:**

(a) 1. Except as provided in subd. 2., if the person possesses a controlled substance included in schedule I or II which is a narcotic drug, or possesses a controlled substance analog of a controlled substance included in schedule I or II which is a narcotic drug, the person may, upon a first conviction, be fined not more than $5,000 or imprisoned for not more than 2 years or both, and, for a 2nd or subsequent offense, the person may be fined not more than $10,000 or imprisoned for not more than 3 years or both.

2. If the person possesses or attempts to possess heroin or a controlled substance analog of heroin, the person may be fined not more than $5,000 or imprisoned for not more than 2 years or both.

3. For purposes of this paragraph, an offense is considered a 2nd or subsequent offense if, prior to the offender's conviction of the offense, the offender has at any time been convicted under this chapter or under any statute of the United States or of any state relating to controlled substances, controlled substance analogs, narcotic drugs, marijuana or depressant, stimulant or hallucinogenic drugs.

(b) Except as provided in pars. (c), (d), (dm), (e) and (f), if the person possesses or attempts to possess a controlled substance or controlled substance analog, other than a controlled substance included in schedule I or II that is a narcotic drug or a controlled substance analog of a controlled substance included in schedule I or II that is a narcotic drug, the person is guilty of a misdemeanor, punishable under s. 939.61.

(c) If a person possess or attempts to possess cocaine or cocaine base, or a controlled substance analog of cocaine or cocaine base, the person shall be fined not more than $5,000 and may be imprisoned for not more than one year in the county jail.

(d) If a person possesses or attempts to possess lysergic acid diethylamide, phencyclidine, amphetamine, methcathinone, psilocin or psilocybin, or a controlled substance analog of lysergic acid diethylamide, phencyclidine, amphetamine, methcathinone, psilocin or psilocybin, the person may be fined not more than $5,000 or imprisoned for not more than one year in the county jail or both.

(dm) If a person possesses or attempts to possess methamphetamine or a controlled substance analog of methamphetamine, the person may be fined not more than $5,000 or imprisoned for not more than 2 years or both.

(e) If a person possesses or attempts to possess tetrahydrocannabinols included under s. 961.14 (4) (t), or a controlled substance analog of tetrahydrocannabinols, the person may be fined not more than $1,000 or imprisoned for not more than 6 months or both.

(f) If a person possesses or attempts to possess gamma−hydroxybutyric acid, gamma−butyrolactone, ketamine or flunitrazepam, the person may be fined not more than $5,000 or imprisoned for not more than 2 years or both.

(4) IMITATION CONTROLLED SUBSTANCES. (am) 1. No person may knowingly distribute or deliver, attempt to distribute or deliver or cause to be distributed or delivered a noncontrolled substance and expressly or impliedly represent any of the following to the recipient:

a. That the substance is a controlled substance.

b. That the substance is of a nature, appearance or effect that will allow the recipient to display, sell, distribute, deliver or use the noncontrolled substance as a controlled substance, if the representation is made under circumstances in which the person has reasonable cause to believe that the noncontrolled substance will be used or distributed for use as a controlled substance.

2. Proof of any of the following is prima facie evidence of a representation specified in subd. 1. a. or b.:

a. The physical appearance of the finished product containing the substance is substantially the same as that of a specific controlled substance.

b. The substance is unpackaged or is packaged in a manner normally used for the illegal delivery of a controlled substance.

c. The substance is not labeled in accordance with 21 USC 352 or 353.

d. The person distributing or delivering, attempting to distribute or deliver or causing distribution or delivery of the substance to be made states to the recipient that the substance may be resold at a price that substantially exceeds the value of the substance.

3. A person who violates this paragraph is guilty of a Class I felony.

NOTE: Subd. 3. is shown as amended eff. 2−1−03 by 2001 Wis. Act 109. Prior to 2−1−03 it reads:

3. A person convicted of violating this paragraph may be fined not more than $5,000 or imprisoned for not more than 2 years or both.

(bm) It is unlawful for any person to agree, consent or offer to lawfully manufacture, deliver, distribute or dispense any controlled substance to any person, or to offer, arrange or negotiate to have any controlled substance unlawfully manufactured, delivered, distributed or dispensed, and then manufacture, deliver, distribute or dispense or offer, arrange or negotiate to have manufactured, delivered, distributed or dispensed to any such person a substance which is not a controlled substance. Any person who violates this paragraph may be fined not more than $500 or imprisoned for not more than 6 months or both.

(5) DRUG ABUSE PROGRAM IMPROVEMENT SURCHARGE. (a) When a court imposes a fine for a violation of this section, it shall also impose a drug abuse program improvement surcharge in an amount of 50% of the fine and penalty assessment imposed.

(b) The clerk of the court shall collect and transmit the amount to the county treasurer as provided in s. 59.40 (2) (m). The county treasurer shall then make payment to the state treasurer as provided in s. 59.25 (3) (f) 2.

(c) All moneys collected from drug surcharges shall be deposited by the state treasurer in and utilized in accordance with s. 20.435 (6) (gb).

History: 1971 c. 219, 307; 1973 c. 12; 1981 c. 90, 314; 1985 a. 328; 1987 a. 339, 403; 1989 a. 31, 56, 121; 1991 a. 39; 138; 1993 a. 98, 118, 437, 482; 1995 a. 201; 1995 a. 448 ss. 243 to 266, 487 to 490; Stats. 1995 s. 961.41; 1997 a. 220, 283; 1999 a. 21, 32, 48, 57; 2001 a. 16, 109.

An inference of intent could be drawn from possession of hashish with a street value of $2,000 to $4,000 and opium with a street value of $20,000 to $24,000. State v. Trimbell, 64 Wis. 2d 379, 219 N.W.2d 369 (1974).

No presumption of intent to deliver is raised by sub. (1m). The statute merely lists evidence from which intent may be inferred. State ex rel. Bena v. Hon. John J. Croseto, 73 Wis. 2d 261, 243 N.W.2d 442 (1976).

Evidence of a defendant's possession of a pipe containing burnt residue of marijuana was insufficient to impute knowledge to the defendant of possession of a controlled substance. Kabat v. State, 76 Wis. 2d 224, 251 N.W.2d 38 (1977).

This section prohibits the act of manufacture, as defined in 161.01 (13) [now 961.01 (13)]. Possession of a controlled substance created by an accused is not required for conviction. This section is not unconstitutionally vague. State ex rel. Bell v. Columbia County Ct. 82 Wis. 2d 401, 263 N.W.2d 162 (1978).

A conviction under sub. (1m) was upheld when the defendant possessed 1/3 gram of cocaine divided into 4 packages and evidence of defendant's prior sales of other drugs was admitted under s. 904.04 (2) as probative of intent to deliver the cocaine. Peasley v. State, 83 Wis. 2d 224, 265 N.W.2d 506 (1978).

Testimony that weapons were found at the accused's home was admissible as part of the chain of facts relevant to the accused's intent to deliver heroin State v. Wedgeworth, 100 Wis. 2d 514, 302 N.W.2d 810 (1981).

Being a procuring agent of the buyer is not a valid defense to a charge under this section. By facilitating a drug deal, the defendant was party to the crime. State v. Hecht, 116 Wis. 2d 605, 342 N.W.2d 721 (1984).

When police confiscated a large quantity of drugs from an empty home and the next day searched the defendant upon his return to the home, confiscating a small quantity of the same drugs, the defendant's conviction for the lesser−included offense of pos-

session and the greater offense of possession with intent to deliver did not violate double jeopardy. State v. Stevens, 123 Wis. 2d 303, 367 N.W.2d 788 (1985).

The defendant was properly convicted of attempted delivery of cocaine even though a noncontrolled substance was delivered. State v. Cooper, 127 Wis. 2d 429, 380 N.W.2d 383 (Ct. App. 1985).

Possession is not a lesser included offense of manufacturing. State v. Peck, 143 Wis. 2d 624, 422 N.W.2d 160 (Ct. App. 1988).

Identification of a controlled substance can be established by circumstantial evidence such as lay experience based on familiarity through prior use, trading, or law enforcement. State v. Anderson, 176 Wis. 2d 196, N.W.2d (Ct. App. 1993).

A conspiracy under sub. (1x) must involve at least 2 people with each subject to the same penalty for the conspiracy. If the buyer of drugs is guilty of misdemeanor possession only, a felony conspiracy charge may not be brought against the buyer. State v. Smith, 189 Wis. 2d 496, 525 N.W.2d 264 (1995).

The state is not required to prove that a defendant knew the exact nature or precise chemical name of a possessed controlled substance. The state must only prove that the defendant knew or believed that the substance was a controlled substance. State v. Sartin, 200 Wis. 2d 47, 546 N.W.2d 449 (1996).

A delivery conspiracy under sub. (1x) requires an agreement between a buyer and a seller that the buyer will deliver at least some of the controlled substance to a 3rd party. State v. Cavallari, 214 Wis. 2d 42, 571 N.W.2d 176 (Ct. App. 1997).

Standing alone, the presence of drugs in someone's system is insufficient to support a conviction for possession, but it is circumstantial evidence of prior possession. Evidence that the defendant was selling drugs is irrelevant to a charge of simple possession. Evidence that the defendant had money but no job does not have a tendency to prove possession. State v. Griffin, 220 Wis. 2d 371, 584 N.W.2d 127 (Ct. App. 1998)

Double jeopardy was not violated when the defendant was convicted of separate offenses under s. 161.41 [now 961.41] for simultaneous delivery of different controlled substances. Leonard v. Warden, Dodge Correctional Inst. 631 F. Supp. 1403 (1986).

961.42 Prohibited acts B—penalties. (1) It is unlawful for any person knowingly to keep or maintain any store, shop, warehouse, dwelling, building, vehicle, boat, aircraft or other structure or place, which is resorted to by persons using controlled substances in violation of this chapter for the purpose of using these substances, or which is used for manufacturing, keeping or delivering them in violation of this chapter.

(2) Any person who violates this section is guilty of a Class I felony.

NOTE: Sub. (2) is shown as amended eff. 2−1−03 by 2001 Wis. Act 109. Prior to 2−1−03 it reads:

(2) Any person who violates this section may be fined not more than $25,000 or imprisoned not more than 2 years or both.

History: 1971 c. 219; 1995 a. 448 s. 267; Stats. 1995 s. 961.42; 1997 a. 283; 2001 a. 109.

"Keeping" a substance under sub. (1) means more than simple possession; it means keeping for the purpose of warehousing or storage for ultimate manufacture or delivery. State v. Brooks, 124 Wis. 2d 349, 369 N.W.2d 183 (Ct. App. 1985).

961.43 Prohibited acts C—penalties. (1) It is unlawful for any person:

(a) To acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception or subterfuge;

(b) Without authorization, to make, distribute or possess any punch, die, plate, stone or other thing designed to print, imprint or reproduce the trademark, trade name or other identifying mark, imprint or device of another or any likeness of any of the foregoing upon any drug or container or labeling thereof so as:

1. To make a counterfeit substance; or

2. To duplicate substantially the physical appearance, form, package or label of a controlled substance.

(2) Any person who violates this section is guilty of a Class H felony.

NOTE: Sub. (2) is shown as amended eff. 2−1−03 by 2001 Wis. Act 109. Prior to 2−1−03 it reads:

(2) Any person who violates this section may be fined not more than $30,000 or imprisoned not more than 6 years or both.

History: 1971 c. 219; 1981 c. 90; 1995 a. 448 s. 268; Stats. 1995 s. 961.43; 1997 a. 283; 2001 a. 109.

961.435 Specific penalty. Any person who violates s. 961.38 (5) may be fined not more than $500 or imprisoned not more than 30 days or both.

History: 1975 c. 190; 1995 a. 448 s. 269; Stats. 1995 s. 961.435.

961.437 Possession and disposal of waste from manufacture of methamphetamine. (1) In this section:

(a) "Dispose of" means discharge, deposit, inject, dump, spill, leak or place methamphetamine manufacturing waste into or on any land or water in a manner that may permit the waste to be emitted into the air, to be discharged into any waters of the state or otherwise to enter the environment.

(b) "Intentionally" has the meaning given in s. 939.23 (3).

(c) "Methamphetamine manufacturing waste" means any solid, semisolid, liquid or contained gaseous material or article that results from or is produced by the manufacture of methamphetamine or a controlled substance analog of methamphetamine in violation of this chapter.

(2) No person may do any of the following:

(a) Knowingly possess methamphetamine manufacturing waste.

(b) Intentionally dispose of methamphetamine manufacturing waste.

(3) Subsection (2) does not apply to a person who possesses or disposes of methamphetamine manufacturing waste under all of the following circumstances:

(a) The person is storing, treating or disposing of the methamphetamine manufacturing waste in compliance with chs. 287, 289, 291 and 292 or the person has notified a law enforcement agency of the existence of the methamphetamine manufacturing waste.

(b) The methamphetamine manufacturing waste had previously been possessed or disposed of by another person in violation of sub. (2).

(4) A person who violates sub. (2) is subject to the following penalties:

(a) For a first offense, the person is guilty of a Class H felony.

NOTE: Par. (a) is shown as amended eff. 2−1−03 by 2001 Wis. Act 109. Prior to 2−1−03 it reads:

(a) For a first offense, the person shall be fined not less than $1,000 nor more than $100,000 or imprisoned for not more than 7 years and 6 months or both.

(b) For a 2nd or subsequent offense, the person is guilty of a Class F felony.

NOTE: Par. (b) is shown as amended eff. 2−1−03 by 2001 Wis. Act 109. Prior to 2−1−03 it reads:

(b) For a 2nd or subsequent offense, the person shall be fined not less than $5,000 nor more than $150,000 or imprisoned for not more than 15 years or both.

(5) Each day of a continuing violation of sub. (2) (a) or (b) constitutes a separate offense.

History: 1999 a. 129; 2001 a. 109.

961.438 Minimum sentence. Any minimum sentence under this chapter is a presumptive minimum sentence. Except as provided in s. 973.09 (1) (d), the court may impose a sentence that is less than the presumptive minimum sentence or may place the person on probation only if it finds that the best interests of the community will be served and the public will not be harmed and if it places its reasons on the record.

NOTE: This section is repealed eff. 2−1−03 by 2001 Wis. Act 109.

History: 1989 a. 121; 1995 a. 448 s. 270; Stats. 1995 s. 961.438; 2001 a. 109.

"Except as provided in s. 973.09 (1) (d)" separates minimum sentences of one year or less from other sentences; that part of the statute regarding making certain findings relates only to situations not arising under s. 973.09 (1) (d). State v. DeLeon, 171 Wis. 2d 200, 490 N.W.2d 767 (Ct. App. 1992).

961.44 Penalties under other laws. Any penalty imposed for violation of this chapter is in addition to, and not in lieu of, any civil or administrative penalty or sanction otherwise authorized by law.

History: 1971 c. 219; 1995 a. 448 s. 271; Stats. 1995 s. 961.44.

961.45 Bar to prosecution. If a violation of this chapter is a violation of a federal law or the law of another state, a conviction or acquittal under federal law or the law of another state for the same act is a bar to prosecution in this state.

History: 1971 c. 219; 1995 a. 448 s. 272; Stats. 1995 s. 961.45.

Under this section, a "prosecution" is to be equated with a conviction or acquittal. The date on which a sentence is imposed is not relevant to the determination of whether a "prosecution" has occurred. State v. Petty, 201 Wis. 2d 337, 548 N.W.2d 817 (1996).

This section bars a Wisconsin prosecution under ch. 961 for the same conduct on which a prior federal conviction is based. The restriction is not limited to the same crime as defined by its statutory elements. State v. Hansen, 2001 WI 53, 243 Wis. 328, 627 N.W. 2d 195.

961.455 Using a child for illegal drug distribution or manufacturing purposes. (1) Any person who has attained the age of 17 years who knowingly solicits, hires, directs, employs or uses a person who is under the age of 17 years for the purpose of violating s. 961.41 (1) is guilty of a Class F felony.

NOTE: Sub. (1) is shown as amended eff. 2−1−03 by 2001 Wis. Act 109. Prior to 2−1−03 it reads:

(1) Any person who has attained the age of 17 years who knowingly solicits, hires, directs, employs or uses a person who is 17 years of age or under for the purpose of violating s. 961.41 (1) may be fined not more than $50,000 or imprisoned for not more than 15 years or both.

(2) The knowledge requirement under sub. (1) does not require proof of knowledge of the age of the child. It is not a defense to a prosecution under this section that the actor mistakenly believed that the person solicited, hired, directed, employed or used under sub. (1) had attained the age of 18 years, even if the mistaken belief was reasonable.

(3) Solicitation under sub. (1) occurs in the manner described under s. 939.30, but the penalties under sub. (1) apply instead of the penalties under s. 939.30.

NOTE: Sub. (3) is shown as amended eff. 2−1−03 by 2001 Wis. Act 109. Prior to 2−1−03 it reads:

(3) Solicitation under sub. (1) occurs in the manner described under s. 939.30, but the penalties under sub. (1) apply instead of the penalties under s. 939.30 or 948.35.

(4) If the conduct described under sub. (1) results in a violation under s. 961.41 (1), the actor is subject to prosecution and conviction under s. 961.41 (1) or this section or both.

History: 1989 a. 121; 1991 a. 153; 1995 a. 27; 1995 a. 448 ss. 273 to 275; Stats. 1995 s. 961.455; 1997 a. 283; 2001 a. 109.

961.46 Distribution to persons under age 18. If a person 17 years of age or over violates s. 961.41 (1) by distributing or delivering a controlled substance or a controlled substance analog to a person 17 years of age or under who is at least 3 years his or her junior, the applicable maximum term of imprisonment prescribed under s. 961.41 (1) for the offense may be increased by not more than 5 years.

NOTE: This section is shown as affected eff. 2−1−03 by 2001 Wis. Act 109. Prior to 2−1−03 it reads:

961.46 Distribution to persons under age 18. (1) Except as provided in sub. (3), any person 17 years of age or over who violates s. 961.41 (1) by distributing or delivering a controlled substance included in schedule I or II which is a narcotic drug or a controlled substance analog of a controlled substance included in schedule I or II which is a narcotic drug to a person 17 years of age or under who is at least 3 years his or her junior is punishable by the fine authorized by s. 961.41 (1) (a) or a term of imprisonment of up to twice that authorized by s. 961.41 (1) (a), or both.

(2) Except as provided in sub. (3), any person 17 years of age or over who violates s. 961.41 (1) by distributing or delivering any other controlled substance included in schedule I, II, III, IV or V or a controlled substance analog of any other controlled substance included in schedule I or II to a person 17 years of age or under who is at least 3 years his or her junior is punishable by the fine authorized by s. 961.41 (1) (b), (i) or (j) or a term of imprisonment of up to twice that authorized by s. 961.41 (1) (b), (i) or (j) or both.

(3) If any person 17 years of age or over violates s. 961.41 (1) (cm), (d), (e), (em), (f), (g), (h) or (im) by distributing or delivering cocaine, cocaine base, heroin, phencyclidine, lysergic acid diethylamide, psilocin, psilocybin, amphetamine, methamphetamine, methcathinone, flunitrazepam or any form of tetrahydrocannabinols or a controlled substance analog of any of these substances to a person 17 years of age or under who is at least 3 years his or her junior, any applicable minimum and maximum fines and minimum and maximum periods of imprisonment under s. 961.41 (1) (cm), (d), (e), (em), (f), (g), (h) or (im) are doubled.

History: 1971 c. 219; 1985 a. 328; 1987 a. 339; 1989 a. 121; 1993 a. 98, 118, 490; 1995 a. 27; 1995 a. 448 ss. 276 to 279; Stats. 1995 s. 961.46; 1999 a. 48, 57; 2001 a. 109.

961.465 Distribution to prisoners. (1) Except as provided in sub. (2), any person who violates s. 961.41 (1) or (1m) by delivering, distributing or possessing with intent to deliver or distribute a controlled substance or controlled substance analog to a prisoner within the precincts of any prison, jail or house of correction is subject to the applicable fine under s. 961.41 (1) or (1m) or a term of imprisonment of up to twice that authorized by s. 961.41 (1) or (1m) or both.

(2) If a person violates s. 961.41 (1) (cm), (d), (e), (em), (f), (g) or (h) or (1m) (cm), (d), (e), (em), (f), (g) or (h) by delivering, distributing or possessing with intent to deliver or distribute cocaine, cocaine base, heroin, phencyclidine, lysergic acid diethylamide, psilocin, psilocybin, amphetamine, methamphetamine, methcathinone or any form of tetrahydrocannabinols, or a controlled substance analog of any of these substances, to a prisoner within the precincts of any prison, jail or house of correction, any applicable minimum and maximum fines and minimum and maximum periods of imprisonment under s. 961.41 (1) (cm), (d), (e), (em), (f), (g) or (h) or (1m) (cm), (d), (e), (em), (f), (g) or (h) are doubled.

(2m) A person may be subject to increased penalties under both this section and s. 961.49 regarding the same unlawful act.

(3) In this section, "precinct" means a place where any activity is conducted by a prison, jail or house of correction.

NOTE: This section is repealed eff. 2−1−03 by 2001 Wis. Act 109.

History: 1979 c. 116; 1985 a. 328; 1987 a. 339; 1989 a. 121; 1993 a. 87, 98, 118, 490; 1995 a. 448 ss. 280 to 284; Stats. 1995 s. 961.465; 1999 a. 48; 2001 a. 109.

961.47 Conditional discharge for possession or attempted possession as first offense. (1) Whenever any person who has not previously been convicted of any offense under this chapter, or of any offense under any statute of the United States or of any state or of any county ordinance relating to controlled substances or controlled substance analogs, narcotic drugs, marijuana or stimulant, depressant or hallucinogenic drugs, pleads guilty to or is found guilty of possession or attempted possession of a controlled substance or controlled substance analog under s. 961.41 (3g) (b), the court, without entering a judgment of guilt and with the consent of the accused, may defer further proceedings and place him or her on probation upon terms and conditions. Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as otherwise provided. Upon fulfillment of the terms and conditions, the court shall discharge the person and dismiss the proceedings against him or her. Discharge and dismissal under this section shall be without adjudication of guilt and is not a conviction for purposes of disqualifications or disabilities imposed by law upon conviction of a crime, including the additional penalties imposed for 2nd or subsequent convictions under s. 961.48. There may be only one discharge and dismissal under this section with respect to any person.

(2) Within 20 days after probation is granted under this section, the clerk of court shall notify the department of justice of the name of the individual granted probation and any other information required by the department. This report shall be upon forms provided by the department.

History: 1971 c. 219; 1985 a. 29; 1989 a. 121; 1991 a. 39; 1995 a. 448 s. 285; Stats. 1995 s. 961.47.

A disposition of probation without entering a judgment of guilt, was not appealable because there was no judgment. If a defendant desires either a final judgment or order in the nature of a final judgment for appeal purposes, he or she has only to withhold consent. State v. Ryback, 64 Wis. 2d 574, 219 N.W.2d 263 (1974).

The reference to s. 161.41 (3) [now 961.41 (3g) (b)] in sub. (1) means that proceedings may only be deferred for convictions for crimes encompassed by s. 161.41 (3) [now 961.41 (3g) (b)]. State v. Boyer, 198 Wis. 2d 837, 543 N.W.2d 562 (Ct. App. 1995).

961.472 Assessment; certain possession or attempted possession offenses. (1) In this section, "facility" means an approved public treatment facility, as defined under s. 51.45 (2) (c).

(2) Except as provided in sub. (5), if a person pleads guilty or is found guilty of possession or attempted possession of a controlled substance or controlled substance analog under s. 961.41 (3g) (am), (c), or (d), the court shall order the person to comply with an assessment of the person's use of controlled substances. The court's order shall designate a facility that is operated by or pursuant to a contract with the county department established under s. 51.42 and that is certified by the department of health and family services to provide assessment services to perform the assessment and, if appropriate, to develop a proposed treatment plan. The court shall notify the person that noncompliance with the order limits the court's ability to determine whether the treat-

ment option under s. 961.475 is appropriate. The court shall also notify the person of the fee provisions under s. 46.03 (18) (fm).

NOTE: Sub. (2) is shown as amended eff. 2−1−03 by 2001 Wis. Act 109. Prior to 2−1−03 it reads:

(2) Except as provided in sub. (5), if a person pleads guilty or is found guilty of possession or attempted possession of a controlled substance or controlled substance analog under s. 961.41 (3g) (a) 2., (c), (d) or (dm), the court shall order the person to comply with an assessment of the person's use of controlled substances. The court's order shall designate a facility that is operated by or pursuant to a contract with the county department established under s. 51.42 and that is certified by the department of health and family services to provide assessment services to perform the assessment and, if appropriate, to develop a proposed treatment plan. The court shall notify the person that noncompliance with the order limits the court's ability to determine whether the treatment option under s. 961.475 is appropriate. The court shall also notify the person of the fee provisions under s. 46.03 (18) (fm).

(3) The facility shall submit an assessment report within 14 days to the court. At the request of the facility, the court may extend the time period by not more than 20 additional workdays. The assessment report may include a proposed treatment plan.

(4) The court shall consider the assessment report in determining whether the treatment option under s. 961.475 is appropriate.

(5) If the court finds that a person under sub. (2) is already covered by or has recently completed an assessment under this section or a substantially similar assessment, the court is not required to make the order under sub. (2).

History: 1985 a. 328; 1987 a. 339; 1989 a. 121; 1993 a. 118; 1995 a. 27 s. 9126 (19); 1995 a. 448 s. 286; Stats. 1995 s. 961.472; 1999 a. 48; 2001 a. 109.

961.475 Treatment option. Whenever any person pleads guilty to or is found guilty of possession or attempted possession of a controlled substance or controlled substance analog under s. 961.41 (3g), the court may, upon request of the person and with the consent of a treatment facility with special inpatient or outpatient programs for the treatment of drug dependent persons, allow the person to enter the treatment programs voluntarily for purposes of treatment and rehabilitation. Treatment shall be for the period the treatment facility feels is necessary and required, but shall not exceed the maximum sentence allowable unless the person consents to the continued treatment. At the end of the necessary and required treatment, with the consent of the court, the person may be released from sentence. If treatment efforts are ineffective or the person ceases to cooperate with treatment rehabilitation efforts, the person may be remanded to the court for completion of sentencing.

History: 1971 c. 219, 336; 1985 a. 328; 1987 a. 339; 1989 a. 121; 1993 a. 118; 1995 a. 448 s. 287; Stats. 1995 s. 961.475.

961.48 Second or subsequent offenses. (1) If a person is charged under sub. (2m) with a felony offense under this chapter that is a 2nd or subsequent offense as provided under sub. (3) and the person is convicted of that 2nd or subsequent offense, the maximum term of imprisonment for the offense may be increased as follows:

(a) By not more than 6 years, if the offense is a Class C or D felony.

(b) By not more than 4 years, if the offense is a Class E, F, G, H, or I felony.

(2m) (a) Whenever a person charged with a felony offense under this chapter may be subject to a conviction for a 2nd or subsequent offense, he or she is not subject to an enhanced penalty under sub. (1) unless any applicable prior convictions are alleged in the complaint, indictment or information or in an amended complaint, indictment or information that is filed under par. (b) 1. A person is not subject to an enhanced penalty under sub. (1) for an offense if an allegation of applicable prior convictions is withdrawn by an amended complaint filed under par. (b) 2.

(b) Notwithstanding s. 971.29 (1), at any time before entry of a guilty or no contest plea or the commencement of a trial, a district attorney may file without leave of the court an amended complaint, information or indictment that does any of the following:

1. Charges an offense as a 2nd or subsequent offense under this chapter by alleging any applicable prior convictions.

2. Withdraws the charging of an offense as a 2nd or subsequent offense under this chapter by withdrawing an allegation of applicable prior convictions.

(3) For purposes of this section, a felony offense under this chapter is considered a 2nd or subsequent offense if, prior to the offender's conviction of the offense, the offender has at any time been convicted of any felony or misdemeanor offense under this chapter or under any statute of the United States or of any state relating to controlled substances or controlled substance analogs, narcotic drugs, marijuana or depressant, stimulant or hallucinogenic drugs.

NOTE: This section is shown as affected eff. 2−1−03 by 2001 Wis. Act 109. Prior to 2−1−03 it reads:

961.48 Second or subsequent offenses. (1) Except as provided in subs. (2) and (4), any person who is charged under sub. (2m) with a 2nd or subsequent offense under this chapter and convicted of that 2nd or subsequent offense may be fined an amount up to twice that otherwise authorized or imprisoned for a term up to twice the term otherwise authorized or both.

(2) If any person is charged under sub. (2m) with a 2nd or subsequent offense under this chapter that is specified in s. 961.41 (1) (cm), (d), (e), (em), (f), (g) or (h), (1m) (cm), (d), (e), (em), (f), (g) or (h) or (3g) (a) 2., (c), (d), (dm) or (e), and he or she is convicted of that 2nd or subsequent offense, any applicable minimum and maximum fines and minimum and maximum periods of imprisonment under s. 961.41 (1) (cm), (d), (e), (em), (f), (g) or (h), (1m) (cm), (d), (e), (em), (f), (g) or (h) or (3g) (a) 2., (c), (d), (dm) or (e) are doubled. A person convicted of a 2nd or subsequent offense under s. 961.41 (3g) (c), (d) or (e) is guilty of a felony and the person may be imprisoned in state prison.

(2m) (a) Whenever a person charged with an offense under this chapter may be subject to a conviction for a 2nd or subsequent offense, he or she is not subject to an enhanced penalty under sub. (1) or (2) unless any applicable prior convictions are alleged in the complaint, indictment or information or in an amended complaint, indictment or information that is filed under par. (b) 1. A person is not subject to an enhanced penalty under sub. (1) or (2) for an offense if an allegation of applicable prior convictions is withdrawn by an amended complaint filed under par. (b) 2.

(b) Notwithstanding s. 971.29 (1), at any time before entry of a guilty or no contest plea or the commencement of a trial, a district attorney may file without leave of the court an amended complaint, information or indictment that does any of the following:

1. Charges an offense as a 2nd or subsequent offense under this chapter by alleging any applicable prior convictions.

2. Withdraws the charging of an offense as a 2nd or subsequent offense under this chapter by withdrawing an allegation of applicable prior convictions.

(3) For purposes of this section, an offense is considered a 2nd or subsequent offense if, prior to the offender's conviction of the offense, the offender has at any time been convicted under this chapter or under any statute of the United States or of any state relating to controlled substances or controlled substance analogs, narcotic drugs, marijuana or depressant, stimulant or hallucinogenic drugs.

(4) This section does not apply to offenses under s. 961.41 (3g) (a) 1., (b) and (f).

History: 1971 c. 219; 1985 a. 328; 1987 a. 339; 1989 a. 121; 1993 a. 98, 118, 482, 490; 1995 a. 402; 1995 a. 448 s. 288; Stats. 1995 s. 961.48; 1997 a. 35 ss. 340, 584; 1997 a. 220; 1999 a. 48; 2001 a. 109.

The trial court erred in imposing a 2nd sentence on a defendant convicted of a 2nd violation of 161.41 (1) (a) and 161.14 (3) (k) [now 961.41 (1) (a) and 961.14 (3) (k)]. While the repeater statute, 161.48 [now 961.48], allows imposition of a penalty not exceeding twice that allowable for a 1st offense, it does not of itself create a crime and cannot support a separate and independent sentence. Olson v. State, 69 Wis. 2d 605, 230 N.W.2d 634.

For offenses under ch. 161 [now 961], the court may apply this section or s. 939.62, but not both. State v. Ray, 166 Wis. 2d 855, 481 N.W.2d 288 (Ct. App. 1992).

In sentencing a defendant when the maximum sentence is doubled under this section, the court considers the same factors it considers in all sentencing, including prior convictions. State v. Canadeo, 168 Wis. 2d 559, 484 N.W.2d 340 (Ct. App. 1992).

Sentencing under this section was improper when the defendant did not admit a prior conviction and the state did not offer proof of one. State v. Coolidge, 173 Wis. 2d 783, 496 N.W.2d 701 (Ct. App. 1993).

Sub. (4) sets forth a limitation on the 2nd or subsequent offense; the previous offense may be any conviction under ch. 161 [now 961]. State v. Robertson, 174 Wis. 2d 36, 496 N.W.2d 221 (Ct. App. 1993).

This section is self−executing; a prosecutor may not prevent the imposition of the sentences under this section by not charging the defendant as a repeater. State v. Young, 180 Wis. 2d 700, 511 N.W.2d 309 (Ct. App. 1993).

Conviction under this section for a second or subsequent offense does not require proof of the prior offense at trial beyond a reasonable doubt. State v. Miles, 221 Wis. 2d 56, 584 N.W.2d 704 (Ct. App. 1998).

A conviction for possessing drug paraphernalia under s. 961.573 qualifies as a prior offense under sub. (3). State v. Moline, 229 Wis. 2d 38, 598 N.W.2d 929 (Ct. App. 1999).

961.49 Distribution of or possession with intent to deliver a controlled substance on or near certain places. If any person violates s. 961.41 (1) (cm), (d), (e), (f), (g) or (h) by delivering or distributing, or violates s. 961.41 (1m) (cm), (d), (e), (f), (g) or (h) by possessing with intent to deliver or distribute, cocaine, cocaine base, heroin, phencyclidine, lysergic acid diethylamide, psilocin, psilocybin, amphetamine, methamphetamine,

methcathinone or any form of tetrahydrocannabinols or a controlled substance analog of any of these substances and the delivery, distribution or possession takes place under any of the following circumstances, the maximum term of imprisonment prescribed by law for that crime may be increased by 5 years:

(1) While the person is in or on the premises of a scattered−site public housing project.

(2) While the person is in or on or otherwise within 1,000 feet of any of the following:

(a) A state, county, city, village or town park.

(b) A jail or correctional facility.

(c) A multiunit public housing project.

(d) A swimming pool open to members of the public.

(e) A youth center or a community center.

(f) Any private or public school premises.

(g) A school bus, as defined in s. 340.01 (56).

(3) While the person is in or on the premises of an approved treatment facility, as defined in s. 51.01 (2), that provides alcohol and other drug abuse treatment.

(4) While the person is within 1,000 feet of the premises of an approved treatment facility, as defined in s. 51.01 (2), that provides alcohol and other drug abuse treatment, if the person knows or should have known that he or she is within 1,000 feet of the premises of the facility or if the facility is readily recognizable as a facility that provides alcohol and other drug abuse treatment.

NOTE: This section is shown as affected by 2001 Wis. Act 109, eff 2−1−03. Prior to 2−1−03 it reads:

961.49 Distribution of or possession with intent to deliver a controlled substance on or near certain places. (1) If any person violates s. 961.41 (1) (cm), (d), (e), (em), (f), (g) or (h) by delivering or distributing, or violates s. 961.41 (1m) (cm), (d), (e), (em), (f), (g) or (h) by possessing with intent to deliver or distribute, cocaine, cocaine base, heroin, phencyclidine, lysergic acid diethylamide, psilocin, psilocybin, amphetamine, methamphetamine, methcathinone or any form of tetrahydrocannabinols or a controlled substance analog of any of these substances and the delivery, distribution or possession takes place under any of the following circumstances, the maximum term of imprisonment prescribed by law for that crime may be increased by 5 years:

(a) While the person is in or on the premises of a scattered−site public housing project.

(b) While the person is in or on or otherwise within 1,000 feet of any of the following:

1. A state, county, city, village or town park.
2. A jail or correctional facility.
3. A multiunit public housing project.
4. A swimming pool open to members of the public.
5. A youth center or a community center.
6. Any private or public school premises.
7. A school bus, as defined in s. 340.01 (56).

(c) While the person is in or on the premises of an approved treatment facility, as defined in s. 51.01 (2), that provides alcohol and other drug abuse treatment.

(d) While the person is within 1,000 feet of the premises of an approved treatment facility, as defined in s. 51.01 (2), that provides alcohol and other drug abuse treatment, if the person knows or should have known that he or she is within 1,000 feet of the premises of the facility or if the facility is readily recognizable as a facility that provides alcohol and other drug abuse treatment.

(2) (a) Except as provided in par. (b), the court shall sentence a person as provided in par. (am) if the person violates s. 961.41 (1) by delivering or distributing, or violates s. 961.41 (1m) by possessing with intent to deliver or distribute, a controlled substance included in schedule I or II, a controlled substance analog of a controlled substance included in schedule I or II or ketamine or flunitrazepam under any of the following circumstances:

1. While the person is in or on the premises of a scattered−site public housing project.

2. While the person is in or on or otherwise within 1,000 feet of any of the following:

a. A state, county, city, village or town park.
b. A jail or correctional facility.
c. A multiunit public housing project.
d. A swimming pool open to members of the public.
e. A youth center or a community center.
f. Any private or public school premises.
g. A school bus, as defined in s. 340.01 (56).

3. While the person is in or on the premises of an approved treatment facility, as defined in s. 51.01 (2), that provides alcohol and other drug abuse treatment.

4. While the person is within 1,000 feet of the premises of an approved treatment facility, as defined in s. 51.01 (2), that provides alcohol and other drug abuse treatment, if the person knows or should have known that he or she is within 1,000 feet of the premises of the facility or if the facility is readily recognizable as a facility that provides alcohol and other drug abuse treatment.

(am) The court shall sentence a person to whom par. (a) applies to at least 3 years in prison, but otherwise the penalties for the crime apply. Except as provided in s. 961.438, the court shall not place the person on probation. Except as provided in s. 973.01 (6), the person is not eligible for parole until he or she has served at least 3 years, with no modification by the calculation under s. 302.11 (1).

(b) If the conduct described in par. (a) involves only the delivery or distribution, or the possession with intent to deliver or distribute, of not more than 25 grams of tetrahydrocannabinols, included in s. 961.14 (4) (t), or not more than 5 plants containing tetrahydrocannabinols, the court shall sentence the person to at least one year in prison, but otherwise the penalties for the crime apply. Except as provided in s. 961.438, the court shall not place the person on probation. Except as provided in s. 973.01 (6), the person is not eligible for parole until he or she has served at least one year, with no modification by the calculation under s. 302.11 (1).

(3) A person who violates sub. (1) may be subject to increased penalties under both subs. (1) and (2) regarding the same unlawful act.

History: 1985 a. 328; 1987 a. 332, 339, 403; 1989 a. 31, 107, 121; 1991 a. 39; 1993 a. 87, 98, 118, 281, 490, 491; 1995 a. 448 s. 289, 491; Stats. 1995 s. 961.49; 1997 a. 283, 327; 1999 a. 32, 48, 57; 2001 a. 109.

Scienter is not an element of this section. State v. Hermann, 164 Wis. 2d 269, 474 N.W.2d 906 (Ct. App. 1991).

A university campus is not a "school" within the meaning of s. 161.49 [now 961.49]. State v. Andrews, 171 Wis. 2d 217, 491 N.W.2d 504 (Ct. App. 1992).

Anyone who passes within a zone listed in sub. (1) while in possession of a controlled substance with an intent to deliver it somewhere is subject to the penalty enhancer provided by this section whether or not the arrest is made within the zone and whether or not there is an intent to deliver the controlled substance within the zone. State v. Rasmussen, 195 Wis. 2d 109, 536 N.W.2d 106 (Ct. App. 1995).

School "premises" begin at the school property line. State v. Hall, 196 Wis. 2d 850, 540 N.W.2d 219 (Ct. App. 1995).

The penalty enhancer for sales close to parks does not violate due process and is not unconstitutionally vague. The ordinary meaning of "parks" includes undeveloped parks. Proximity to a park is rationally related to protecting public health and safety from drug sale activities. State v. Lopez, 207 Wis. 2d 415, 559 N.W.2d 264 (Ct. App. 1996).

Day care centers are a subset of "youth centers" as defined in s. 961.01(22) and come within the definition of places listed in s. 961.49 (2). State v. Van Riper, 222 Wis. 2d 197, 586 N.W.2d 198 (Ct. App. 1998).

This section contains two elemental facts−−a distance requirement and a particularized protected place−−both of which must be submitted to the jury and proven beyond a reasonable doubt. State v. Harvey, 2002 WI 93, 254 Wis. 2d 442, 647 N.W.2d 189.

961.492 Distribution or possession with intent to deliver certain controlled substances on public transit vehicles.

If a person violates s. 961.41 (1) or (1m) under all of the following circumstances, the maximum period of imprisonment under s. 961.41 (1) or (1m) may be increased by not more than 5 years:

(1) The violation of s. 961.41 (1) or (1m) involves the distribution or delivery or the possession, with intent to distribute or deliver, of any controlled substance included in schedule I or II, of a controlled substance analog of any controlled substance included in schedule I or II or of ketamine or flunitrazepam.

(2) The person knowingly uses a public transit vehicle during the violation.

NOTE: This section is repealed eff. 2−1−03 by 2001 Wis. Act 109.

History: 1995 a. 448 s. 249; 1999 a. 57; 2001 a. 109.

961.495 Possession or attempted possession of a controlled substance on or near certain places.

If any person violates s. 961.41 (3g) by possessing or attempting to possess a controlled substance included in schedule I or II, a controlled substance analog of a controlled substance included in schedule I or II or ketamine or flunitrazepam while in or on the premises of a scattered−site public housing project, while in or on or otherwise within 1,000 feet of a state, county, city, village or town park, a jail or correctional facility, a multiunit public housing project, a swimming pool open to members of the public, a youth center or a community center, while in or on or otherwise within 1,000 feet of any private or public school premises or while in or on or otherwise within 1,000 feet of a school bus, as defined in s. 340.01 (56), the court shall, in addition to any other penalties that may apply to the crime, impose 100 hours of community service work for a public agency or a nonprofit charitable organization. The court shall ensure that the defendant is provided a written statement of the terms of the community service order and that the community service order is monitored. Any organization or agency acting in good faith to which a defendant is assigned pursuant to an order under this section has immunity from any civil liability

in excess of $25,000 for acts or omissions by or impacting on the defendant.

History: 1989 a. 31, 121; 1991 a. 39; 1993 a. 87, 118, 281, 490; 1995 a. 448 s. 290; Stats. 1995 s. 961.495; 1999 a. 57.

961.50 Suspension or revocation of operating privilege. (1) If a person is convicted of any violation of this chapter, the court shall, in addition to any other penalties that may apply to the crime, suspend the person's operating privilege, as defined in s. 340.01 (40), for not less than 6 months nor more than 5 years. The court shall immediately take possession of any suspended license and forward it to the department of transportation together with the record of conviction and notice of the suspension. The person is eligible for an occupational license under s. 343.10 as follows:

(a) For the first such conviction, at any time.

(b) For a 2nd conviction within a 5−year period, after the first 60 days of the suspension or revocation period.

(c) For a 3rd or subsequent conviction within a 5−year period, after the first 90 days of the suspension or revocation period.

(2) For purposes of counting the number of convictions under sub. (1), convictions under the law of a federally recognized American Indian tribe or band in this state, federal law or the law of another jurisdiction, as defined in s. 343.32 (1m) (a), for any offense therein which, if the person had committed the offense in this state and been convicted of the offense under the laws of this state, would have required suspension or revocation of such person's operating privilege under this section, shall be counted and given the effect specified under sub. (1). The 5−year period under this section shall be measured from the dates of the violations which resulted in the convictions.

(3) If the person's license or operating privilege is currently suspended or revoked or the person does not currently possess a valid operator's license issued under ch. 343, the suspension or revocation under this section is effective on the date on which the person is first eligible and applies for issuance, renewal or reinstatement of an operator's license under ch. 343.

History: 1991 a. 39; 1993 a. 16, 480; 1995 a. 448 s. 291; Stats. 1995 s. 961.50; 1997 a. 84.

A suspension imposed pursuant to this section is not a "presumptive minimum sentence" under s. 961.438. A minimum 6−month suspension is mandatory. State v. Herman, 2002 WI App 28, 250 Wis. 2d 166, 640 N.W.2d 539.

SUBCHAPTER V

ENFORCEMENT AND ADMINISTRATIVE PROVISIONS

961.51 Powers of enforcement personnel. (1) Any officer or employee of the pharmacy examining board designated by the examining board may:

(a) Execute and serve search warrants, arrest warrants, administrative inspection warrants, subpoenas and summonses issued under the authority of this state;

(b) Make arrests without warrant for any offense under this chapter committed in the officer's or employee's presence, or if the officer or employee has reasonable grounds to believe that the person to be arrested has committed or is committing a violation of this chapter which may constitute a felony; and

(c) Make seizures of property pursuant to this chapter.

(2) This section does not affect the responsibility of law enforcement officers and agencies to enforce this chapter, nor the authority granted the department of justice under s. 165.70.

History: 1971 c. 219; 1985 a. 29; 1993 a. 482; 1995 a. 448 s. 293; Stats. 1995 s. 961.51.

961.52 Administrative inspections and warrants. (1) Issuance and execution of administrative inspection warrants shall be as follows:

(a) A judge of a court of record, 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.

(b) A warrant shall issue only upon an affidavit of a designated officer or employee of the pharmacy examining board or the department of justice 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 application exist or that there is probable cause to believe they exist, the judge shall issue a warrant 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:

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

2. Be directed to a person authorized by law to execute it;

3. 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;

4. Identify the item or types of property to be seized, if any;

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

(c) 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 credible 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.

(d) The judge who has issued a warrant shall attach thereto a copy of the return and all papers returnable in connection therewith and file them with the clerk of court for the county in which the inspection was made.

(2) The pharmacy examining board and the department of justice may make administrative inspections of controlled premises in accordance with the following provisions:

(a) For purposes of this section only, "controlled premises" means:

1. Places where persons authorized under s. 961.32 to possess controlled substances in this state are required by federal law to keep records; and

2. Places including factories, warehouses, establishments and conveyances in which persons authorized under s. 961.32 to possess controlled substances in this state are permitted by federal law to hold, manufacture, compound, process, sell, deliver or otherwise dispose of any controlled substance.

(b) When authorized by an administrative inspection warrant issued pursuant to sub. (1), an officer or employee designated by the pharmacy examining board or the department of justice, 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.

(c) When authorized by an administrative inspection warrant, an officer or employee designated by the pharmacy examining board or the department of justice may:

1. Inspect and copy records relating to controlled substances;

2. 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 par. (e), all other things therein, including records, files, papers, processes, controls and facilities bearing on violation of this chapter; and

3. Inventory any stock of any controlled substance therein and obtain samples thereof.

(d) This section does not prevent entries and administrative inspections, including seizures of property, without a warrant:

1. If the owner, operator or agent in charge of the controlled premises consents;

2. In situations presenting imminent danger to health or safety;

3. 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;

4. In any other exceptional or emergency circumstance where time or opportunity to apply for a warrant is lacking; or

5. In all other situations in which a warrant is not constitutionally required.

(e) 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.

History: 1971 c. 219; 1983 a. 538; 1985 a. 29; 1993 a. 482; 1995 a. 448 s. 294; Stats. 1995 s. 961.52.

961.53 Violations constituting public nuisance. Violations of this chapter constitute public nuisances under ch. 823, irrespective of any criminal prosecutions which may be or are commenced based on the same acts.

History: 1971 c. 219; Sup. Ct. Order, 67 Wis. 2d 585, 775 (1975); 1995 a. 448 s. 295; Stats. 1995 s. 961.53.

961.54 Cooperative arrangements and confidentiality. The department of justice shall cooperate with federal, state and local agencies in discharging its responsibilities concerning traffic in controlled substances and in suppressing the abuse of controlled substances. To this end, it may:

(1) Arrange for the exchange of information among governmental officials concerning the use and abuse of controlled substances;

(2) Coordinate and cooperate in training programs concerning controlled substance law enforcement at local and state levels;

(3) Cooperate with the bureau by establishing a centralized unit to accept, catalog, file and collect statistics, including records of drug dependent persons and other controlled substance law offenders within the state, and make the information available for federal, state and local law enforcement purposes. It shall not furnish the name or identity of a patient or research subject whose identity could not be obtained under s. 961.335 (7); and

(4) Conduct programs of eradication aimed at destroying wild or illicit growth of plant species from which controlled substances may be extracted.

History: 1971 c. 219, 336; 1975 c. 110; 1995 a. 448 s. 296; Stats. 1995 s. 961.54.

961.55 Forfeitures. (1) The following are subject to forfeiture:

(a) All controlled substances or controlled substance analogs which have been manufactured, delivered, distributed, dispensed or acquired in violation of this chapter.

(b) All raw materials, products and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, distributing, importing or exporting any controlled substance or controlled substance analog in violation of this chapter.

(c) All property which is used, or intended for use, as a container for property described in pars. (a) and (b).

(d) All vehicles 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 pars. (a) and (b) or for the purpose of transporting any property or weapon used or to be used or received in the commission of any felony under this chapter, but:

1. No vehicle 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 vehicle is a consenting party or privy to a violation of this chapter;

2. No vehicle 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 the owner's knowledge or consent. This subdivision does not apply to any vehicle owned by a person who is under 16 years of age on the date that the vehicle is used, or is intended for use, in the manner described under par. (d) (intro.), unless the court determines that the owner is an innocent bona fide owner;

3. A vehicle is not subject to forfeiture for a violation of s. 961.41 (3g) (b), (c), (d), (e) or (f); and

NOTE: Subd. 3. is shown as amended eff. 2−1−03 by 2001 Wis. Act 109. Prior to 2−1−03 it reads:

3. A vehicle is not subject to forfeiture for a violation of s. 961.41 (3g) (b), (c), (d), (dm), (e) or (f); and

4. If forfeiture of a vehicle encumbered by a bona fide perfected security interest occurs, the holder of the security interest shall be paid from the proceeds of the forfeiture if the security interest was perfected prior to the date of the commission of the felony which forms the basis for the forfeiture and he or she neither had knowledge of nor consented to the act or omission.

(e) 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.

(f) All property, real or personal, including money, directly or indirectly derived from or realized through the commission of any crime under this chapter.

(g) Any drug paraphernalia, as defined in s. 961.571, used in violation of this chapter.

(2) Property subject to forfeiture under this chapter may be seized by any officer or employee designated in s. 961.51 (1) or (2) or a law enforcement officer upon process issued by any court of record having jurisdiction over the property. Seizure without process may be made if:

(a) The seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant;

(b) The property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding based upon this chapter;

(c) The officer or employee or a law enforcement officer has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(d) The officer or employee or a law enforcement officer has probable cause to believe that the property was used or is intended to be used in violation of this chapter, that the property was derived from or realized through a crime under this chapter or that the property is a vehicle which was used as described in sub. (1) (d).

(3) In the event of seizure under sub. (2), proceedings under sub. (4) shall be instituted promptly. All dispositions and forfeitures under this section and ss. 961.555 and 961.56 shall be made with due provision for the rights of innocent persons under sub. (1) (d) 1., 2. and 4. Any property seized but not forfeited shall be returned to its rightful owner. Any person claiming the right to possession of property seized may apply for its return to the circuit court for the county in which the property was seized. The court

shall order such notice as it deems adequate to be given the district attorney and all persons who have or may have an interest in the property and shall hold a hearing to hear all claims to its true ownership. If the right to possession is proved to the court's satisfaction, it shall order the property returned if:

(a) The property is not needed as evidence or, if needed, satisfactory arrangements can be made for its return for subsequent use as evidence; or

(b) All proceedings in which it might be required have been completed.

(4) Property taken or detained under this section shall not be subject to replevin, but is deemed to be in the custody of the sheriff of the county in which the seizure was made subject only to the orders and decrees of the court having jurisdiction over the forfeiture proceedings. When property is seized under this chapter, the person seizing the property may:

(a) Place the property under seal;

(b) Remove the property to a place designated by it; or

(c) Require the sheriff of the county in which the seizure was made to take custody of the property and remove it to an appropriate location for disposition in accordance with law.

(5) When property is forfeited under this chapter, the agency whose officer or employee seized the property may:

(a) Retain it for official use;

(b) Sell that which is not required to be destroyed by law and which is not harmful to the public. The agency may use 50% of the amount received for payment of all proper expenses of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising and court costs and the costs of investigation and prosecution reasonably incurred. The remainder shall be deposited in the school fund as proceeds of the forfeiture. If the property forfeited is money, all the money shall be deposited in the school fund;

(c) Require the sheriff of the county in which the property was seized to take custody of the property and remove it for disposition in accordance with law; or

(d) Forward it to the bureau for disposition.

(6) Controlled substances included in schedule I and controlled substance analogs of controlled substances included in schedule I that are possessed, transferred, sold, offered for sale or attempted to be possessed in violation of this chapter are contraband and shall be seized and summarily forfeited to the state. Controlled substances included in schedule I and controlled substance analogs of controlled substances included in schedule I that are seized or come into the possession of the state, the owners of which are unknown, are contraband and shall be summarily forfeited to the state.

(6m) Flunitrazepam or ketamine that is possessed, transferred, sold, offered for sale or attempted to be possessed in violation of this chapter is contraband and shall be seized and summarily forfeited to the state. Flunitrazepam or ketamine that is seized or comes into the possession of the state, the owner of which is unknown, is contraband and shall be summarily forfeited to the state.

(7) Species of plants from which controlled substances in schedules I and II may be derived which have been planted or cultivated in violation of this chapter, or of which the owners or cultivators are unknown, or which are wild growths, may be seized and summarily forfeited to the state.

(8) The failure, upon demand by any officer or employee designated in s. 961.51 (1) or (2), of the person in occupancy or in control of land or premises upon which the species of plants are growing or being stored, to produce an appropriate federal registration, or proof that the person is the holder thereof, constitutes authority for the seizure and forfeiture of the plants.

History: 1971 c. 219, 307; 1981 c. 267; 1985 a. 245, 328; 1987 a. 339; 1989 a. 121; 1993 a. 118, 482; 1995 a. 448 ss. 297 to 305; Stats. 1995 s. 961.55; 1997 a. 220; 1999 a. 48, 57, 110; 2001 a. 109.

A vehicle obtained out of state and used to transport a controlled substance is subject to forfeiture under sub. (1) (d). State v. S & S Meats, Inc. 92 Wis. 2d 64, 284 N.W.2d 712 (Ct. App. 1979).

A vehicle subject to sub. (1) (d) 4 is not subject to forfeiture unless the secured party consents. State v. Fouse, 120 Wis. 2d 471, 355 N.W.2d 366 (Ct. App. 1984).

Under sub. (1) (f), the state may seize property from an owner not charged with a crime. State v. Hooper, 122 Wis. 2d 748, 364 N.W.2d 175 (Ct. App. 1985).

The "seized but not forfeited" language of s. 961.55 (3) means that the portion of that subsection related to return of property is only triggered by an unsuccessful forfeiture action brought by the state; in the event that the district attorney elects not to bring a forfeiture action, a person seeking the return of seized property may do so under s. 968.20. Jones v. State, 226 Wis. 2d 565, 594 N.W.2d 738 (1999).

961.555 Forfeiture proceedings. (1) TYPE OF ACTION; WHERE BROUGHT. In an action brought to cause the forfeiture of any property seized under s. 961.55, the court may render a judgment in rem or against a party personally, or both. The circuit court for the county in which the property was seized shall have jurisdiction over any proceedings regarding the property when the action is commenced in state court. Any property seized may be the subject of a federal forfeiture action.

(2) COMMENCEMENT. (a) The district attorney of the county within which the property was seized shall commence the forfeiture action within 30 days after the seizure of the property, except that the defendant may request that the forfeiture proceedings be adjourned until after adjudication of any charge concerning a crime which was the basis for the seizure of the property. The request shall be granted. The forfeiture action shall be commenced by filing a summons, complaint and affidavit of the person who seized the property with the clerk of circuit court, provided service of authenticated copies of those papers is made in accordance with ch. 801 within 90 days after filing upon the person from whom the property was seized and upon any person known to have a bona fide perfected security interest in the property.

(b) Upon service of an answer, the action shall be set for hearing within 60 days of the service of the answer but may be continued for cause or upon stipulation of the parties.

(c) In counties having a population of 500,000 or more, the district attorney or corporation counsel may proceed under par. (a).

(d) If no answer is served or no issue of law or fact has been joined and the time for that service or joining issue has expired, or if any defendant fails to appear at trial after answering or joining issue, the court may render a default judgment as provided in s. 806.02.

(3) BURDEN OF PROOF. The state shall have the burden of satisfying or convincing to a reasonable certainty by the greater weight of the credible evidence that the property is subject to forfeiture under s. 961.55.

(4) ACTION AGAINST OTHER PROPERTY OF THE PERSON. The court may order the forfeiture of any other property of a defendant up to the value of property found by the court to be subject to forfeiture under s. 961.55 if the property subject to forfeiture meets any of the following conditions:

(a) Cannot be located.

(b) Has been transferred or conveyed to, sold to or deposited with a 3rd party.

(c) Is beyond the jurisdiction of the court.

(d) Has been substantially diminished in value while not in the actual physical custody of the law enforcement agency.

(e) Has been commingled with other property that cannot be divided without difficulty.

History: 1971 c. 219; Sup. Ct. Order, 67 Wis. 2d 585, 752 (1975); 1981 c. 113, 267; Sup. Ct. Order, 120 Wis. 2d xiii; 1985 a. 245; 1989 a. 121; 1993 a. 321; 1995 a. 448 s. 306; Stats. 1995 s. 961.555; 1997 a. 187.

Judicial Council Committee Note, 1974: The district attorney would be required to file within the 15 [now 30] day period. The answer need not be verified. [Re Order effective Jan. 1, 1976]

Judicial Council Note, 1984: Sub. (2) (a) has been amended by allowing 60 days after the action is commenced for service of the summons, complaint and affidavit on the defendants. The prior statute, requiring service within 30 days after seizure of the property, was an exception to the general rule of s. 801.02 (2), stats. [Re Order effective Jan. 1, 1985]

The time provisions of sub. (2) are mandatory and jurisdictional. State v. Rosen, 72 Wis. 2d 200, 240 N.W.2d 168 (1976).

Persons served under sub. (2) (a) must be named as defendants. An action cannot be brought against an inanimate object as a sole "defendant." State v. One 1973 Cadillac, 95 Wis. 2d 641, 291 N.W.2d 626 (Ct. App. 1980).

An affidavit under sub. (2) (a) must be executed by a person who was present at the seizure or who ordered the seizure and received reports from those present at the seizure. State v. Hooper, 122 Wis. 2d 748, 364 N.W.2d 175 (Ct. App. 1985).

Sub. (2) (b) requires a hearing be held, not set, within 60 days of the service of the answer and allows a continuance only when it is applied for within the 60 day period. State v. Baye, 191 Wis. 2d 334, 528 N.W.2d 81 (Ct. App. 1995).

961.56 Burden of proof; liabilities. (1) It is not necessary for the state 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.

(2) In the absence of proof that a person is the duly authorized holder of an appropriate federal registration or order form, the person is presumed not to be the holder of the registration or form. The burden of proof is upon the person to rebut the presumption.

(3) No liability is imposed by this chapter upon any authorized state, county or municipal officer or employee engaged in the lawful performance of the officer's or employee's duties.

History: 1971 c. 219, 307; 1993 a. 482; 1995 a. 448 s. 307; Stats. 1995 s. 961.56.

961.565 Enforcement reports. On or before November 15 annually, the governor and the attorney general shall submit a joint report to the chief clerk of each house of the legislature for distribution to the legislature under s. 13.172 (2) describing the activities in this state during the previous year to enforce the laws regulating controlled substances. The report shall contain recommendations for improving the effectiveness of enforcement activities and other efforts to combat the abuse of controlled substances.

History: 1989 a. 122; 1995 a. 448 s. 308; Stats. 1995 s. 961.565.

SUBCHAPTER VI

DRUG PARAPHERNALIA

961.571 Definitions. In this subchapter:

(1) (a) "Drug paraphernalia" means all equipment, products and materials of any kind that are used, designed for use or primarily intended for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a controlled substance or controlled substance analog in violation of this chapter. "Drug paraphernalia" includes, but is not limited to, any of the following:

1. Kits used, designed for use or primarily intended for use in planting, propagating, cultivating, growing or harvesting of any species of plant that is a controlled substance or from which a controlled substance or controlled substance analog can be derived.

2. Kits used, designed for use or primarily intended for use in manufacturing, compounding, converting, producing, processing or preparing controlled substances or controlled substance analogs.

3. Isomerization devices used, designed for use or primarily intended for use in increasing the potency of any species of plant that is a controlled substance.

4. Testing equipment used, designed for use or primarily intended for use in identifying, or in analyzing the strength, effectiveness or purity of, controlled substances or controlled substance analogs.

5. Scales and balances used, designed for use or primarily intended for use in weighing or measuring controlled substances or controlled substance analogs.

6. Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose and lactose, used, designed for use or primarily intended for use in cutting controlled substances or controlled substance analogs.

7. Separation gins and sifters used, designed for use or primarily intended for use in removing twigs and seeds from, or in otherwise cleaning or refining, marijuana.

8. Blenders, bowls, containers, spoons and mixing devices used, designed for use or primarily intended for use in compounding controlled substances or controlled substance analogs.

9. Capsules, balloons, envelopes and other containers used, designed for use or primarily intended for use in packaging small quantities of controlled substances or controlled substance analogs.

10. Containers and other objects used, designed for use or primarily intended for use in storing or concealing controlled substances or controlled substance analogs.

11. Objects used, designed for use or primarily intended for use in ingesting, inhaling or otherwise introducing marijuana, cocaine, hashish or hashish oil into the human body, such as:

a. Metal, wooden, acrylic, glass, stone, plastic or ceramic pipes with or without screens, permanent screens, hashish heads or punctured metal bowls.

b. Water pipes.

c. Carburetion tubes and devices.

d. Smoking and carburetion masks.

e. Roach clips: meaning objects used to hold burning material, such as a marijuana cigarette, that has become too small or too short to be held in the hand.

f. Miniature cocaine spoons and cocaine vials.

g. Chamber pipes.

h. Carburetor pipes.

i. Electric pipes.

j. Air−driven pipes.

k. Chilams.

L. Bongs.

m. Ice pipes or chillers.

(b) "Drug paraphernalia" excludes:

1. Hypodermic syringes, needles and other objects used or intended for use in parenterally injecting substances into the human body.

2. Any items, including pipes, papers and accessories, that are designed for use or primarily intended for use with tobacco products.

(2) "Primarily" means chiefly or mainly.

History: 1989 a. 121; 1991 a. 140; 1995 a. 448 s. 310; Stats. 1995 s. 961.571.

A tobacco pipe is excluded from the definition of drug paraphernalia under sub. (1) (b) 2. The presence of residue of a controlled substance in the pipe does not change that result. State v. Martinez, 210 Wis. 2d 397, 563 N.W.2d 922 (Ct. App. 1997).

961.572 Determination. (1) In determining whether an object is drug paraphernalia, a court or other authority shall consider, in addition to all other legally relevant factors, the following:

(a) Statements by an owner or by anyone in control of the object concerning its use.

(b) The proximity of the object, in time and space, to a direct violation of this chapter.

(c) The proximity of the object to controlled substances or controlled substance analogs.

(d) The existence of any residue of controlled substances or controlled substance analogs on the object.

(e) Direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver it to persons whom he or she knows intend to use the object to facilitate a violation of this chapter; the innocence of an owner, or of anyone in control of the object, as to a direct violation of this chapter shall not prevent

a finding that the object is designed for use or primarily intended for use as drug paraphernalia.

(f) Instructions, oral or written, provided with the object concerning its use.

(g) Descriptive materials accompanying the object that explain or depict its use.

(h) Local advertising concerning its use.

(i) The manner in which the object is displayed for sale.

(j) Whether the owner, or anyone in control of the object, is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products.

(k) The existence and scope of legitimate uses for the object in the community.

(L) Expert testimony concerning its use.

(2) In determining under this subchapter whether an item is designed for a particular use, a court or other authority shall consider the objective physical characteristics and design features of the item.

(3) In determining under this subchapter whether an item is primarily intended for a particular use, a court or other authority shall consider the subjective intent of the defendant.

History: 1989 a. 121; 1991 a. 140; 1995 a. 448 s. 311; Stats. 1995 s. 961.572.

961.573 Possession of drug paraphernalia. (1) No person may use, or possess with the primary intent to use, drug paraphernalia 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 or controlled substance analog in violation of this chapter. Any person who violates this subsection may be fined not more than $500 or imprisoned for not more than 30 days or both.

(2) Any person who violates sub. (1) who is under 17 years of age is subject to a disposition under s. 938.344 (2e).

(3) No person may use, or possess with the primary intent to use, drug paraphernalia to manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack or store methamphetamine or a controlled substance analog of methamphetamine in violation of this chapter. Any person who violates this subsection is guilty of a Class H felony.

NOTE: Sub. (3) is shown as amended eff. 2−1−03 by 2001 Wis. Act 109. Prior to 2−1−03 it reads:

(3) No person may use, or possess with the primary intent to use, drug paraphernalia to manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack or store methamphetamine or a controlled substance analog of methamphetamine in violation of this chapter. Any person who violates this subsection may be fined not more than $10,000 or imprisoned for not more than 5 years or both.

History: 1989 a. 121; 1991 a. 39, 140; 1995 a. 27, 77; 1995 a. 448 ss. 312 to 314, 492; Stats. 1995 s. 961.573; 1999 a. 129; 2001 a. 109.

961.574 Manufacture or delivery of drug paraphernalia. (1) No person may deliver, possess with intent to deliver, or manufacture with intent to deliver, drug paraphernalia, knowing that it will be primarily 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 or controlled substance analog in violation of this chapter. Any person who violates this subsection may be fined not more than $1,000 or imprisoned for not more than 90 days or both.

(2) Any person who violates sub. (1) who is under 17 years of age is subject to a disposition under s. 938.344 (2e).

(3) No person may deliver, possess with intent to deliver, or manufacture with intent to deliver, drug paraphernalia, knowing that it will be primarily used to manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack or store methamphetamine or a controlled substance analog of methamphetamine in violation of this chapter. Any person who violates this subsection is guilty of a Class H felony.

NOTE: Sub. (3) is shown as amended eff. 2−1−03 by 2001 Wis. Act 109. Prior to 2−1−03 it reads:

(3) No person may deliver, possess with intent to deliver, or manufacture with intent to deliver, drug paraphernalia, knowing that it will be primarily used to manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack or store methamphetamine or a controlled substance analog of methamphetamine in violation of this chapter. Any person who violates this subsection may be fined not more than $10,000 or imprisoned for not more than 5 years or both.

History: 1989 a. 121; 1991 a. 39, 140; 1995 a. 27, 77; 1995 a. 448 ss. 315 to 317, 493; Stats. 1995 s. 961.574; 1999 a. 129; 2001 a. 109.

961.575 Delivery of drug paraphernalia to a minor. (1) Any person 17 years of age or over who violates s. 961.574 (1) by delivering drug paraphernalia to a person 17 years of age or under who is at least 3 years younger than the violator may be fined not more than $10,000 or imprisoned for not more than 9 months or both.

(2) Any person who violates this section who is under 17 years of age is subject to a disposition under s. 938.344 (2e).

(3) Any person 17 years of age or over who violates s. 961.574 (3) by delivering drug paraphernalia to a person 17 years of age or under is guilty of a Class G felony.

NOTE: Sub. (3) is shown as amended eff. 2−1−03 by 2001 Wis. Act 109. Prior to 2−1−03 it reads:

(3) Any person 17 years of age or over who violates s. 961.574 (3) by delivering drug paraphernalia to a person 17 years of age or under may be fined not more than $50,000 or imprisoned for not more than 10 years or both.

History: 1989 a. 121; 1991 a. 39; 1995 a. 27, 77; 1995 a. 448 ss. 318, 494; Stats. 1995 s. 961.575; 1999 a. 129; 2001 a. 109.

961.576 Advertisement of drug paraphernalia. No person may place in any newspaper, magazine, handbill or other publication any advertisement, knowing that the purpose of the advertisement, in whole or in part, is to promote the sale of objects designed for use or primarily intended for use as drug paraphernalia in violation of this chapter. Any person who violates this section may be fined not more than $500 or imprisoned for not more than 30 days or both.

History: 1989 a. 121; 1991 a. 140; 1995 a. 448 s. 319; Stats. 1995 s. 961.576.

961.577 Municipal ordinances. Nothing in this subchapter precludes a city, village or town from prohibiting conduct that is the same as that prohibited by s. 961.573 (2), 961.574 (2) or 961.575 (2).

History: 1989 a. 121; 1995 a. 448 s. 320; Stats. 1995 s. 961.577.

SUBCHAPTER VII

MISCELLANEOUS

961.61 Uniformity of interpretation. This chapter shall be so applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among those states which enact it.

History: 1971 c. 219; 1995 a. 448 s. 322; Stats. 1995 s. 961.61.

961.62 Short title. This chapter may be cited as the "Uniform Controlled Substances Act".

History: 1971 c. 219; 1995 a. 448 s. 323; Stats. 1995 s. 961.62.