CHAPTER 961

UNIFORM CONTROLLED SUBSTANCES ACT

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.

961.003 Uniformity of interpretation. This chapter shall be so applied and construed as to effectuate its general purpose to
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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; 2005 a. 14 s. 39; Stats. 2005 s. 961.003.

961.005 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; 2005 a. 14 s. 40; Stats. 2005 s. 961.005.

SUBCHAPTER I
DEFINITIONS

961.01 Definitions. As used in this chapter:

(1g) “1,4-butanediol” means 1,4-butanediol as packaged, marketed, manufactured, or promoted for human consumption, but does not include 1,4-butanediol intended for use or consumption in or for mechanical, industrial, manufacturing, or scientific applications or purposes.

(1r) “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 and:

3. The chemical structure of a controlled substance included in schedule I or II; or

4. The chemical structure of which is 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) “Distributor” means to deliver other than by administering or dispensing a controlled substance or controlled substance analog.

(10) “Distributor” means a person who distributes.

(10m) “Destruction” means the transfer of any controlled substance from a licent 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.

(11s) “Gamma-butyrolactone” means gamma-butyrolactone as packaged, marketed, manufactured, or promoted for human consumption, but does not include gamma-butyrolactone intended for use or consumption in or for mechanical, industrial, manufacturing, or scientific applications or purposes.

(11t) “Ephedrine” means any material, compound, mixture, or preparation that contains any quantity of ephedrine or any of its salts, isomers, and salts of isomers.

(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 s. 961.16 (2) (b) 1., “isomer” includes any geometric isomer; in s. 961.20 (4) (am) “isomer” includes any positional isomer; and in ss. 961.14 (2) (nd) 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.

(12t) “Liquid−filled pseudoephedrine gelcap” means a soft, liquid−filled gelatin capsule that is intended to be sold at retail and that contains pseudoephedrine or any of its salts, isomers, or salts of isomers.

(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, 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 tetrahydrocannabinol. “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) “Multifamily 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 and esters of isomers, salts and salts of isomers, esters and ethers 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, 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.

(20b) “Pseudoephedrine liquid” means a product that is intended to be sold at retail, that is a liquid at room temperature, and that contains pseudoephedrine or any of its salts, isomers, or salts of isomers.

(20c) “Pseudoephedrine product” means a material, compound, mixture, or preparation containing any quantity of pseudoephedrine or any of its salts, isomers, or salts of isomers but does not include such a product if any of the following applies:
(a) The product is a pseudoephedrine liquid or a liquid−filled pseudoephedrine gelcap. This paragraph does not apply if the controlled substances board has determined, by rule, that the product can be readily used in the manufacture of methamphetamine. (b) The controlled substances board has determined, by rule, that the product cannot be readily used in the manufacture of methamphetamine.

(20g) “Public housing project” means any housing project or development administered by a housing authority, as defined in s. 16.301 (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.

Stats. 1971 c. 219; 1979 c. 89; 1981 c. 200; 1983 a. 500 s. 43; 1989 a. 31; 1993 a. 87, 129, 158, 184, 281, 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; 2003 a. 33; 2005 a. 14, 52; 2011 a. 32; 2013 a. 151; 2017 a. 60; s. CSB 2.21, Wis. adm. code.
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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 sub. (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), 97–3367.

**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, the controlled substances board shall similarly treat the substance after the expiration of 30 days from the date of publication in the federal register of a final order rescheduling or deleting cannabidiol or from the date of issuance of an order of temporary scheduling under 21 USC 811 (h). 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, rescheduling or deleting cannabidiol.

(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. This paragraph does not apply to the promulgation of rules by the controlled substances board under s. 961.01 (20c), (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 bar 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. 15; 1983 a. 189 s. 329 (13); 1995 a. 448 ss. 145 to 152, 469, 479; Stats. 1995 s. 961.11; 2005 a. 14; 2017 a. 4.

**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.
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 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 of isomers that are theoretically possible within the specific chemical designation:

(ag) Acetylmethadol,

(a) AH–7921 (3,4–dichloro–N–[(1–dimethylamino)cyclohexylmethyl][benzamide]);

(am) Alphaprodine;

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

(bm) Alphameprodine;

(c) Alphamethadol;

(cm) Benzethidine;

(dm) Betamethadol;

(e) Betameprodine;

(em) Betaprodine;

(f) Clonitazene;

(fm) Dextromoramide;

(gm) Dimapromide;

(h) Diethylthiambutene;

(hg) Diénoxin;

(hm) Dimenoxadol;

(j) Dimethapentanol;

(jm) Dimethylthiambutene;

(k) Dioxaphetyl butyrate;

(km) Dipipanone;

(m) Ethylmeththiambutene;

(mm) Etonitazene;

(n) Etoxeridine;

(nd) Fentanyl analogs, including any compound, except compounds scheduled elsewhere in this chapter, structurally derived from fentanyl by replacement of the phenyl portion of the phenethyl group by any monocycle whether or not further substituted in or on the monocycle; by substitution in or on the phenethyl group with alkyl, alkenyl, alkoxy, hydroxy, halo, haloalkyl, amino or nitro groups; by substitution in or on the piperidine ring with alkyl, alkenyl, alkoxy, ether, hydroxy, halo, haloalkyl, amino or nitro groups; by replacement of the aniline ring with any aromatic monocyte whether or not further substituted in or on the aromatic monocyte; by replacement of the N–propionyl group by another acyl group; or by any combination of these modifications.

**History:** 1971 c. 219; 1995 a. 448 ss. 155, 156, 471; Stats. 1995 s. 961.13.
isomers, esters, ethers, and salts of isomers, esters, or ethers that are theoretically possible within the specific chemical designation:

- Mixture or preparation which contains any quantity of any of the following substances derived from opium, including any of the above compounds:
  - Thebacon.
  - Pholcodine;
  - Normorphine;
  - Nicomorphine;
  - Nicocodeine;
  - Myrophine;
  - Morphine−N−oxide;
  - Morphine methylsulfonate;
  - Morphine methylbromide;
  - Methyldihydromorphine;
  - Methyldesorphine;
  - Hydromorphinol;
  - Etorphine, except its hydrochloride salts;
  - Drotebanol;
  - Dihydromorphine;
  - Desomorphine;
  - Codeine−N−oxide;
  - Codeine methylbromide;
  - Benzylmorphine;
  - Acetyldihydrocodeine;
  - Propylenediamine;
  - U−47700 (3,4−dichloro−N−[2−(dimethylamino)cyclohexyl]−N−methylbenzamide).

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, esters, ethers, and salts of isomers, esters, ethers that are theoretically possible within the specific chemical designation, in any form contained in a plant, obtained from a plant, or chemically synthesized:

- 3,4−methylenedioxyamphetamine, commonly known as “MDA”;
- 3,4−methylenedioxyethylamphetamine, commonly known as “MDE”;
- 3,4−methylenedioxyxymethamphetamine, commonly known as “MDMA”;
- N−hydroxy−3,4−methylenedioxyamphetamine;
- 5−methoxy−3,4−methylenedioxyamphetamine;
- 4−ethyl−2,5−dimethoxyamphetamine, commonly known as “DOET”;
- 3,4,5−trimethoxyamphetamine;
- Alpha−ethyltryptamine;
- Bufotenine;
- Diethyltryptamine;
- Dimethyltryptamine;
- 4−methyl−2,5−dimethoxyamphetamine, commonly known as “STP”;
- Ibotamine;
- Lysergic acid diethylamide, commonly known as “LSD”;
- Mescaline, in any form, including mescaline contained in peyote, obtained from peyote or chemically synthesized;
- 1H−indol−3−yl−(1−naphthyl)methane by substitution at the nitrogen atom of the indole ring by alkyl, haloalkyl, cyanoalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1−(N−methyl−2−piperidinyl)methyl, 2−(4−morpholinyl)ethyl, 1−(N−methyl−3−morpholinyl)methyl, or (tetrahydropropyran−4−yl)methyl group, whether or not further substituted in the indole ring to any extent, whether or not substituted in the naphthyl ring to any extent. Substances specified under this subdivision include:
  - 1−pentyl−2−methyl−3−(1−naphthoyl)indole, commonly known as JWH−007;
  - 1−propyl−2−methyl−3−(1−naphthoyl)indole, commonly known as JWH−015;
  - 1−pentyl−3−(1−naphthoyl)indole, commonly known as JWH−019;
  - 1−butyl−3−(1−naphthoyl)indole, commonly known as JWH−073;
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f. 1−pentyl−3−(4−methoxy−1−naphthoyl)indole, commonly known as JWH−081;

g. 1−pentyl−2−methyl−3−(4−methoxy−1−naphthoyl)indole, commonly known as JWH−098;

h. 1−pentyl−3−(4−methyl−1−naphthoyl)indole, commonly known as JWH−122;

i. 1−pentyl−3−(7−methoxy−1−naphthoyl)indole, commonly known as JWH−164;

j. 1−[2−(4−(morpholinyl)ethyl)]−3−(1−naphthoyl)indole, commonly known as JWH−200;

k. 1−pentyl−3−(4−ethyl−1−naphthoyl)indole, commonly known as JWH−210;

L. 1−pentyl−3−(4−chlooro−1−naphthoyl)indole, commonly known as JWH−398;

m. 1−pentyl−3−(4−fluoro−1−naphthoyl)indole, commonly known as JWH−412;

n. 1−[1−(N−methyl−2−piperidinyl)methyl]−3−(1−naphthoyl)indole, commonly known as AM−1220;

o. 1−(5−fluoropentyl)−3−(1−naphthoyl)indole, commonly known as AM−2201;

p. 1−(5−fluoropentyl)−3−(4−methyl−1−naphthoyl)indole, commonly known as MAM−2201;

q. 1−(5−chloropentyl)−3−(1−naphthoyl)indole, commonly known as AM−2201 (5−chloropentyl);

r. 1−(5−bromopentyl)−3−(1−naphthoyl)indole, commonly known as AM−2201 (5−bromopentyl);

s. 1−(4−cyanobutyl)−3−(1−naphthoyl)indole, commonly known as AM−2232;

t. (R)−(+)−[2,3−dihydro−5−methyl−3−(4−morpoholinyl)methyl]pyrrolo[1,2−d]−1,4−benzoxazin−6−yl]−1−naphthalenyl−methanone, commonly known as WIN 55,212−2;

2. Any compound structurally derived from 3−(1−naphthoyl)pyrrole by substitution at the nitrogen atom of the pyrrole ring by alkyl, haloalkyl, cyanoalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1−(N−methyl−2−piperidinyl)methyl, 2−(4−morpholinyl)ethyl, 1−(N−methyl−2−pyrrolidinyl)methyl, 1−(N−methyl−3−morpholinyl)methyl, or (tetrahydropyran−4−yl)methyl group, whether or not further substituted in the pyrrole ring to any extent, whether or not substituted in the naphthyl ring to any extent. Substances specified under this subdivision include:

a. 1−pentyl−5−(2−fluorophenyl)−3−(1−naphthoyl)pyrrole, commonly known as JWH−201;

b. 1−pentyl−3−(4−methoxyphenylacetyl)indole, commonly known as JWH−200;

c. 1−pentyl−3−(3−methoxyphenylacetyl)indole, commonly known as JWH−210;

d. 1−pentyl−3−(2−methoxyphenylacetyl)indole, commonly known as JWH−250;

e. 1−pentyl−3−(2−chlorophenylacetyl)indole, commonly known as JWH−203;

f. 1−pentyl−3−(3−chlorophenylacetyl)indole, or 3−chloro isomer of JWH−203;

g. 1−pentyl−3−(4−chlorophenylacetyl)indole, or 4−chloro isomer of JWH−203;

h. 1−(2−cyclohexylmethyl)−3−(2−methoxyphenylacetyl)indole, commonly known as RCS−8;

i. 1−[1−(N−methyl−2−piperidinyl)methyl]−3−(2−methoxyphenylacetyl)indole, commonly known as cannabipiperidiethanol;

5. Any compound structurally derived from 2−(3−hydroxy−cyclohexyl)phenol by substitution at the 5−position of the phenolic ring by alkyl, haloalkyl, cyanoalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1−(N−methyl−2−piperidinyl)methyl, 2−(4−morpholinyl)ethyl, 1−(N−methyl−2−pyrrolidinyl)methyl, 1−(N−methyl−3−morpholinyl)methyl, or (tetrahydropyran−4−yl)methyl group, whether or not substituted in the cyclohexyl ring to any extent. Substances specified under this subdivision include:

a. 2−[(1R,3S)−3−hydroxy−cyclohexyl]−5−(2−methoxycyclohexyl)−2−[2−methyl−2−(3−hydroxy−cyclohexyl)phenol, commonly known as CP 47,497;

b. 2−[(1R,3S)−3−hydroxy−cyclohexyl]−5−(2−methoxynaphthyl)−2−[2−methyl−2−(3−hydroxy−cyclohexyl)phenol, commonly known as CP 47,497 C8 homologue, or cannabicyclohexanol;

6. Any compound structurally derived from 3−(benzoyl)indole by substitution at the nitrogen atom of the indole ring by alkyl, haloalkyl, cyanoalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1−(N−methyl−2−piperidinyl)methyl, 2−(4−morpholinyl)ethyl, 1−(N−methyl−2−pyrrolidinyl)methyl, 1−(N−methyl−3−morpholinyl)methyl, or (tetrahydropyran−4−yl)methyl group, whether or not further substituted in the indole ring to any extent whether or not substituted in the phenyl ring to any extent. Substances specified under this subdivision include:

a. 1−pentyl−3−(2−iodobenzoyl)indole, commonly known as AM−679;

b. 1−(5−fluoropentyl)−3−(2−iodobenzoyl)indole, commonly known as AM−694;

c. 1−pentyl−3−(4−methoxybenzoyl)indole, commonly known as RCS−4;

b. 1−butyl−3−(4−methoxybenzoyl)indole, commonly known as RCS−4−C4 homologue;

e. 1−pentyl−3−(2−methoxybenzoyl)indole, commonly known as RCS−4−2−methoxy isomer;

f. 1−butyl−3−(2−methoxybenzoyl)indole, a C4 homologue, 2−methoxy isomer of RCS−4;

g. 1−[2−(4−morpholinyl)ethyl]−2−methyl−3−(4−methoxybenzoyl)indole, commonly known as pravadoline, or WIN 48,098;

h. 1−[2−(4−morpholinyl)ethyl]−2−methyl−3−(4−methoxybenzoyl)−6−iodo−indole, commonly known as 6−iodopravadoline, or AM−630;

i. 1−[1−(N−methyl−2−piperidinyl)methyl]−3−(2−iodo−5−nitrobenzoyl)indole, commonly known as AM−1241;
6. Any compound structurally derived from N-adamantyl−1H-indole−3−carboxylic acid by substitution at either nitrogen atom of the indole ring by alkyl, haloalkyl, cyanoalkyl, alkenyl, alkynyl, cycloalkylmethyl, cycloalkylethyl, 1−(N−methyl−2−piperidinyl)methyl, 2−(4−morpholinyl)ethy, 1−(N−methyl−2−pyrrolidinyl)methyl, 1−(N−methyl−3−morpholinyl)methyl, or (tetrahydropran−4−yl)methyl group, whether or not further substituted in the indole ring to any extent, whether or not substituted in the adamantyl ring to any extent. Substances specified under this subdivision include:
   a. N−(1−adamantyl)−1−pentyl−1H−indole−3−carboxamide, commonly known as AKB−48;
   b. N−(1−adamantyl)−1−(5−fluoropentyl)−1H−indole−3−carboxamide, commonly known as AKB−48;
30. Any compound structurally derived from N-naphthyl-1H-indole-3-carboxamide by substitution at the nitrogen atom of the indole ring with alkyl, haloalkyl, cyanoalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, 1-(N-methyl-3-carboxamido)-3-methylbutanoate, commonly known as MBB-CHMICA.

46. 1-(4-cyanobutyl)-N-(2-phenylpropan-2-yl)-1H-indazole-3-carboxamide, commonly known as 4-CN-CUMYL-BUTINACA.

47. Methyl 2-(1-(cyclohexylmethyl)-1H-indole-3-carboxamido)-3-methylbutanoate, commonly known as MMB-CHMICA.

48. 1-(5-fluorophenyl)-N-(2-phenylpropan-2-yl)-1H-pyrrolo[2,3-b]pyridine-3-carboxamide, commonly known as 5F-CUMYL-PTAICA.

(u) 1-[1-(2-thienyl)cyclohexyl]piperidine, which is the thiopehine analog of phenycyclidine.

(uu) 1-[1-(2-thienyl)cyclohexyl]pyrrolidine, which is the thiopehine pyrrolidine analog of phenycyclidine.

(ug) N-ethyl-1-phenylcyclohexylamine, which is the ethylamine analog of phenycyclidine.

(ur) 1-(1-phenylcyclohexyl)pyrrolidine, which is the pyrrolidine analog of phenycyclidine.

(uv) 2-(3-methoxyphenyl)-2-(ethylamino)cyclohexanone, commonly known as methoxetamine.

(v) 2,5-dimethoxyamphetamine, commonly known as “DOB”;

(w) 4-bromo-2,5-dimethoxyamphetamine, commonly known as DOI.

(wb) 4-chloro-2,5-dimethoxyamphetamine, commonly known as DOC.

(wg) 4-bromo-2,5-dimethoxy-beta-phenylethylamine, commonly known as “2C-B” or “Nexus”;

(wgm) 4-iodo-2,5-dimethoxy-beta-phenylethylamine, commonly known as “2C-I”.

(wh) 2,5-dimethoxy-4-(n-propylthiophenethyl)amine, commonly known as “2C-T-7”;

(wi) Alpha-methyltryptamine, commonly known as “AMT”; 5-methoxy-N, N-diisopropyltryptamine, commonly known as “5-MeO-DIPT”;

(wk) 2,5-dimethoxy-4-ethylphenethylamine, commonly known as 2C-E.

(wL) 2,5-dimethoxy-4-methylethylphenethylamine, commonly known as 2C-D.

(wn) 2,5-dimethoxy-4-chlorophenethylamine, commonly known as 2C-C.

(wo) 2,5-dimethoxy-4-isopropylthiophenethylamine, commonly known as 2C-T-2.

(wp) 2,5-dimethoxy-4-n-propylthiophenethylamine, commonly known as 2C-T-4.

(wq) 2,5-dimethoxy-4-nitropentylthiophenethylamine, commonly known as 2C-H.

(wr) 2,5-dimethoxy-4-(n)-propylthiophenethylamine, commonly known as 2C-N.

(ws) Any compound structurally derived from N-benzyl-2-(2,5-dimethoxyphenyl)ethanamine by substitution at the nitrogen atom, or on either ring, with alkyl, alkoxy, alkylenedioxy, haloalkyl, hydroxyl, halide or nitro substituents, or by any combination of these modifications. Substances specified under this paragraph include:

1. 2-[(4-iodo-2,5-dimethoxyphenyl)methyl]ethanamine, commonly known as 2F-NBOMe.

2. 2-(4-chloro-2,5-dimethoxyphenyl)methyl]ethanamine, commonly known as 2C-NBOMe.

3. 2-[(4-bromo-2,5-dimethoxyphenyl)methyl]ethanamine, commonly known as 2B-NBOMe.

4. 2-[(4-ethyl-2,5-dimethoxyphenyl)methyl]ethanamine, commonly known as 2E-NBOMe.
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(wy) N.N−diallyl−5−methoxytryptamine, commonly known as 5−MeO−DALT.

 ww) 5−(2−aminopropyl)benzofuran, commonly known as 5−APB.

 wx) 6−(2−aminopropyl)benzofuran, commonly known as 6−APB.

 wy) 5−(2−aminopropyl)−2,3−dihydrobenzofuran, commonly known as 5−APDB.

 wz) 6−(2−aminopropyl)−2,3−dihydrobenzofuran, commonly known as 6−APDB.

 (x) 4−methoxymethylamphetamine, commonly known as “PMA.”

 (xa) 5−iodo−2−aminodindane, commonly known as 5−IAI.

 (xb) 4−methoxymethylamphetamine, commonly known as PMMA.

 (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”), gamma−butyrolactone, and 1,4−butanediol.

 (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−phenylethylcatholine.

 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−methylnorex.

 (e) N,N−dimethamphetamine.

 (L) Substituted cathinones. Any compound, except bupropion or compounds scheduled elsewhere in this chapter, that is structurally derived from 2−amino−propan−1−one by substitution at the 1−position with either phenyl, naphthyl, or thiophene ring systems, whether or not the compound is further modified in any of the following ways: by substitution in the ring system to any extent with alkyl, alkoxy, alkylenedioxy, haloalkyl, hydroxyl, or halide substituents, whether or not further substituted in the ring system by one or more other univalent substituents; by substitution at the 3−position with an acyclic alkyl substituent; by substitution at the 2−amino nitrogen atom with alkyl, dialkyl, benzyl, or methoxybenzyl groups; by inclusion of the 2−amino nitrogen atom in a cyclic structure; or by any combination of these modifications. Substances specified under this subdivision include:

 1. Methcathinone.

 2. Methylenedioxypyrovalerone, commonly known as MDVP.

 3. 4−methylmethcathinone, commonly known as mephedrone or 4−MMC.

 4. 4−methylethcathinone, commonly known as 4−MEC.

 5. 4−methoxy−alpha−pyrrolidinoephinophene, commonly known as MOPPP.

 6. 3,4−methylendioxy−alpha−pyrrolidinoephinophene, commonly known as MDPPP.
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, dextrophan, nalbuphine, butorphanol, naldemedine, nalmefene, naloxogol, naloxone and naltrixone 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.
4m. Dihydrocodeine.
4r. Dihydroetorphine.
5. Ethylmorphine.
7. Hydrocodone, also known as dihydromorphone.
8. Hydromorphone, also known as dihydromorphone.
10. Morphine.
11. Oxycodeone.
12. Oxymorphone.
13. Thebaine.

(b) Coca leaves and any salt, compound, derivative or preparation of coca leaves. Decocainized coca leaves or preparations which do not contain cocaine or ecgonine are excluded from this paragraph. (121) Hoflupane is 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.
(b) An immediate precursor to fentanyl, including 4-aminophenethyl-4-piperidine, commonly known as ANPP.

(10) HALLUCINOGENIC SUBSTANCES. (a) Dronabinol \([+-\delta=-9\text{-trans}-\text{tetrahydrocannabinol} (\delta=-9\text{-THC})]\) in an oral solution in a drug product approved by the U.S. food and drug administration.

(b) Nabilone (another name for nabilone is \(\text{delta-9-(trans)-6a, 7, 8, 10a-1-hydroxy-6, 6-dimethyl-9H-dibenzo}[b,d]pyran-9-one\)).

History: 1971 c. 219; 1981 c. 6, 206; 1989 a. 121; 1993 a. 98; 1995 a. 448 ss. 168 to 178; 473; Stats. 1995 s. 961.16; 2013 s. 351; 2015 a. 195 s. 83; 2017 a. 365 s. 111; ss. CSB 2.16, 2.17, 2.19, 2.21, 2.22, 2.25, 2.26, 2.35, 2.39, 2.40, 2.44, 2.54, 2.58. Wis. adm. code.


At a preliminary hearing, the state must show that a substance was probably l-cocaine rather than d-cocaine. State v. Russo, 303 Wis. 2d 206, 303 N.W.2d 846 (Cl. 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 the United States; and

(c) Abuse of the substance may lead to moderate or low physical or 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) Sulfonidemethylmethane;

(j) Sulfonethylmethane;

(k) Sulfonmethylene;

(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 dosage form approved by the federal food and drug administration for marketing only as a suppository:

1. Amobarbital.

2. Secobarbital.

3. Phenobarbital.

(o) Any drug product containing gamma-hydroxybutyric acid, including its salts, isomers, and salts of isomers, for which an application is approved under section 505 of the federal food, drug and cosmetic act:

1. Gamma-hydroxybutyric acid.

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-1-hydroxy-6, 6-dimethyl-9H-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 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 morpheine per 100 milliliters or per 100 grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(5m) NARCOTIC DRUGS NOT LIMITED BY QUANTITY. Any material, compound, mixture, or preparation containing any of the following narcotic drugs, including any of their salts, isomers and salts of isomers that are theoretically possible within the specific chemical designation:

(a) Buprenorphine

(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 mitigate 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) Desoxymethyltestosterone;
(g) Fluoxymesterone;
(h) Formebulone, which is also called fromebulone;
(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; 1995 a. 448 ss. 181 to 200; 475; Stats. 1995 s. 961.18; 1997 a. 220; 2009 a. 180; 2013 a. 351; ss. CSB 2.19, 2.21, 2.25, 2.29, 2.30, 2.37, Wis. adm. code.


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.


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;
(b) Chlordiazepoxide;
(c) Chloral hydrate;
(d) Clozapine;
(e) Clozapine;
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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:

(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 25 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.

(2m) Pseudoephedrine. Pseudoephedrine or any of its salts, isomers, or salts of isomers.

(3) Other stimulants. Any material, compound, mixture or preparation which contains any quantity of any of the following substances:

(a) Brivacacetam. Brivacacetam ((2S)−2−[(4R)−2−oxo−4−propylpyrrolidin−1−yl]butanamide), including its salts, isomers or salts of isomers.

(4) Approved cannabidiol drugs. A drug product in finished dosage formulation that has been approved by the United States Food and Drug Administration that contains cannabidiol (2−[1R−3−methyl−6R−(1−methylethenyl)−2−cyclohexen−1−yl]−5−pentoxy−1,3−benzenediol) derived from cannabis and no more than 0.1 percent (w/w) residual tetrahydrocannabinoids.

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

1. They may be dispensed and sold only in good faith as a medicine and not for the purpose of evading this chapter.
2. They may be sold at retail only by a pharmacist or, if the substance is a pseudoephedrine product, by a person who is working under the direction of a pharmacist when sold in a retail establishment. This subsection does not apply to a substance governed by s. 961.38 (4) (b).
3. When sold in a retail establishment, they shall bear the name and address of the establishment on the immediate container of said preparation.
4. (a) Any person purchasing such a substance that is not a pseudoephedrine product shall, 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 the 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).

(b) Any person purchasing such a substance that is a pseudoephedrine product shall, at the time of purchase, present to the seller that person’s correct name, address, and an identification card containing the person’s photograph. The seller shall record the name, date of birth, and address of the purchaser; the name and quantity measured in grams of pseudoephedrine contained in the product purchased; the date and time purchased; the purchaser identification type and number, such as driver’s license state and number; and the name of the seller or, if the pseudoephedrine product is being sold by a person who is not a pharmacist, the name of the pharmacist supervising the seller. The purchaser shall sign the record of the 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) No person may purchase more than 227 grams of a product containing opium or more than 113 grams of a product containing any other schedule V substance within a 48−hour period without the authorization of a physician, dentist, or veterinarian. This subsection does not apply to a pseudoephedrine product unless it contains another schedule V substance.

(6) No person other than a physician, dentist, veterinarian, or pharmacist may purchase more than 7.5 grams of pseudoephedrine contained in a pseudoephedrine product within a 30−day period without the authorization of a physician, dentist, or veterinarian.

(7) No person other than a physician, dentist, veterinarian, or pharmacist may possess more than 227 grams of a product containing opium or more than 113 grams of a product containing any other schedule V substance at any time without the authorization of a physician, dentist, or veterinarian. This subsection does not apply to a pseudoephedrine product unless it contains another schedule V substance.

(8) No person may sell a pseudoephedrine product to a person under 18 years of age, and no person under 18 years of age may purchase a pseudoephedrine product.


961.235 Records relating to sales of pseudoephedrine products. (1) In this section:

(a) “Records of pseudoephedrine sales” means records required under s. 961.23 (4) (b) with respect to the sale of a pseudoephedrine product.

(b) “Stop sale alert” means a real−time notification to a seller of pseudoephedrine products that completion of the sale would result in the purchaser violating the pseudoephedrine quantity limits set forth in s. 961.23 (6).

(c) “System” means the National Precursor Log Exchange (NPLEx) system, which is an electronic pseudoephedrine sales tracking system that is capable of generating stop sale alerts, and that is installed, operated, and maintained free of any one−time or recurring charge to the seller or to the state.

(2) Records of pseudoephedrine sales shall be kept in electronic format and shall be maintained by the pharmacy for at least 2 years. Except as provided in sub. (6) and (7), only a pharmacist may have access to records of pseudoephedrine sales and information contained in those records.

(3m) Except as provided in sub. (4), a seller shall electronically submit records of pseudoephedrine sales to the system before completing a sale of a nonprescription pseudoephedrine product.

(4) If a seller who is attempting to complete a sale of a nonprescription pseudoephedrine product experiences mechanical or electronic failure of the system and is unable to comply with the requirement in sub. (3m), the seller may, subject to the requirement under s. 961.23 (4) (b), complete the sale without complying with the requirement under sub. (3m). The seller shall maintain a written log or an alternative electronic record−keeping mechanism until such time as the seller is able to comply with the requirement.

(5) A seller may not complete a sale of a nonprescription pseudoephedrine product if the system generates a stop sale alert unless the seller has a reasonable fear of imminent bodily harm if he or she does not complete the sale. The seller may use the system’s override function to complete the sale if he or she has a reasonable fear of imminent bodily harm.

(6) A pharmacist shall make records required under s. 961.23 (4) (b) available to a law enforcement officer who requests them. Law enforcement officers may make those records available to other persons or redisclose information from those records to other persons only in connection with a criminal investigation or prosecution under this chapter.

(7) The system shall provide real−time access through an online portal to records of pseudoephedrine sales submitted under sub. (3m) to the department of justice and to law enforcement officers in the state. Law enforcement officers may make those records available to other persons or redisclose information from those records to other persons only in connection with a criminal investigation or prosecution under this chapter.

(8) Absent negligence, wantonness, recklessness, or deliberate misconduct, any seller utilizing the system in accordance with this section shall not be civilly liable as a result of any act or omission in carrying out the duties required by this section and shall be immune from liability to any third party unless the seller has violated any provision of this section in relation to a claim brought for such a violation.


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.


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, DISPENSING AND POSSESSION 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; 1993 a. 448 s. 231; Stats. 1995 s. 961.31.

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

961.32 Possession authorization. (1m) (a) Persons registered under federal law to manufacture, distribute, dispense or conduct research with controlled substances may possess, manu-
facture, 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.

(b) The following persons need not be registered under federal law to lawfully possess controlled substances in this state:
   1. 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;
   2. 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;
   3. 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.
   4. Any person exempted under federal law, or for whom federal registration requirements have been waived.
   5. A person actively engaged in the direct operation or implementation of a drug disposal program that is authorized under s. 165.65 (2) or (3) or is authorized under federal law, as defined in s. 165.65 (1) (a).

(2m) (a) In this subsection, “certification” means a letter or other official document issued by a physician licensed under s. 448.04 (1) (a) that contains all of the following:
   1. The name, address, and telephone number of the physician.
   2. The name and address of the patient who is issued the letter or document.
   3. The date on which the letter or document is issued.

(b) An individual may possess cannabis in a form without a psychoactive effect if the individual has certification stating that the individual possesses cannabis to treat a medical condition, if the certification has an issue date that is no more than one year prior to the possession, and if any expiration date provided by the physician in the certification has not passed.

(3) (a) In this subsection:
   1. “Hemp” means the plant Cannabis sativa, or any part of the plant including the seeds.
   2. “Industrial hemp” has the meaning given in s. 94.55 (1).
   (b) A person who is acting in accordance with rules promulgated by the department of agriculture, trade and consumer protection under s. 94.55 (2) (b) may not be prosecuted for a criminal offense under this chapter, or under any municipal ordinance that prohibits conduct that is the same as that prohibited under this chapter, for any of the following:
      1. Planting, growing, cultivating, harvesting, processing, or transporting hemp that contains a delta-9-tetrahydrocannabinol concentration of the crop of not more than 0.7 percent above the permissible limit for industrial hemp on a dry weight basis or that is grown from industrial hemp seed certified under s. 94.55 (2) (c).
      2. Selling, transferring, importing, exporting, or taking possession of industrial hemp.
      3. Selling, transferring, importing, exporting, processing, transporting, harvesting, or taking possession of hemp that has been certified under s. 94.55 (2) (c), by a laboratory authorized by the department of agriculture, trade and consumer protection to test the delta-9-tetrahydrocannabinol concentration in hemp, as meeting the permissible delta-9-tetrahydrocannabinol concentration limit for industrial hemp.
      4. Possessing hemp with a delta-9-tetrahydrocannabinol concentration above the permissible level for industrial hemp if the hemp was certified under s. 94.55 (2) (c) at the time the possessor took possession as meeting the permissible concentration limit for industrial hemp and the possessor had no reason to believe at that time that the certification was incorrect.
      5. Taking samples of hemp, transporting samples to a testing facility, or testing samples for their delta-9-tetrahydrocannabinol concentration.
      6. Taking or possessing cannabis in a form without a psychoactive effect if the individual has certification stating that the individual possesses cannabis to treat a medical condition, if the certification has an issue date that is no more than one year prior to the possession, and if any expiration date provided by the physician in the certification has not passed.
   (c) A person who plants, grows, cultivates, harvests, samples, tests, processes, transports, transfers, takes possession of, sells, imports, or exports industrial hemp in violation of a rule promulgated under s. 94.55 (2) (b) may not be prosecuted under s. 94.55 or this chapter unless the person is referred to the district attorney for the county in which the violation occurred by the department of agriculture, trade and consumer protection, and may not be prosecuted under a municipal ordinance that prohibits the same conduct as is prohibited under this chapter unless the person is referred to local law enforcement by the department of agriculture, trade and consumer protection.
   (d) Notwithstanding s. 961.31 (4) (am) 2. a., engaging in an activity described under par. (b) does not constitute prima facie evidence of a prohibited representation under s. 961.31 (4) (am) 1. a. or b.

961.335 Special use authorization. (1) (a) 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.

(b) Except as provided in par. (c), no person may engage in any activity described under par. (a) without a permit issued under this section.

(c) 1. A person who is actively engaged in the direct operation or implementation of a drug disposal program that is authorized under s. 165.65 (2) or (3) or is authorized under federal law, as defined in s. 165.65 (1) (a), may, without a permit issued under this section, obtain or possess a controlled substance for the purposes of operating and implementing the drug disposal program.
   2. A person who is permitted under federal law to dispose of a controlled substance may, without a permit issued under this section, possess the controlled substance for the purpose of disposing of the controlled substance.
   3. An individual who is designated and authorized to receive a permit under this section 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, without an additional permit issued under this section, possess and use a controlled substance, for the purposes authorized in the permit received for the department or unit.
   (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, except that, for any permit issued to a state crime laboratory, the permit is effective for any controlled substance whether or not the name or schedule is specified.
   (d) Whether dispensing to human subjects is authorized.

(5) A permit shall be effective only for the person, project, and, except as provided in sub. (4) (c), substances 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.

Cross-reference: See also ch. CSB 3, Wis. adm. code.

(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; 2013 a. 198; 2015 a. 298.

961.337 Drug disposal programs. Nothing in this chapter, or rules promulgated under this chapter, prohibits any of the following:

(1) The direct operation or implementation of a drug disposal program that is authorized under s. 165.65 (2) or (3) or is authorized under federal law, as defined in s. 165.65 (1) (a).

(2) The transfer by the ultimate user, or by another person that lawfully possesses the controlled substance or controlled substance analog, of a controlled substance or controlled substance analog to a drug disposal program that has been authorized under s. 165.65 (2) or (3) or is authorized under federal law, as defined in s. 165.65 (1) (a), and that accepts the controlled substance or controlled substance analog.

History: 2013 a. 198.

961.34 Controlled substances therapeutic research. (1) 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 855 (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.

(2) (a) Upon the request of any physician, the controlled substances board shall aid the physician in applying for and processing an investigational drug permit under 21 USC 855 (i) for cannabidiol as treatment for a seizure disorder. If the federal food and drug administration issues an investigational drug permit, the controlled substances board shall approve which pharmacies and physicians may dispense cannabidiol to patients.

(b) If cannabidiol is removed from the list of controlled substances, or if cannabidiol is determined not to be a controlled substance, under schedule 1 of 21 USC 812 (c), the controlled substances board shall approve which pharmacies and physicians may dispense cannabidiol to patients as treatment for a seizure disorder.

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; 2013 a. 267.


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 safety and professional services or a board, examining board or affiliated credentialing board in the department of safety and professional services, 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.


961.37 Law enforcement duty. (1) A law enforcement officer shall report as provided in sub. (2) if the law enforcement officer, while acting in an official capacity, does any of the following:

(a) Encounters a situation in which the law enforcement officer reasonably suspects that a violation of this chapter involving a monitored prescription drug, as defined in s. 961.385 (1) (ag), is occurring or has occurred.

(b) Encounters an individual who the law enforcement officer believes is undergoing or has immediately prior experienced an opioid-related drug overdose, as defined in s. 256.40 (1) (d), or a deceased individual who the law enforcement officer believes died as a result of using a narcotic drug.

(c) Receives a report of a stolen controlled–substance prescription.

(2) A law enforcement officer under sub. (1) shall report to the law enforcement agency that employs him or her all of the following:

(a) The name and date of birth of all of the following, if applicable:
   1. The individual who is suspected of violating this chapter.
   2. The individual who experienced an opioid–related drug overdose.
   3. The individual who died as a result of using a narcotic drug.
   4. The individual who filed the report of a stolen controlled–substance prescription.

(b) The name of the prescribing practitioner, the prescription number, and the name of the drug as it appears on the prescription order or prescription medicine container if a prescription medicine container was in the vicinity of the suspected violation, drug
overdose, or death or if a controlled—substance prescription was reported stolen.

(3) (a) The law enforcement agency receiving the report under sub. (2) shall, except as provided under par. (b), submit notice of the suspected violation of this chapter, the opioid–related drug overdose, the death as a result of using a narcotic drug, or the report of a stolen controlled—substance prescription, and the information reported under sub. (2) to the prescription drug monitoring program.

(b) If a law enforcement agency determines that submitting any information under par. (a) would interfere with an active criminal investigation, the law enforcement agency may postpone the action until the investigation concludes.

History: 2015 a. 268.

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

(1n) (a) A pharmacy or physician approved under s. 961.34 (2) (a) or (b) may dispense cannabinoids in a form without a psychoactive effect as a treatment for a medical condition.

(b) A physician licensed under s. 448.04 (1) (a) may issue an individual a certification, as defined in s. 961.32 (2m) (a), stating that the individual possesses cannabinoids to treat a medical condition if the cannabinoid is in a form without a psychoactive effect.

(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 hard copy or electronic prescription of a practitioner.

(2) In emergency situations, as defined by rule of the pharmacy examining board, schedule II drugs may be dispensed upon an oral prescription of a practitioner, reduced promptly to a written hard copy or electronic record 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) A substance included in schedule V may be distributed or dispensed only for a medical purpose, including medical treatment or authorized research.

(b) Except when dispensed directly by a practitioner, other than a pharmacy, to an ultimate user, a substance specified in s. 961.22 (2) shall not be dispensed without a written, oral, or electronic prescription of a practitioner.

(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.


961.385 Prescription drug monitoring program. (1) In this section:

(a) “Administrator” means the direct application of a monitored prescription drug, whether by injection, ingestion, or any other means, to the body of a patient by any of the following:

1. A practitioner or his or her agent.

2. A patient at the direction of a practitioner.

3. A pharmacist.

(ab) “Agent” means an authorized person who acts on behalf of or at the direction of another person.

(ac) “Board” means the controlled substances board.

(ad) “Business day” means any day on which the offices of the department of safety and professional services are open.

(ae) “Deliver” or “delivery” means the actual, constructive, or attempted transfer of a monitored prescription drug from one person to another.

(af) “Dispense” means to deliver a monitored prescription drug pursuant to the lawful prescription order of a practitioner, including the compounding, packaging, or labeling necessary to prepare the monitored prescription drug for delivery.

(ag) “Monitored prescription drug” means a substance identified in s. 961.16, 961.18, 961.20, or 961.22 or a drug identified by the board by rule as having a substantial potential for abuse.

(aj) “Patient” means an individual or animal for whom a monitored prescription drug is prescribed or to whom a monitored prescription drug is dispensed or administered.

(ak) “Pharmacist” means a person licensed by the pharmacy examining board under s. 450.03 or 450.05 or licensed in another state and recognized by this state as a person authorized to engage in the practice of pharmacy in the state in which the person is licensed.

(an) “Pharmacy” means a place of practice licensed under s. 450.06 or 450.065.

(ar) “Practitioner” has the meaning given in s. 450.01 (17) but does not include a veterinarian licensed under ch. 89.

(b) “Prescription drug” means a drug identified by the board by rule as having a substantial potential for abuse.

(b) “Prescription drug” means a substance included in schedule V for the practitioner’s own personal use.

(bf) “Prescription order” means an order transmitted orally, electronically, or in writing by a practitioner or a veterinarian licensed under ch. 89 for a monitored prescription drug for a particular patient.

(2) The board shall establish by rule a program for monitoring the dispensing of monitored prescription drugs. The program shall do all of the following:

(a) Require a pharmacy or a practitioner to generate a record documenting each dispensing of a monitored prescription drug at the pharmacy or, if the monitored prescription drug is not dispensed at a pharmacy, by the practitioner and to submit the record to the board no later than 11:59 p.m. of the next business day after the monitored prescription drug is dispensed, except that the program may not require the generation of a record in any of the following circumstances:

1. A monitored prescription drug is administered directly to a patient.

2. A monitored prescription drug is compounded, packaged, or labeled in preparation for delivery but is not delivered.

3. The prescription order is for a monitored prescription drug that is a substance listed in the schedule in s. 961.22 and is not a narcotic drug, and the prescription order is for a number of doses that is intended to last the patient 7 days or less.

(b) Identify specific data elements to be contained in a record documenting the dispensing of a monitored prescription drug, including the method of payment and, subject to sub. (2m), the name recorded under s. 450.11 (1b) (bm). In identifying specific data elements, the board shall consider data elements identified by similar programs in other states and shall ensure, to the extent pos-
sible, that records generated by the program are easily shared with other states.

(c) Specify the persons to whom a record may be disclosed and the circumstances under which the disclosure may occur. Except as otherwise provided under this section, the rule promulgated under this paragraph shall comply with s. 146.82.

(cm) Permit the board to disclose a record generated by the program to any of the following:
1. A practitioner, pharmacist, registered nurse licensed under s. 441.06, or substance abuse counselor, as defined in s. 440.88 (1) (b), or an individual licensed under s. 457.08 (4), 457.10, 457.11, 457.12, 457.13, or 457.14 (1) (d) to (f) who treats alcohol or substance dependency or abuse as a specialty, if any of the following is applicable:
   a. The practitioner, pharmacist, registered nurse, substance abuse counselor, or individual is directly treating or rendering assistance to the patient.
   b. The practitioner, pharmacist, registered nurse, substance abuse counselor, or individual is being consulted regarding the health of the patient by an individual who is directly treating or rendering assistance to the patient.
2. A person who medically coordinates, directs, or supervises, or establishes standard operating procedures for, a practitioner, pharmacist, registered nurse, substance abuse counselor, or individual to whom records may be disclosed under subd. 1., if the person is evaluating the job performance of the practitioner, pharmacist, registered nurse, substance abuse counselor, or individual, or is performing quality assessment and improvement activities, including outcomes evaluation or development of clinical guidelines, and if the disclosure does not contain personally identifiable information, as defined in s. 19.62 (5), of a patient and is limited to only those records about the practitioner, pharmacist, registered nurse, substance abuse counselor, or individual the person medically coordinates, directs, or supervises, or for whom the person establishes standard operating procedures.
3. Relevant state boards and agencies, relevant agencies of other states, relevant law enforcement agencies, as defined in s. 165.77 (1) (b), and relevant prosecutorial units, as defined in s. 978.001 (2), if any of the following is true:
   a. The state board or agency, agency of another state, law enforcement agency, or prosecutorial unit makes a written request for the record and is engaged in an active and specific investigation or prosecution of a violation of any state or federal law involving a monitored prescription drug, and the record being requested is reasonably related to that investigation or prosecution.
   b. The state board or agency, agency of another state, law enforcement agency, or prosecutorial unit makes a written request for the record and is monitoring the patient as part of a drug court, as defined in s. 165.955 (1).
   c. The circumstances indicate suspicious or critically dangerous conduct or practices of a pharmacy, pharmacist, practitioner, or patient. The board shall define what constitutes suspicious or critically dangerous conduct or practices for purposes of this subd.
3. c.
4. An agent of a practitioner or pharmacist if disclosure to the practitioner or pharmacist is authorized subject to subd. 1.
   (cs) 1. Require that a patient’s records under the program be reviewed before the practitioner issues a prescription order for the patient. The review required under this subdivision may be performed by the practitioner or by the practitioner’s agent in accordance with applicable standards of practice. This subdivision does not apply after April 1, 2020.
2. The requirement under subd. 1. that a patient’s records under the program be reviewed before the practitioner issues a prescription order for the patient does not apply if any of the following is true:
   a. The patient is receiving hospice care, as defined in s. 50.94 (1) (a).
   b. The prescription order is for a number of doses that is intended to last the patient 3 days or less and is not subject to refill.
   c. The monitored prescription drug is lawfully administered to the patient.
   d. Due to emergency, it is not possible to review the patient’s records under the program because the digital platform for the program is not operational due to other technological failure if that failure is reported to the board.
   (d) Specify a secure electronic format for submittal of a record generated under the program and authorize the board to grant a pharmacy or practitioner a waiver of the specified format.
   (e) Specify a deadline for the submittal of a record to the board.
   (f) Permit the board to refer to the appropriate licensing or regulatory board for discipline a pharmacist, pharmacy, or practitioner that fails to comply with rules promulgated under this subsection, including by failure to generate a record that is required by the program.
   (fm) Permit the board to refer a pharmacist, pharmacy, or practitioner to the appropriate law enforcement agency for investigation and possible prosecution when the board has determined that a criminal violation may have occurred.
   (g) Maximize the potential for funding the operation of the program with available federal funding sources.
   (h) Ensure that the program complies with s. 146.82, except as otherwise provided in this section, and 45 CFR part 164, subpart E.
   (i) Disclose information submitted to the program by a law enforcement agency under s. 961.37 (3) (a) to relevant practitioners, pharmacists, and others to whom the board may make disclosures under par. (c).
2m (a) The rules promulgated under sub. (2) may not require that a record submitted to the board before 2 years after April 9, 2014, contain the name recorded under s. 450.11 (1b) (bm).
   (b) After consultation with representatives of licensed pharmacists and pharmacies, and subject to the approval of the secretary of safety and professional services, the board may delay the requirement that a record submitted to the board contain the name recorded under s. 450.11 (1b) (bm) for an additional period beyond the date specified in par. (a).
3. (a) A pharmacy, pharmacist, or practitioner is immune from civil or criminal liability or professional discipline arising from the pharmacy’s, pharmacist’s, or practitioner’s compliance in good faith with this section or with rules promulgated under this section.
   (b) Nothing in this section may be construed to require a pharmacy or pharmacist to obtain, before dispensing a monitored prescription drug to a patient, information about the patient that has been collected pursuant to the program established under sub. (2).
4. Records generated under the program under this section are not subject to inspection or copying under s. 19.35.
5. (a) Beginning with the 3rd calendar quarter of 2016, no later than 30 days after the end of each calendar quarter, the board shall conduct a review of the program under this section to evaluate the actual outcomes of the program compared with projected outcomes, as determined by the board. The board’s review shall include an evaluation of all of the following:
   1. The satisfaction with the program of pharmacists, pharmacies, practitioners, and other users of the program.
   2. The efficiency and effectiveness of the program in meeting the goals of the program and the needs of the patients assisted by the program.
   3. The extent to which the program is reaching and assisting the target population.
   4. The extent to which the program is complying with applicable laws, rules, and regulations.
   5. The extent to which the program is complying with applicable standards and guidelines.
   6. The extent to which the program is complying with applicable evaluation criteria and indicators.
   7. The extent to which the program is complying with applicable performance measures and benchmarks.
   8. The extent to which the program is complying with applicable service delivery standards and benchmarks.
   9. The extent to which the program is complying with applicable quality improvement standards and benchmarks.
   10. The extent to which the program is complying with applicable financial management standards and benchmarks.
   11. The extent to which the program is complying with applicable procurement standards and benchmarks.
   12. The extent to which the program is complying with applicable evaluation standards and benchmarks.
   13. The extent to which the program is complying with applicable reporting standards and benchmarks.
   14. The extent to which the program is complying with applicable audit standards and benchmarks.
   15. The extent to which the program is complying with applicable compliance standards and benchmarks.
   16. The extent to which the program is complying with applicable legal standards and benchmarks.
   17. The extent to which the program is complying with applicable ethical standards and benchmarks.
   18. The extent to which the program is complying with applicable professional standards and benchmarks.
   19. The extent to which the program is complying with applicable accreditation standards and benchmarks.
   20. The extent to which the program is complying with applicable certification standards and benchmarks.
2017−18 Wisconsin Statutes updated by 2017 Wis. Acts 368 to 370 and through all Supreme Court and Controlled Substances Board Orders filed before and in effect on January 17, 2019. Published and certified under s. 35.18. Changes effective after January 17, 2019, are designated by NOTES. (Published 1−17−19)
2. The program’s impact on referrals of pharmacists, pharmacies, and practitioners to licensing or regulatory boards for discipline and to law enforcement agencies for investigation and possible prosecution.

(b) This subsection does not apply after October 30, 2020.

(6) Beginning with the 3rd calendar quarter of 2016, no later than 30 days after the end of each calendar quarter, the board shall provide a report to the department of safety and professional services that includes all of the following:

(a) The results of the board’s review under sub. (5). This paragraph does not apply after October 30, 2020.

(b) An assessment of the trends and changes in the use of monitored prescription drugs in this state.

(c) The number of practitioners, by profession, and pharmacies submitting records to the board under the program in the previous quarter.

(d) A description of the number, frequency, and nature of submissions by law enforcement agencies under s. 961.37 (3) (a) in the previous quarter.

(e) A description of the number, frequency, and nature of requests made in the previous quarter for disclosure of records generated under the program.

(f) The number of individuals receiving prescription orders from 5 or more practitioners or having monitored prescription drugs dispensed by 5 or more pharmacies within the same 90-day period at any time over the course of the program.

(g) The number of individuals receiving daily morphine milligram equivalents of 1 to 19 milligrams, 20 to 49 milligrams, 50 to 99 milligrams, and 100 or more milligrams in the previous quarter.

(h) The number of individuals to whom both opioids and benzodiazepines were dispensed within the same 90-day period at any time over the course of the program.

(7s) (a) The board may contract with an analytics firm to augment the program under this section with an analytics platform that provides data integration, advanced analytics, and alert management capabilities to detect problematic behaviors of practitioners, pharmacies, pharmacists, and patients.

(b) If the board augments the program under this section as specified in par. (a), the goals of that augmentation shall include all of the following:

1. Allowing the board, with the assistance of the analytics firm, to identify past patterns of abuse, addiction, or criminal activity.

2. Proactively improving painkiller prescribing, informing clinical practice, and protecting patients at risk.

3. Measuring program outcomes at an individual level to minimize the abuse of monitored prescription drugs in this state.

(c) For purposes of this subsection, the board may disclose records generated under the program to an analytics firm with which the board contracts.


Cross-reference: See also ch. CSB 4, Wis. adm. code.

961.395 Limitation on advanced practice nurses. (1) An advanced practice nurse who is certified under s. 449.16 may prescribe controlled substances only as permitted by the rules promulgated under s. 449.16 (3).

(2) An advanced practice nurse certified under s. 449.16 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. 449.16 may dispense a controlled substance only by prescribing or administering the controlled substance or as otherwise permitted by the rules promulgated under s. 449.16 (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:

(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.

(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.

(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.
(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.

(e) *Phencyclidine, amphetamine, methamphetamine, methcathinone, cathinone, N−benzylpiperazine, and a substance specified in s. 961.14 (7) (L).* If the person violates this subsection with respect to phencyclidine, amphetamine, methamphetamine, methcathinone, cathinone, N−benzylpiperazine, a substance specified in s. 961.14 (7) (L), or a controlled substance analog of phencyclidine, amphetamine, methamphetamine, methcathinone, cathinone, N−benzylpiperazine, or a substance specified in s. 961.14 (7) (L), 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.

(f) *Synthetic cannabinoids.* If a person violates this subsection with respect to a controlled substance specified in s. 961.14 (4) (tb), or a controlled substance analog of a controlled substance specified in s. 961.14 (4) (tb), and the amount manufactured, distributed, or delivered is:

1. Two hundred grams or less, the person is guilty of a Class I felony.
2. More than 200 grams but not more than 1,000 grams, the person is guilty of a Class H felony.
3. More than 1,000 grams but not more than 2,500 grams, the person is guilty of a Class G felony.
4. More than 2,500 grams but not more than 10,000 grams, the person is guilty of a Class F felony.
5. More than 10,000 grams, the person is guilty of a Class E felony.

(g) *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.

(h) *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.

(i) *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.

(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:

(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.

(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.

(c) 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:
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 but not more than 15 grams, the person is guilty of a Class E felony.
4. More than 15 grams but not more than 40 grams, the person is guilty of a Class D felony.
5. More than 40 grams, the person is guilty of a Class C felony.

(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.

(e) Phencyclidine, amphetamine, methamphetamine, methcathinone, cathinone, N−benzylpiperazine, and a substance specified in s. 961.14 (7) (L). If a person violates this subsection with respect to phencyclidine, amphetamine, methamphetamine, methcathinone, cathinone, N−benzylpiperazine, a substance specified in s. 961.14 (7) (L), or a controlled substance analog of phencyclidine, amphetamine, methamphetamine, methcathinone, cathinone, N−benzylpiperazine, or a substance specified in s. 961.14 (7) (L), 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.

(em) Synthetic cannabinoids. If a person violates this subsection with respect to a controlled substance specified in s. 961.14 (4) (tb), or a controlled substance analog of a controlled substance specified in s. 961.14 (4) (tb), and the amount possessed, with intent to manufacture, distribute, or deliver, is:
1. Two hundred grams or less, the person is guilty of a Class I felony.
2. More than 200 grams but not more than 1,000 grams, the person is guilty of a Class H felony.
3. More than 1,000 grams but not more than 2,500 grams, the person is guilty of a Class G felony.
4. More than 2,500 grams but not more than 10,000 grams, the person is guilty of a Class F felony.
5. More than 10,000 grams, the person is guilty of a Class E felony.

(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.

(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.

(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.

(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.

(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.

(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.

(1n) Piperidine possession. (a) No person may possess any quantity of piperidine or its salts with the intent to use the piperi-
dine 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.

(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.

(1r) DETERMINING WEIGHT OF SUBSTANCE. In determining amounts under s. 961.49 (2) (b), 1999 stats., and subs. (1) (1m) (c), an amount includes the weight of cocaine, cocaine base, heroin, phencyclidine, lysergic acid diethylamide, psilocin, psilocybin, amphetamine, methamphetamine, tetrahydrocannabinols, synthetic cannabinoids, or substituted cathinones, 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) Counterfeit of phencyclidine and certain other drugs. If a person violates this subsection with respect to a counterfeit substance that is a counterfeit of phencyclidine, methamphetamine, lysergic acid diethylamide, gamma-hydroxybutyric acid, gamma-butyrolactone, 1,4-butanediol, 3,4-methylenedioxyamphetamine, 4-bromo-2,5-dimethoxy-beta-phenylethylamine, 4-methylisochroman, or ketamine, the person is subject to the applicable fine and imprisonment for manufacture, distribution, delivery, or possession with intent to manufacture, distribute, or deliver, of the counterfeit controlled substance under sub. (1) or (1m).

(cm) Counterfeit flunitrazepam. If a person violates this subsection with respect to a counterfeit substance that is flunitrazepam, the person is subject to the applicable fine and imprisonment for manufacture, distribution, delivery, or possession with intent to manufacture, distribute, or deliver, of the counterfeit 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.

(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:

(3m) Synthetic cannabinoids. If a person possesses or attempts to possess 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 I felony.

(b) Other drugs generally. Except as provided in pars. (c) to (g), if a 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 possesses 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, 3,4-methylenedioxyamphetamine, methcathinone, cathinone, N-benzylpiperazine, a substance specified in s. 961.14 (4) (a) to (h), (m) to (q), (sm), (u) to (xb), or (7) (L), psilocin, or psilocybin, or a controlled substance analog of lysergic acid diethylamide, phencyclidine, amphetamine, 3,4-methylenedioxyamphetamine, methcathinone, cathinone, N-benzylpiperazine, a substance specified in s. 961.14 (4) (a) to (h), (m) to (q), (sm), (u) to (xb), or (7) (L), 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) (i), 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 of the following offenses:

(1) 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 of the following offenses:

(1m) 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 of the following offenses:

(1m) 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 of the following offenses:
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, narcotics drugs, marijuana, or depressant, stimulant, or hallucinogenic drugs.

(f) Gamma–hydroxybutyric acid, gamma–butyrolactone, 1,4–butanediol, ketamine, or flunitrazepan. If a person possesses or attempts to possess gamma–hydroxybutyric acid, gamma–butyrolactone, 1,4–butanediol, ketamine or flunitrazepan, the person is guilty of a Class H felony.

(g) Methamphetamine. If a person possesses or attempts to possess methamphetamine or a controlled substance analog of methamphetamine, the person is guilty of a Class I felony.

(3) PURCHASES OF PSEUDOEPIHRINE PRODUCTS. Whoever purchases more than 7.5 grams of pseudoephedrine contained in a pseudoephedrine product within a 30–day period, other than by purchasing the product in person from a pharmacist or pharmacist, is guilty of a Class I felony. This subsection does not apply to a purchase by a physician, dentist, veterinarian, or pharmacist or a purchase that is authorized by a physician, dentist, or veterinarian.

(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 distributed or dispensed for use as a controlled substance.

c. Evidence that the defendant was selling drugs is irrelevant to a charge of simple possession of a noncontrolled substance was delivered. St. v. Cooper, 380 N.W.2d 383 (1986).

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 admitted under s. 904.01(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. St. v. Wedge, 628 Wis. 2d 314, 202 N.W.2d 810 (2001).

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. St. v. Hulin, 65 Wis. 2d 605, 342 N.W.2d 267 (1983).

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

The defendant was properly convicted of attempted delivery of cocaine even though the noncontrolled substance was seaweed. St. v. Cooper, 127 Wis. 2d 429, 380 N.W.2d 383 (Cl. App. 1985).

Possession is not a lesser included offense of manufacturing. St. v. Peck, 143 Wis. 2d 642, 422 N.W.2d 160 (Cl. 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. St. v. Anderson, 176 Wis. 2d 196, N.W.2d (Cl. 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. St. v. Smith, 189 Wis. 2d 496, 525 N.W.2d 263 (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. St. v. Sartin, 200 Wis. 2d 474, 546 N.W.2d 449 (1996), 94–0037.

A delivery conspiracy under sub. (1x) requires an agreement between a buyer and a defendant that the buyer will deliver at least some of the controlled substance to the party. St. v. Cavallari, 214 Wis. 2d 571, N.W.2d 176 (Cl. App. 1997), 96–3391.

Standing alone, the presence of drugs in someone’s system is insufficient to support prosecution 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. St. v. Griffin, 220 Wis. 2d 371, 584 N.W.2d 127 (Cl. App. 1998), 97–0914.

Delivery under sub. (1m) requires transfer from one person to another. Intent to transfer drugs to the person from whom they were originally received satisfies this definition. Transfer to a 3rd party is not required. St. v. Pinkard, 2005 WI App 226, 189 App. 2d 287, 287 Wis. 2d 592, 706 N.W.2d 157, 04–2755.

A person may be a member of an enterprise, in particular, a conspiracy to manufacture a controlled substance, based on the person’s sale of goods that are not illegal to sell or possess. One does not become a party to a conspiracy by aiding and abetting it, through sales of supplies or otherwise, unless he or she knows that the inference of which knowledge cannot be drawn from mere knowledge that the buyer will use the goods illegally. The gist of the conspiracy is the seller’s intent, which may be inferred by an overt act to further, promote, and continue the buyer’s intended illegal use. There must be clear, unequivocal evidence of the seller’s knowledge of the buyer’s intended illegal use. St. v. Routton, 2007 WI App 178, 154 App. 2d 306, 386 N.W.2d 330, 06–2535.

Possession requires evidence that the individual had a substance in his or her control. When combined with other corroborating evidence of sufficient probative value, evidence of ingestion can be sufficient to prove possession. St. v. Patterson, 2012 WI App 161, 321 Wis. 2d 752, 776 N.W.2d 602, 08–1968.

Sub. (3g) requires that the prior conviction be connected to controlled substances, a prior conviction is to trigger penalty enhancement. Underlying a prior conviction presents alternative methods of violating the statute, it is appropriate to consult a limited class of documents to determine what statutory alternative formed the basis for the prior conviction. A criminal court judge, rather than a jury, is allowed to determine the applicability of a defendant’s prior conviction for sentence enhancement purposes, when the necessary information con
cerring the prior conviction can be readily determined from an existing judicial record. State v. Guarnero, 2015 WI 72, 363 Wis. 2d 857, 867 N.W.2d 400, 13–1753.

Double jeopardy was not violated when the defendant was convicted of separate offenses under s. 161.41 [now s. 661.41] 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.


“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).

Warehousing or storage under Brooks does not encompass merely possessing an item while transporting it. Cocaine was not warehoused or stored when the cocaine was carried in the defendant’s truck while moving from one location to another. State v. Slagle, 2007 WI App 117, 300 Wis. 2d 662, 731 N.W.2d 284, 66–0775.

**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.


**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.

**961.44 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.

**961.442 Penalties; industrial hemp.** If a person attempts to conceal the commission of a crime under this chapter while representing that he or she is engaging in the planting, growing, cultivating, harvesting, processing, transporting, importing, exporting, selling, transferring, sampling, testing, or taking possession of industrial hemp, the maximum term of imprisonment prescribed by law for that crime may be increased as follows:

(1) The maximum term of imprisonment for a misdemeanor may be increased by not more than 6 months.

(2) The maximum term of imprisonment for a felony may be increased by not more than 3 years.

*History: 2017 a. 100.

**961.443 Immunity from criminal prosecution; possession.** (1) DEFINITIONS. In this section, “aider” means a person who does any of the following:

(a) Brings another person to an emergency room, hospital, fire station, or other health care facility and makes contact with an individual who staffs the emergency room, hospital, fire station, or other health care facility if the other person is, or if a reasonable person would believe him or her to be, suffering from an overdose of, or other adverse reaction to, any controlled substance or controlled substance analog.

(b) Summons and makes contact with a law enforcement officer, ambulance, emergency medical services practitioner, as defined in s. 256.01 (5), or other health care provider, in order to assist another person if the other person is, or if a reasonable person would believe him or her to be, suffering from an overdose of, or other adverse reaction to, any controlled substance or controlled substance analog.

(c) Calls the telephone number “911” or, in an area in which the telephone number “911” is not available, the number for an emergency medical service provider, and makes contact with an individual identifying the number with the intent to obtain assistance for another person if the other person is, or if a reasonable person would believe him or her to be, suffering from an overdose of, or other adverse reaction to, any controlled substance or controlled substance analog.

(2) IMMUNITY FROM CRIMINAL PROSECUTION AND REVOCATION OF PAROLE, PROBATION, OR EXTENDED SUPERVISION. (a) No aider may have his or her parole, probation, or extended supervision revoked, and an aider is immune from prosecution under s. 946.49 for bail jumping, under s. 961.573 for the possession of drug paraphernalia, under s. 961.41 (3g) for the possession of a controlled substance or a controlled substance analog, and under s. 961.69 (2) for possession of a masking agent, under the circumstances surrounding or leading to his or her commission of an act described in sub. (1) that occurs on or after July 19, 2017, if the aider’s attempt to obtain assistance occurs immediately after the aider believes the other person is suffering from the overdose or other adverse reaction.

(b) 1. No aided person may have his or her parole, probation, or extended supervision revoked under the circumstances surrounding or leading to an aider’s commission of an act described in sub. (1) that occurs on or after July 19, 2017, if the aided person completes a treatment program as a condition of his or her parole, probation, or extended supervision or, if a treatment program is unavailable or would be prohibitive financially, agrees to be imprisoned in the county jail for not less than 15 days.

2. If an aided person is subject to prosecution under s. 946.49 for bail jumping, under s. 961.573 for the possession of drug paraphernalia, under s. 961.41 (3g) for the possession of a controlled substance or a controlled substance analog, and under s. 961.69 (2) for possession of a masking agent under the circumstances surrounding or leading to an aider’s commission of an act described in sub. (1) that occurs on or after July 19, 2017, the district attorney shall offer the aided person a deferred prosecution agreement that includes the completion of a treatment program. This subdivision does not apply to an aided person who is on parole, probation, or extended supervision and fails to meet a condition under subd. 1.

NOTE: Sub. (2) is repealed and recreated eff. 8−1−20 by 2017 Wis. Act 59 to read:

(2) IMMUNITY FROM CRIMINAL PROSECUTION. An aider is immune from prosecution under s. 961.573 for the possession of drug paraphernalia, under s. 961.41 (3g) for the possession of a controlled substance or a controlled substance analog, and under s. 961.69 (2) for possession of a masking agent under the circumstances surrounding or leading to his or her commission of an act described in sub. (1).

*History: 2013 a. 194; 2015 a. 264; 2017 a. 12, s. 33, 59, 364.

The decision of whether immunity under sub. (2) applies should be made by the court pursuant to a pretrial motion. The defendant bears the burden of proving by a preponderance of the evidence his or her entitlement to immunity. State v. Williams, 2016 WI App 82, 372 Wis. 2d 365, 888 N.W.2d 1, 15–2044.

The legislature had meant to provide immunity for bail jumping offenses founded in part upon violations of the statutes cited in sub. (2), it could have easily written that into this section. It did not. State v. Williams, 2016 WI App 82, 372 Wis. 2d 365, 888 N.W.2d 1, 15–2044.

If the Legislature intended to provide immunity for bail jumping offenses founded in part upon violations of the statutes cited in sub. (2), it could have easily written that into this section. It did not. State v. Williams, 2016 WI App 82, 372 Wis. 2d 365, 888 N.W.2d 1, 15–2044.

**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.

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961.45 Uniform Controlled Substances Act

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), 93–2200.

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. 2d 328, 627 N.W.2d 195, 99–1128.

If a conspiracy involves multi-layered conduct, and all such conduct is part of the overarching common scheme, this section does not bar prosecution when some other part of the multi-layered conduct has resulted in a prosecution in some other jurisdiction. State v. Bautista, 2009 WI App 100, 320 Wis. 2d 582, 770 N.W.2d 744, 08–1692.

961.452 Defenses in certain schedule V prosecutions. (1) A person who proves all of the following by a preponderance of the evidence has a defense to prosecution under s. 961.41 (1) (j) that is based on the person’s violation of a condition specified in s. 961.23 with respect to the person’s distribution or delivery of a pseudoephedrine product:

(a) The person did not knowingly or recklessly violate the condition under s. 961.23.

(b) The person reported his or her own violation of the condition under s. 961.23 to a law enforcement officer in the county or municipality in which the violation occurred within 30 days after the violation.

(2) A seller who proves all of the following by a preponderance of the evidence has a defense to prosecution under s. 961.41 (1) (j) that is based on the person’s violation of a condition specified in s. 961.23 with respect to the person’s distribution or delivery of a pseudoephedrine product:

(a) The person did not knowingly or recklessly violate the condition under s. 961.23.

(b) The acts or omissions constituting the violation of the condition under s. 961.23 were the acts or omissions of one or more of the person’s employees.

(c) The person provided training to each of those employees regarding the restrictions imposed under s. 961.23 on the delivery of pseudoephedrine products.

(3) A person who proves all of the following by a preponderance of the evidence has a defense to prosecution under s. 961.41 (1) (j) for a violation of s. 961.23 (6):

(a) The purchaser presented an identification card that contained the name or address other than the person’s own.

(b) The appearance of the purchaser was such that an ordinary and prudent person would believe that the purchaser was the person depicted in the photograph contained in that identification card.

(c) The sale was made in good faith, in reasonable reliance on the identification card and appearance of the purchaser, and with the belief that the name and address of the purchaser were as listed on the identification card.

(4) A person who proves all of the following by a preponderance of the evidence has a defense to prosecution under s. 961.41 (1) (j) for a violation of s. 961.23 (8):

(a) The purchaser presented an identification card that indicated that he or she was 18 years of age or older.

(b) The appearance of the purchaser was such that an ordinary and prudent person would believe that the purchaser was 18 years of age or older.

(c) The sale was made in good faith, in reasonable reliance on the identification card and appearance of the purchaser, and with the belief that the purchaser was 18 years of age or older.


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.

(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.

(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.


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.


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 under 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 informa-

2017–18 Wisconsin Statutes updated by 2017 Wis. Acts 368 to 370 and through all Supreme Court and Controlled Substances Board Orders filed before and in effect on January 17, 2019. Published and certified under s. 35.18. Changes effective after January 17, 2019, are designated by NOTES. (Published 1–17–19)
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 of attempted possession of a controlled substance or controlled substance analog under s. 961.41 (3g) (am), (c), (d), or (g), 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 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 sub. (5) 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) The court is not required to enter an order under sub. (2) if any of the following applies:

(a) The court finds that the person is already covered by or has recently completed an assessment under this section or a substantively similar assessment.

(b) The person is participating in a substance abuse treatment program that meets the requirements of s. 165.95 (3), as determined by the department of justice under s. 165.95 (9) and (10).


961.473 Victim impact panels. If a person pleads guilty to or is found guilty of a violation of this chapter, the court may order the person to attend a program, such as a victim impact panel, that demonstrates the adverse effects of substance abuse on an individual or an individual’s family in addition to any forfeiture or penalty imposed. The court may order the defendant to pay a reasonable fee, based on the person’s ability to pay, to offset the costs of assembling and holding the program ordered under this section.

History: 2017 a. 261.

961.475 Treatment option. Whenever any person pleads guilty to or is found guilty of possession of 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.


A disposition of probation without entering a judgment of guilt, was not appealable because the trial court had entered a 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. Rybak, 64 Wis. 2d 374, 219 N.W.2d 263 (1974).

The reference to s. 161.41 (3) [now s. 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 s. 961.41 (3g) (b)]. State v. Boyer, 198 Wis. 2d 837, 543 N.W.2d 562 (Ct. App. 1995), 95-0624.

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.

(4) This section does not apply if the person is presently charged with a felony under s. 961.41 (3g) (c), (d), (e), or (g).


The trial court erred in imposing a 2nd sentence on a defendant convicted of a 2nd violation of s. 161.41 (1) (a) and 161.14 (3) (k) [now ss. 961.41 (1) (a) and 961.14 (3) (k)]. While the repeater statute, s. 161.48 [now s. 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 ch. 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).

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. Mikes, 221 Wis. 2d 56, 584 N.W.2d 703 (Ct. App. 1998), 97-1364.

A conviction for possessing drug paraphernalia under s. 961.57 qualifies as a prior offense under sub. (3). State v. Moline, 229 Wis. 2d 33, 598 N.W.2d 929 (App. Ct. 1999), 98-2176.

A defendant convicted of a second or subsequent controlled substance offense is subject to the penalty enhancements provided for in both s. 961.48 and s. 961.49. This application of each enhancer is based on a separate and distinct prior conviction or convictions. State v. Mazey, 2003 WI App 94, 264 Wis. 2d 878, 663 N.W.2d 811, 02-1711.

961.49 Offenses involving intent to deliver or distribute a controlled substance on or near certain places. (1m) 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 distrib-
ute, cocaine, cocaine base, heroin, phenacyclidine, 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 and any premises of a tribal school, as defined in s. 115.001 (15m).
   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.

(2m) If any person violates s. 961.65 and, during the violation, the person intends to deliver or distribute methamphetamine or a controlled substance analog of methamphetamine under any of the circumstances listed under sub. (1m) (a), (b), (c), or (d), the maximum term of imprisonment for that crime is increased by 5 years.

History:

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

Any person who passes within a zone listed in sub. (1) [now sub. (1m)] while in possession of a controlled substance with an intent to deliver it somewhere is subject to the penalties 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 (Cl. App. 1995), 94−24300.

School “premises” begin at the school property line. State v. Hall, 196 Wis. 2d 850, 540 N.W.2d 219 (Cl. App. 1995), 94−2848x.

The penalty enhancer for sales close to parks does not apply due process and is not unconstitutional 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 413, 559 N.W.2d 264 (Cl. App. 1996), 95−32520.

Day care centers are a subset of “youth centers” as defined in s. 961.01 (22) and common within the definition of places listed in sub. (2). State v. Van Pumper, 222 Wis. 2d 117, 586 N.W.2d 198 (Cl. App. 1998), 97−33067.

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, 00−0541.

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 of any premises of a tribal school, as defined in s. 115.001 (15m), 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 the order shall have immunity from civil liability in excess of $25,000 for acts or omissions by or impacting on the defendant.

History:

961.50 Suspension or revocation of operating privilege. (1) If a person is convicted of any violation of this chapter, the court may, 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. If a court suspends a person’s operating privilege under this subsection, the court may take possession of any suspended license. If the court takes possession of a license, it shall destroy the license. The court shall forward to the department of transportation 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 for issuance, renewal, or reinstatement of an operator’s license under ch. 343.

History:

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.

2017−18 Wisconsin Statutes updated by 2017 Wis. Acts 368 to 370 and through all Supreme Court and Controlled Substances Board Orders filed before and in effect on January 17, 2019. Published and certified under s. 35.18. Changes effective after January 17, 2019, are designated by NOTES. (Published 1−17−19)
(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 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.

(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;
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.


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) Subject to subs. (1g) and (1m), 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, compound- ing, processing, delivering, distributing, importing or exporting any controlled substance or controlled substance analog in viola-
tion of this chapter.

(c) All property which is used, or intended for use, as a con-
tainer for property described in pars. (a) and (b).

(d) All vehicles which are used, or intended for use, to trans-
port, or in any manner to facilitate the transportation, for the pur-
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, except that a vehicle is not subject to forfeiture for a viola-
tion of s. 961.41 (3g) (b) to (g).

(e) All books, records, and research products and materials, in-
cluding 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.

(h) Any masking agent, as defined in s. 961.69 (1), used in violation of this chapter.

(1g) A judgment of forfeiture may not be entered under this chapter unless a person is convicted of the criminal offense that was the basis for the seizure of the item or that is related to the action for forfeiture.

(1k) A person who has been subject to a seizure of property has a right to a pretrial hearing under s. 968.20.

(1m) The property of an innocent owner may not be forfeited.

A person who claims to be an innocent owner may follow the pro-
cedures under s. 961.555 (5).

(1r) If a law enforcement officer or agency or state or local employee or agency refers seized property to a federal agency directly, indirectly, by adoption, through an intergovernmental joint task force, or by other means, for the purpose of forfeiture litigation, the agency shall produce an itemized report of actual forfeiture expenses, as defined in sub. (5) (b), and submit the report to the department of administration to make it available on the department’s website. If there is a federal or state criminal conviction for the crime that was the basis for the seizure, the agency may accept all proceeds if one of the following circumstances applies and is explained in the report submitted under this subsection:

(a) The defendant has died.

(b) The defendant was deported by the U.S. government.

(c) The defendant has been granted immunity in exchange for testifying or otherwise assisting a law enforcement investigation or prosecution.

(d) The defendant fled the jurisdiction.

(e) The property has been unclaimed for a period of at least 9 months.

(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 war-
rant;
This section and s. 973.075 both include the same “innocent owner” defense language, which bars forfeiture if the crime was committed without the property owner’s knowledge or consent. In the absence of contrary evidence, the legislature intended “owner” to have the same meaning in both provisions. Ownership under s. 973.075 (1) (b) 2. (renumbered s. 973.075 (1) (b) 2m. b.) is not controlled by legal title, but will be found based on consideration of possession, title, control, and financial stake. State v. Kirsch, 222 Wis. 2d 598, 587 N.W.2d 910 (Ct. App. 1998).

The “seized but not forfeited” language of sub. (3) means that the portion of that subsection related to return of property is only triggered by a 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. 961.555. Jones v. State, 226 Wis. 2d 281, 594 N.W.2d 738 (1999), 97–2306.

For purposes of the statutory “innocent owner” exception in this case, while one co-titleholder had the largest financial interest in the forfeited vehicle, the 2nd co-titleholder, who used the vehicle in drug sales was the actual owner of the vehicle when the 2nd titleholder had nearly complete possession and control of the vehicle and paid for insurance, gas, and maintenance while the first titleholder had a different vehicle of her own. However, while forfeiture of the vehicle and 2nd titleholder’s “seized property” interest in it was controlled by legal title, the balance of the full financial interest in the vehicle was unconstitutional under the Excessive Fines Clause. State v. One 2013, Toyota Corolla, 2015 WI App 84, 365 Wis. 2d 582, 872 N.W.2d 98, 14–2226.

A law enforcement agency may not retain unclaimed contraband money for its own use. In the absence of an asset forfeiture proceeding initiated by the state or a judicial determination that the money constitutes contraband, a local law enforcement agency should dispose of the money as unclaimed property under s. 59.66 (2). OAG 10–09.

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. Subject to s. 961.55 (1r), any property seized may be the subject of a federal forfeiture action.

(2) COMENCEMENT. (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, and the forfeiture proceedings shall be adjourned until after the defendant is convicted of any charge concerning a crime which was the basis for the seizure of the property. If property is seized, a charge shall be filed within 6 months after the seizure, except that an unlimited number of 6-month extensions may be granted if, for each extension, a judge determines probable cause is shown and the additional time is warranted. If no charge is issued within 6 months after the seizure, or a 6−month extension is not granted, the seized property shall be returned to the owner. 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 against the person from whom the property was seized and upon any person known to have a bona fide perfected security interest in the property.

(2) If 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.

(7) The property has been unclaimed for a period of at least 9 months.

The property is contraband that is subject to forfeiture under s. 961.55 (6), (6m), or (7).

(a) 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.

(b) 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,
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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.

(2m) CRIMINAL FORFEITURES. (a) In addition to any penalties under this chapter, the court shall, with due provision for the rights of innocent persons in accordance with sub. (5), order forfeiture of any property specified in s. 961.55 (1) in accordance with pars. (b), (c), and (d).

(b) A criminal complaint must allege the extent of property subject to forfeiture under this subsection. At trial, the court or the jury shall return a special verdict determining the extent of property, if any, that is subject to forfeiture under this subsection. If the special verdict contains a finding of property subject to forfeiture under this subsection, a judgment of criminal forfeiture shall be entered along with the judgment of conviction under s. 972.13.

(c) An injured person has a right or claim to forfeited property or the proceeds derived from forfeited property under this subsection that is superior to any right or claim the state has in the property or proceeds. This paragraph does not grant the injured person priority over state claims or rights by reason of a tax lien or other forfeiture under this subsection, a judgment of criminal forfeiture shall be entered along with the judgment of conviction under s. 972.13.

(d) An injured or innocent person may petition the court for relief from the judgment of criminal forfeiture entered under par. (b) within 30 days after it is entered. The person filing the petition has the burden of satisfying or convincing to a reasonable certainty by the greater weight of the credible evidence that the person has a bona fide perfected security interest in the property subject to forfeiture in s. 961.55 (1) or any other property subject to forfeiture in sub. (4). The court may order that a person with a bona fide perfected security interest be paid from the proceeds of the forfeiture or any other equitable relief necessary so as to do substantial justice to the person.

(3) BURDEN OF PROOF. The state shall have the burden of proving by clear and convincing evidence that the property is subject to forfeiture under s. 961.55.

(3g) PRIVILEGES. The defendant or convicted offender may invoke the right against self-incrimination or the marital privilege during the forfeiture-related stage of the prosecution. The trier of fact at the hearing may draw an adverse inference from the invocation of the right or privilege.

(3m) PROPORTIONALITY. (a) The court may not order the forfeiture of property if the court finds that the forfeiture is grossly disproportional to the crime for which the person whose property was seized was convicted or that the forfeiture is unconstitutionally excessive under the state or federal constitution.

(b) A person who is alleging that the forfeiture is grossly disproportional or is unconstitutionally excessive under this subsection shall have the burden of satisfying or convincing to a reasonable certainty by the greater weight of the credible evidence that the forfeiture is grossly disproportional or unconstitutionally excessive.

(c) In determining whether the forfeiture is grossly disproportional or unconstitutionally excessive, the court shall consider the following:

1. The seriousness of the offense.
2. The purpose of the statute authorizing the forfeiture.
3. The maximum fine for the offense.
4. The harm that actually resulted from the defendant’s conduct.

(d) In determining whether the forfeiture is grossly disproportional or unconstitutionally excessive, the court may not consider the value of the property to the state.

(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.

(5) INNOCENT OWNERS. (a) Notwithstanding sub. (2)(a), a person who claims to have an ownership interest in property subject to forfeiture as an innocent owner may petition the court for the return of his or her seized property at any time.

(b) A person who has an ownership interest in property subject to forfeiture that exists at the occurrence of the illegal conduct giving rise to the forfeiture and who claims to be an innocent owner has the burden of proving by clear and convincing evidence that he or she has a legal right, title, or interest in the property seized under this chapter.

(c) If the requisite showing under par. (b) has been made, in order to proceed with a forfeiture action against the property, the state has the burden of proving by clear and convincing evidence that the person had actual or constructive knowledge of the underlying crime giving rise to the forfeiture.

(d) A person who has an ownership interest in property subject to forfeiture that he or she acquired after the occurrence of the conduct giving rise to the forfeiture and who claims to be an innocent owner has the burden of proving by clear and convincing evidence that he or she has a legal right, title, or interest in the property seized under this chapter.

(e) If the requisite showing under par. (d) has been made, in order to proceed with a forfeiture action against the property, the state has the burden of proving by clear and convincing evidence that the person had actual or constructive knowledge that the property was subject to forfeiture or that the person was not a bona fide purchaser without notice of any defect in title and for valuable consideration.

(f) If the state does not meet the burden under par. (c) or (e) as to any property, the court shall find that the property is the property of an innocent owner and not subject to forfeiture under this chapter and shall order the state to relinquish all claims of title to the property.

(6) RETURN OF PROPERTY. The court shall order the return of any property subject to forfeiture under s. 961.55 to 961.56 within 30 days of acquittal or dismissal of charges for the offense which was the basis of the forfeiture action, or 6 months after a seizure which was the basis of the forfeiture action if no charges have been issued and no extension has been granted. If the property is co-owned by 2 or more defendants in a criminal action, and one or more defendant co-owners are acquitted or the charges against him or her are dismissed, the court shall have discretion to dispose of the co-owned property in accordance with the proportionality guidelines in sub. (3m) as he or she deems appropriate.

(7) ATTORNEY FEES. A person who prevails in an action to return property subject to forfeiture under ss. 961.55 to 961.56 may be awarded reasonable attorney fees by the state if the court finds that the forfeiting agency or prosecuting attorney has arbitrarily and capriciously pursued the forfeiture action.


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]
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961.572

961.556 Burden of proof; liabilities. (1) It is not necessary for the state to negate any exception 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 exception or exemption 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, s. 307; 1993 a. 482, s. 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 governor 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.


SUBCHAPTER VI

DRUG PARAPHERNALIA

961.571 Definitions. In this subchapter:

(1) "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, analyzing, testing, 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.

(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 396, 563 N.W.2d 922 (Ct. App. 1997), 96-1899.

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:

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, 131 Wis. 2d 334, 528 N.W.2d 81 (Ct. App. 1995).

The 60-day limit in sub. (2) (b) is mandatory and a forfeiture petition must be dismissed with prejudice unless the requisite hearing is held within the 60–day period. Once the 60–day period has expired, the circuit court loses competency, and the state may not start the clock running anew by filing another forfeiture petition based on the same facts. State v. One 2000 Lincoln Navigator, Its Tools and Appurtenances, 2007 WI App 127, 301 Wis. 2d 714, 731 N.W.2d 375, 06–2016.

Authentication of a summons and complaint is accomplished by the clerk’s placing a filing stamp indicating the case number on each copy of the summons and complaint and for purposes of sub. (2) (a), a forthright affidavit authenticated the same way. Failure to comply with the authentication of the forfeiture summons, complaint, and affidavit can constitute fundamental error. But when, as in this case, the state presents the same facts. State v. One 2000 Lincoln Navigator, Its Tools and Appurtenances, 2007 WI App 127, 301 Wis. 2d 714, 731 N.W.2d 375, 06–2016.

Persons served under sub. (2) (a) must be named as defendants. An action cannot

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, s. 307; 1993 a. 482, s. 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.


961.571 Definitions. In this subchapter:

(1) "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, analyzing, testing, 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.

(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 396, 563 N.W.2d 922 (Ct. App. 1997), 96-1899.

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:

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).

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The 60–day limit in sub. (2) (b) is mandatory and a forfeiture petition must be dismissed with prejudice unless the requisite hearing is held within the 60–day period. Once the 60–day period has expired, the circuit court loses competency, and the state may not start the clock running anew by filing another forfeiture petition based on the same facts. State v. One 2000 Lincoln Navigator, Its Tools and Appurtenances, 2007 WI App 127, 301 Wis. 2d 714, 731 N.W.2d 375, 06–2016.

Authentication of a summons and complaint is accomplished by the clerk’s placing a filing stamp indicating the case number on each copy of the summons and complaint and for purposes of sub. (2) (a), a forthright affidavit authenticated the same way. Failure to comply with the authentication of the forfeiture summons, complaint, and affidavit can constitute fundamental error. But when, as in this case, the state presents the same facts. State v. One 2000 Lincoln Navigator, Its Tools and Appurtenances, 2007 WI App 127, 301 Wis. 2d 714, 731 N.W.2d 375, 06–2016.

Persons served under sub. (2) (a) must be named as defendants. An action cannot

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, s. 307; 1993 a. 482, s. 448 s. 307; Stats. 1995 s. 961.56.
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(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.


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 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.


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.


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.


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 (1) or (2), 961.574 (1) or (2), or 961.575 (1) or (2) or a county from prohibiting conduct that is the same as that prohibited by s. 961.573 (1) or (2), 961.574 (1) or (2), or 961.575 (1) or (2).


SUBCHAPTER VII
MISCELLANEOUS

961.65 Possessing materials for manufacturing methamphetamine. Except as authorized by this chapter, any person who possesses an ephedrine or pseudoephedrine product, red phosphorus, lithium metal, sodium metal, iodine, anhydrous ammonia, or pressurized ammonia with intent to manufacture methamphetamine is guilty of a Class H felony. Possession of more than 9 grams of ephedrine or pseudoephedrine, other than pseudoephedrine contained in a product to which s. 961.01 (20c) (a) or (b) applies, creates a rebuttable presumption of intent to manufacture methamphetamine. In this section, “ephedrine” and “pseudoephedrine” include any of their salts, isomers, and salts of isomers.


961.67 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 emit-
ted 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.

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

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


961.69 Possession, use, manufacture, distribution, or advertisement of a masking agent. (1) In this section, “masking agent” means any substance or device that is intended for use to defraud, circumvent, interfere with, or provide a substitute for a bodily fluid in conjunction with a lawfully administered drug test.

(2) No person may use, or possess with the primary intent to use, a masking agent. Any person who violates this subsection may be fined not more than $500 or imprisoned for not more than 30 days or both.

(3) No person may deliver, possess with intent to deliver, or manufacture with intent to deliver a masking agent. Any person who violates this subsection may be fined not more than $1,000 or imprisoned for not more than 90 days or both.

(4) No person may place on an Internet site or 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 a masking agent. Any person who violates this subsection may be fined not more than $500 or imprisoned for not more than 30 days or both.

History: 2015 a. 264; s. 35.17 correction in (3).