

## CHAPTER 161

## UNIFORM CONTROLLED SUBSTANCES ACT

161.001	Declaration of intent	161.38	Prescriptions.
	SUBCHAPTER I		SUBCHAPTER IV
	DEFINITIONS		OFFENSES AND PENALTIES
161.01	Definitions.	161.41	Prohibited acts A—penalties
	SUBCHAPTER II	161.42	Prohibited acts B—penalties
	STANDARDS AND SCHEDULES	161.43	Prohibited acts C—penalties
161.11	Authority to control	161.435	Specific penalty
161.115	Native American Church exemption.	161.44	Penalties under other laws
161.12	Nomenclature	161.45	Bar to prosecution
161.13	Schedule I tests.	161.46	Distribution to persons under age 18
161.14	Schedule I.	161.465	Distribution to prisoners.
161.15	Schedule II tests	161.47	Conditional discharge for possession as first offense
161.16	Schedule II.	161.475	Treatment option
161.17	Schedule III tests	161.48	Second or subsequent offenses.
161.18	Schedule III		SUBCHAPTER V
161.19	Schedule IV tests		ENFORCEMENT AND ADMINISTRATIVE PROVISIONS
161.20	Schedule IV.	161.51	Powers of enforcement personnel
161.21	Schedule V tests	161.52	Administrative inspections and warrants
161.22	Schedule V.	161.53	Violations constituting public nuisance
161.23	Dispensing of schedule V substances.	161.54	Cooperative arrangements and confidentiality
161.24	Republishing of schedules.	161.55	Forfeitures.
	SUBCHAPTER III	161.555	Forfeiture proceedings.
	REGULATION OF MANUFACTURE, DISTRIBUTION AND DISPENSING OF CONTROLLED SUBSTANCES	161.56	Burden of proof; liabilities
161.31	Rules.		SUBCHAPTER VI
161.32	Possession authorization.		MISCELLANEOUS
161.335	Special use authorization.	161.61	Uniformity of interpretation.
161.36	Diversion control and prevention.	161.62	Short title

**161.001 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:

(1) 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.

Ch. 161, the uniform controlled substances act, precludes the enactment of municipal ordinances regulating the sale and possession of such controlled substances as marijuana. 63 Atty. Gen 107.

## SUBCHAPTER I

## DEFINITIONS

**161.01 Definitions.** As used in this chapter:

(1) "Administer" means the direct application of 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 his presence, by his authorized agent); or

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

(2) "Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor or dispenser. It does not include a common or contract carrier, public warehouse keeper or employe of the carrier or warehouse keeper.

(3) "Bureau" means the bureau of narcotics and dangerous drugs, U.S. department of justice, or its successor agency.

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

(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" means the actual, constructive or attempted transfer from one person to another of a controlled substance, whether or not there is any agency relationship.

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

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

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

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

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

(11) "Drug" means a) substances recognized as drugs in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States or official National Formulary or any supplement to any of them; b) substances intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or animals; c) substances, other than food, intended to affect the structure or any function of the body of man or animals; and d) substances intended for use as a component of any article specified in a), b) or c). It does not include devices or their components, parts or accessories.

(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.

(13) "Manufacture" means the production, preparation, propagation, compounding, conversion or processing of a controlled substance, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container, except that this term does not include the preparation or compounding of a controlled substance by an individual for his own use or the preparation, compounding, packaging or labeling of a controlled substance:

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

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

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

(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 opiate, and any salt, compound, derivative or preparation of opium or opiate.

(b) Any salt, compound, isomer, derivative or preparation thereof which is chemically equivalent or identical with any of the substances referred to in par. (a), but not including the isoquinoline alkaloids of opium.

(c) Opium poppy and poppy straw.

(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. It does not include, unless specifically designated as controlled under s. 161.11, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). It does include its racemic and levorotatory forms.

(17) "Opium poppy" means the 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, dentist, veterinarian, podiatrist, scientific investigator or other person 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

(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" includes the manufacture, planting, cultivation, growing or harvesting of a controlled substance.

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

**History:** 1971 c. 219; 1979 c. 89; 1981 c. 200, 206; 1983 a 500 s. 43

See note to 161.41, citing *State ex rel. Bell v. Columbia County Ct.* 82 W (2d) 401, 263 NW (2d) 162.

## SUBCHAPTER II

### STANDARDS AND SCHEDULES

**161.11 Authority to control.** (1) The controlled substances board shall administer this subchapter and may add substances to or delete or reschedule all substances enumerated in the schedules in ss. 161.14, 161.16, 161.18, 161.20 and 161.22 pursuant to the rule-making procedures of ch. 227. 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 psychic or physical dependence liability; and

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

(2) After considering the factors enumerated in sub. (1), the controlled substances board shall make findings with respect thereto and issue a rule controlling the substance if it finds the substance has a potential for abuse.

(3) If the controlled substances 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 any substance is designated, rescheduled or deleted as a controlled substance under federal law and notice thereof is given to the controlled substances board, the board by affirmative action shall similarly control the substance under this chapter after the expiration of 30 days from publication in the federal register of a final order designating a substance as a controlled substance or rescheduling or deleting a substance, unless within that 30-day period, the board objects to inclusion, rescheduling or deletion. In that case, the board shall publish the reasons for objection and afford all interested parties an opportunity to be heard. At the conclusion of the hearing, the board shall publish its decision, which shall be final unless altered by statute. Upon publication of objection to inclusion, rescheduling or deletion under this chapter by the board, control under this chapter is stayed until the board publishes its decision.

(5) Authority to control under this section does not extend to intoxicating liquors, as defined in s. 139.01 (3), to fermented malt beverages as defined in s. 125.02, or to tobacco.

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

(b) If the board finds that any nonnarcotic substance barred from control under this chapter by par. (a) is dangerous to or is being so used as to endanger the public health and welfare, it may request the department of justice in the name of the state to seek a temporary restraining order or temporary injunction under ch. 813 to either ban or regulate the sale and possession of the substance. The order or

injunction shall continue until the adjournment of the legislature convened next following its issuance. In making its findings as to nonnarcotic substances under this paragraph, the board shall consider the items specified in sub. (1).

**History:** 1971 c. 219, 307; Sup. Ct. Order, 67 W (2d) 774; 1981 c. 79 s. 18; 1983 a. 189 s. 329 (13).

**161.115 Native American Church exemption.** This chapter does not apply to the non-drug use of peyote and mescaline in the bona fide religious ceremonies of the Native American Church

**History:** 1971 c. 219.

**161.12 Nomenclature.** The controlled substances listed or to be listed in the schedules in ss. 161.14, 161.16, 161.18, 161.20 and 161.22 are included by whatever official, common, usual, chemical or trade name designated.

**History:** 1971 c. 219.

LSD discussed in relationship to 1969 and 1971 Stats. Berg v. State, 63 W (2d) 228, 216 NW (2d) 521.

**161.13 Schedule I tests.** The controlled substances board shall place a substance in schedule I if it finds that the substance:

(1) Has high potential for abuse; and

(2) Has no accepted medical use in treatment in the United States or lacks accepted safety for use in treatment under medical supervision.

**History:** 1971 c. 219.

**161.14 Schedule I. (1) INCLUDED SUBSTANCES.** The controlled substances listed in this section are included in schedule I.

(2) **OPIATES.** Unless specifically excepted under federal regulations or unless listed in another schedule, any of the following opiates, or their isomers, esters, ethers, salts, salts of isomers, esters or ethers, if isomers, esters, ethers, salts or salts of isomers exist within the specified chemical designation:

- (a) Acetylmethadol;
- (am) Allylprodine;
- (b) Alphacetylmethadol;
- (bm) Alphameprodine;
- (c) Alphamethadol;
- (cm) Benzethidine;
- (d) Betacetylmethadol;
- (dm) Betameprodine;
- (e) Betamethadol;
- (em) Betaprodine;
- (f) Clonitazene;
- (fm) Dextromoramide;
- (gm) Diampromide;
- (h) Diethylthiambutene;
- (hg) Difenoxy;
- (hm) Dimenoxadol;
- (j) Dimepheptanol;

- (jm) Dimethylthiambutene;
- (k) Dioxaphetyl butyrate;
- (km) Dipipanone;
- (m) Ethylmethylthiambutene;
- (mm) Etonitazene;
- (n) Etoxadine;
- (nm) Furethidine;
- (p) Hydroxypethidine;
- (pm) Ketobemidone;
- (q) Levomoramide;
- (qm) Levophenacymorphan;
- (qs) Methylfentanyl;
- (r) Morpheridine;
- (rm) Noracymethadol;
- (s) Norlevorphanol;
- (sm) Normethadol;
- (t) Norpipanone;
- (tm) Phenadoxone;
- (u) Phenampromide;
- (um) Phenomorphan;
- (v) Phenoperidine;
- (vm) Piritramide;
- (w) Proheptazine;
- (wm) Properidine;
- (wn) Propiram;
- (x) Racemoramide;
- (xr) Tilidine;
- (y) Trimeperidine.

**NOTE:** Par. (hg) is printed as adopted by action of the controlled substances board in administrative rule CSB 2.09 (4) effective 5-1-76, pursuant to s. 161.11 (1).

**NOTE:** Par. (wn) is printed as adopted by action of the controlled substances board in administrative rule CSB 2.10 effective 9-1-76, pursuant to s. 161.11 (1).

**NOTE:** Par. (xg) is repealed under 161.11 by CSB 2.16, Wis. Adm. Code, eff. 11-1-84, which creates the same language in s. 161.16 (3) (y).

(3) **OPIUM DERIVATIVES.** Unless specifically excepted under federal regulations or unless listed in another schedule, any of the following opium derivatives or their salts, isomers or salts of isomers, if salts, isomers or salts of isomers exist within the specific chemical designation:

- (a) Acetorphine;
- (b) Acetyldihydrocodeine;
- (c) Benzylmorphine;
- (d) Codeine methylbromide;
- (e) Codeine-N-Oxide;
- (f) Cyprenorphine;
- (g) Desomorphine;
- (h) Dihydromorphine;
- (hm) Drotribanol;
- (j) Etorphine, except hydrochloride salts of etorphine;
- (k) Heroin;
- (m) Hydromorphanol;
- (n) Methylmorphine;
- (p) Methylhydromorphine;
- (q) Morphine methylbromide;
- (r) Morphine methylsulfonate;
- (s) Morphine-N-Oxide;

- (t) Myrophine;
- (u) Nicocodeine;
- (v) Nicomorphine;
- (w) Normorphine;
- (x) Pholcodine;
- (y) Thebacon.

NOTE: Sub. (3) (hm) is printed as adopted by action of the controlled substances board in administrative rule CSB 2.05, effective 8-1-74, pursuant to s. 161.11 (1).

**(4) HALLUCINOGENIC SUBSTANCES.** Unless specifically excepted under federal regulations or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following hallucinogenic substances or their salts, isomers or salts of isomers, if salts, isomers or salts of isomers exist within the specific chemical designation, in any form including a substance, salt, isomer or salt of an isomer contained in a plant, obtained from a plant or chemically synthesized:

- (a) 3,4-methylenedioxy amphetamine, commonly known as "MDA";
- (b) 5-methoxy-3,4-methylenedioxy amphetamine;
- (c) 3,4,5-trimethoxy amphetamine;
- (d) Bufotenine;
- (e) Diethyltryptamine;
- (f) Dimethyltryptamine;
- (g) 4-methyl-2, 5-dimethoxyamphetamine, commonly known as "STP";
- (h) Ibogaine;
- (j) Lysergic acid diethylamide, commonly known as "LSD";
- (m) Mescaline, in any form, including mescaline contained in peyote, obtained from peyote or chemically synthesized;
- (mn) Parahexyl;
- (n) Phencyclidine, commonly known as "PCP";
- (p) N-ethyl-3-piperidyl benzilate;
- (q) N-methyl-3-piperidyl benzilate;
- (r) Psilocybin;
- (s) Psilocin;
- (t) Tetrahydrocannabinols, commonly known as "THC", in any form including tetrahydrocannabinols contained in marijuana, obtained from marijuana or chemically synthesized;
- (u) 1-[1-(2-thienyl)-cyclohexyl]-piperidine, which is the thiophene analog of phencyclidine;
- (ug) N-ethyl-1-phenylcyclohexylamine, which is the ethylamine analog of phencyclidine;
- (ur) 1-(1-phenylcyclohexyl)-pyrrolidine, which is the pyrrolidine analog of phencyclidine;
- (v) 2, 5-dimethoxyamphetamine;
- (w) 4-bromo-2, 5-dimethoxyamphetamine;

- (x) 4-methoxyamphetamine.

NOTE: Pars. (v), (w) and (x) [renumbered from (u), (v) and (w)] are printed as adopted by action of the controlled substances board in administrative rule CSB 2.09 (4), effective 5-1-76, pursuant to s. 161.11 (1).

NOTE: Par. (mn) is created under s. 161.11 by CSB 2.15, Wis. Adm. Code, eff. 11-1-84.

**(5) DEPRESSANTS.** Unless specifically excepted under federal regulations or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system or their salts, isomers or salts of isomers, if salts, isomers or salts of isomers exist within the specific chemical designation:

- (a) Mecloqualone.

**(6) IMMEDIATE PRECURSORS.** Unless specifically excepted under federal regulations or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances or their salts:

- (a) Immediate precursors to phencyclidine:
  1. 1-phenylcyclohexylamine.
  2. 1-piperidinocyclohexanecarbonitrile.

**(7) STIMULANTS.** Unless specifically excepted under federal regulations or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following stimulants or their salts, isomers or salts of isomers, if salts, isomers or salts of isomers exist within the specific chemical designation:

- (a) Fenethylline.
- (b) N-ethylamphetamine.

History: 1971 c. 219; 1981 c. 206; CSB 2.16, 2.15

NOTE: See 1979-80 Statutes for more notes on actions by controlled substances board under s. 161.11 (1).

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

**161.15 Schedule II tests.** The controlled substances board shall place a substance in schedule II if it finds that:

- (1) The substance has high potential for abuse;
- (2) The substance has currently accepted medical use in treatment in the United States, or currently accepted medical use with severe restrictions; and
- (3) The abuse of the substance may lead to severe psychic or physical dependence.

History: 1971 c. 219.

**161.16 Schedule II. (1) INCLUDED SUBSTANCES.** The controlled substances listed in this section are included in schedule II.

**(2) SUBSTANCES OF PLANT ORIGIN.** Unless specifically excepted under federal regulations or unless listed in another schedule, any of the

following substances in any form, including a substance contained in a plant, obtained from a plant or chemically synthesized:

(a) Opium and opiate, and any salt, compound, derivative or preparation of opium or opiate. Apomorphine, dextrophan, nalbuphine, butorphanol, naloxone and naltrexone and their respective salts and the isoquinoline alkaloids of opium and their respective salts are excluded from this paragraph. The following substances and their salts, isomers and salts of isomers, if salts, isomers or salts of isomers exist under the specific chemical designation, are included in this paragraph:

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

2. Opium poppy and poppy straw.

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

4. Codeine

5. Ethylmorphine.

6. Etorphine hydrochloride

7. Hydrocodone, also known as dihydrocodeinone.

8. Hydromorphone, also known as dihydromorphinone.

9. Metopon

10. Morphine.

11. Oxycodone.

12. Oxymorphone.

13. Thebaine.

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

1. Cocaine.

2. Ecgonine.

(3) OPIATES Unless specifically excepted under federal regulations or unless listed in another schedule, any of the following opiates or their isomers, esters, ethers, salts and salts of isomers, if isomers, esters, ethers, salts or salts of isomers exist within the specific chemical designation:

(a) Alphaprodine;

(b) Anileridine;

(c) Bezitramide;

(d) Dihydrocodeine;

(e) Diphenoxylate;

(f) Fentanyl;

(g) Isomethadone;

(h) Levomethorphan;

(j) Levorphanol;

(k) Meperidine, also known as pethidine;

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

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

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

(q) Metazocine;

(r) Methadone;

(s) Methadone—Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane;

(t) Moramide—Intermediate, 2-methyl-3-morpholino-1, 1-diphenyl-propane-carboxylic acid;

(u) Phenazocine;

(v) Piminodine;

(w) Racemethorphan;

(x) Racemorphan.

(y) Sufentanil.

NOTE: Par. (y) is created under s. 161.11 by CSB 2.16, Wis. Adm. Code, eff. 11-1-84, which repeals the same language in s. 161.14 (2) (xg).

(5) STIMULANTS Unless specifically excepted under federal regulations or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system:

(a) Amphetamine, its salts, optical isomers, and salts of its optical isomers;

(b) Methamphetamine, its salts, optical isomers, and salts of its optical isomers;

(c) Phenmetrazine, its salts, isomers and salts of its isomers;

(d) Methylphenidate, its salts, optical isomers and salts of its optical isomers.

(7) DEPRESSANTS Unless specifically excepted under federal regulations or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system or their salts, isomers or salts of isomers, if salts, isomers or salts of isomers exist within the specific chemical designation:

(a) Amobarbital;

(am) Methaqualone;

(b) Pentobarbital;

(c) Secobarbital.

(8) IMMEDIATE PRECURSORS Unless specifically excepted under federal regulations or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances:

(a) An immediate precursor to amphetamine or methamphetamine:

1. Phenylacetone, commonly known as "P2P".

**161.16 UNIFORM CONTROLLED SUBSTANCES ACT**

3286

(9) OTHER SUBSTANCES. Unless specifically excepted by federal regulations or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances or their salts, isomers or salts of isomers, if salts, isomers or salts of isomers exist under the specific chemical designation:

(a) Pentazocine.

History: 1971 c. 219; 1981 c. 6, 206; CSB 2.16

NOTE: See 1979-80 Statutes for more notes on actions by controlled substances board under s. 161.11 (1).

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

**161.17 Schedule III tests.** The controlled substances board shall place a substance in schedule III if it finds that:

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

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

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

History: 1971 c. 219

**161.18 Schedule III. (1) INCLUDED SUBSTANCES.** The controlled substances listed in this section are included in schedule III.

(2m) STIMULANTS. Unless specifically excepted by federal regulations or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system or their salts, isomers or salts of isomers, if salts, isomers or salts of isomers exist within the specific chemical designation:

(a) Benzphetamine;

(b) Chlorphentermine;

(c) Clortermine;

(e) Phendimetrazine.

(3) DEPRESSANTS. Unless specifically excepted under federal regulations or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system or their salts, isomers or salts of isomers, if salts, isomers or salts of isomers exist within the specific chemical designation:

(a) Any substance which contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid, except those substances which are specifically listed in other schedules;

(b) Chlorhexadol;

(c) Glutethimide;

(d) Lysergic acid;

(e) Lysergic acid amide;

(f) Methyprylon;

(h) Sulfondiethylmethane;

(j) Sulfonethylmethane;

(k) Sulfonmethane.

(m) Any compound, mixture, or preparation containing amobarbital, secobarbital, pentobarbital and one or more other active medicinal ingredients which are not listed in any schedule.

(n) Any suppository dosage form containing amobarbital, secobarbital or pentobarbital and approved by the federal food and drug administration for marketing only as a suppository.

(4) OTHER SUBSTANCES. Unless specifically excepted under federal regulations or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances or their salts, isomers or salts of isomers, if salts, isomers or salts of isomers exist under the specific chemical designation:

(a) Nalorphine.

(b) Not more than 12.5 milligrams per dosage unit of pentazocine with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(5) NARCOTIC DRUGS. Unless specifically excepted under federal regulations or unless listed in another schedule, 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 the following specified quantities:

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

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

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

(e) Not more than 1.8 grams of dihydrocodeine per 100 milliliters or 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 not more than 15 milligrams per dosage unit, with one or more ingredients in recognized therapeutic amounts;

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

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

**(6) EXCEPTIONS.** The controlled substances board may except by rule any compound, mixture or preparation containing any stimulant or depressant substance listed in sub. (3) from the application of all or any part of this chapter if the compound, mixture or preparation contains one or more active medicinal ingredients not having a stimulant or depressant effect on the central nervous system; and if the admixtures are included therein in combinations, quantity, proportion or concentration that vitiate the potential for abuse of the substances which have a stimulant or depressant effect on the central nervous system.

**History:** 1971 c 219; 1981 c. 6; 1981 c 206 ss. 32 to 40, 57.

**NOTE:** See 1979-80 Statutes for more notes on actions by controlled substances board under s. 161.11 (1).

**161.19 Schedule IV tests.** The controlled substances board shall place a substance in schedule IV if it finds that:

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

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

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

**History:** 1971 c 219

**161.20 Schedule IV. (1) INCLUDED SUBSTANCES.** The controlled substances listed in this section are included in schedule IV.

**(2) DEPRESSANTS.** Unless specifically excepted under federal regulations or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system or their salts, isomers or salts of isomers, if salts, isomers or salts of isomers exist under the specific chemical designation:

(a) Alprazolam;

(am) Barbitol;

(b) Chloral betaine;

(c) Chloral hydrate;

(cm) Chlordiazepoxide;

(cn) Clonazepam;

(cp) Clorazepate;

(cr) Diazepam;

(d) Ethchlorvynol;

(e) Ethinamate;

(em) Flurazepam;

(eo) Halazepam;

(eq) Mazindol;

(er) Lorazepam;

(ew) Mebutamate;

(f) Methohexital;

(g) Meprobamate;

(h) Methylphenobarbital;

(hm) Oxazepam;

(j) Paraldehyde;

(k) Petrichloral;

(km) Prazepam;

(m) Phenobarbital;

(n) Temazepam;

(nm) Triazolam;

(o) N,N'-dimethyl-1,2-diphenylethylamine, commonly known as "SPA".

**NOTE:** Pars. (cm), (cn), (cr), (em) and (hm) are printed as adopted by action of the controlled substances board in administrative rule CSB 2.09 (1), effective 5-1-76, pursuant to s. 161.11 (1).

Par. (km) is printed as adopted by action of the controlled substances board in administrative rule CSB 2.14 effective 12-1-77, pursuant to s. 161.11 (1).

**NOTE:** Par. (nm) is created under s. 161.11 by CSB 2.15, Wis. Adm. Code, eff. 11-1-84.

**(2m) STIMULANTS.** Unless specifically excepted under federal regulations or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system or their salts, isomers or salts of isomers, if salts, isomers or salts of isomers exist under the specific chemical designation:

(a) Diethylpropion.

(b) Fenfluramine.

(c) Pemoline.

(d) Phentermine.

(e) Pipradrol.

**NOTE:** Par. (b) is printed as adopted by action of the controlled substances board in administrative rule CSB 2.08 (3), effective 3-1-76, pursuant to s. 161.11 (1).

**(3) NARCOTIC DRUGS CONTAINING NONNARCOTIC ACTIVE MEDICINAL INGREDIENTS.** Any compound, mixture or preparation containing limited quantities of any of the following narcotic drugs or their salts, isomers or salts of isomers, 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 medici-



**161.20 UNIFORM CONTROLLED SUBSTANCES ACT**

3288

nal qualities other than those possessed by the narcotic drug alone:

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

(4) **OTHER SUBSTANCES.** Unless specifically excepted under federal regulations or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances or their salts:

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

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

**History:** 1971 c. 219; 1979 c. 32; 1981 c. 206 ss. 34m, 41 to 52; CSB 2 15

**NOTE:** See 1979-80 Statutes for more notes on actions by controlled substances board under s. 161.11 (1).

**161.21 Schedule V tests.** The controlled substances board shall place a substance in schedule V if it finds that:

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

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

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

**History:** 1971 c. 219

**161.22 Schedule V. (1) INCLUDED SUBSTANCES.** The controlled substances listed in this section are included in schedule V.

(2) **NARCOTIC DRUGS CONTAINING NONNARCOTIC ACTIVE MEDICINAL INGREDIENTS.** Any compound, mixture or preparation containing limited quantities of any of the following narcotic drugs or their salts, isomers or salts of isomers, 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 medic-

inal qualities other than those possessed by the narcotic drug alone:

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

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

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

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

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

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

(3) **OTHER SUBSTANCES.** Unless specifically excepted under federal regulations or unless listed in another schedule, any quantity of the following substances or their salts, isomers or salts of isomers, if salts, isomers or salts of isomers exist under the specific chemical designation:

**History:** 1971 c. 219; 1981 c. 206; CSB 2 15

**NOTE:** Sub. (3) (a) is not printed. Section 2 of CSB 2 15, Wis. Adm. Code, created eff. 11-1-84 under s. 161.11, stats., states: "Paragraph (a) Loperamide hydrochloride of subsection (3), section 161 22, is repealed."

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

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

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

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

(4) That any person purchasing such a substance at the time of purchase present to the seller his correct name and address. The seller shall record the name and address and the name and quantity of the product sold. The purchaser and the seller shall sign the record of this transaction. The giving of a false name or false address by the purchaser shall be prima facie evidence of a violation of s. 161.43 (1) (a).

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

ouces of a product containing any other schedule V substance be in the possession of any person other than a physician, dentist, veterinarian or pharmacist at any time without the authorization of a physician, dentist or veterinarian.

**History:** 1971 c 219; 1973 c 12 s 37; 1981 c 206.

**161.24 Republishing of schedules.** The controlled substances board shall revise and republish the schedules semiannually for 2 years from October 1, 1972, and thereafter annually.

**History:** 1971 c 219.

### SUBCHAPTER III

#### REGULATION OF MANUFACTURE, DISTRIBUTION AND DISPENSING OF CONTROLLED SUBSTANCES

**161.31 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.

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

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

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

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

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

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

**History:** 1971 c 219, 336; 1983 a 500 s 43.

Doctor or dentist who dispenses drugs to patient within course of professional practice is not subject to criminal liability. *State v Townsend*, 107 W (2d) 24, 318 NW (2d) 361 (1982)

**161.335 Special use authorization. (1)** Upon application the controlled substances board may issue a permit authorizing a person to

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

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

(3) The fee for a permit under this section shall be an amount determined by the controlled substances board but shall not exceed \$25. No fee may be charged for permits issued to employes 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 in schedule I, and by name or schedule if in any other schedule.

(d) Whether dispensing to human subjects is authorized.

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

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

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

**161.335 UNIFORM CONTROLLED SUBSTANCES ACT**

3290

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

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

**History:** 1971 c. 219; 1975 c. 110, 199; 1977 c. 26.

**161.36 Diversion control and prevention. (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 diversion patterns within the state of certain controlled substances the board selects that are listed in s. 161.16, 161.18, 161.20 or 161.22.

(2) The controlled substances board shall enter into written agreements with other state or federal agencies to assist and promote coordination of agencies responsible for ensuring compliance with controlled substances law, to monitor observance of these laws and to monitor cooperation between the agencies.

(3) The controlled substances board shall evaluate the outcome of its program under this section and shall annually report to the presiding officer of each house of the legislature on its findings and recommendations for improving control and prevention of the diversion of controlled substances.

**History:** 1981 c. 200

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

(2) In emergency situations, as defined by rule of the pharmacy examining board, schedule II drugs may be dispensed upon oral prescription of a practitioner, reduced promptly to writing and filed by the pharmacy. Prescriptions shall be retained in conformity with rules of the pharmacy examining board promulgated under s. 161.31. 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 or oral 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 controlled substance included in schedule V shall not be distributed or dispensed other than for a medical purpose.

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

**History:** 1971 c. 219; 1975 c. 190, 421; 1977 c. 203

**SUBCHAPTER IV****OFFENSES AND PENALTIES**

**161.41 Prohibited acts A—penalties. (1)** Except as authorized by this chapter, it is unlawful for any person to manufacture or deliver a controlled substance. Any person who violates this subsection with respect to:

(a) A controlled substance classified in schedule I or II which is a narcotic drug, may be fined not more than \$25,000 or imprisoned not more than 15 years or both;

(b) Any other controlled substance classified in schedule I, II or III, may be fined not more than \$15,000 or imprisoned not more than 5 years or both;

(c) A substance classified in schedule IV, may be fined not more than \$10,000 or imprisoned not more than 3 years or both;

(d) A substance classified in schedule V, may be fined not more than \$5,000 or imprisoned not more than one year or both.

(1m) Except as authorized by this chapter, it is unlawful for any person to possess, with intent to manufacture or deliver, a controlled substance. 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 prior to and after the alleged violation. Any person who violates this subsection with respect to:

(a) A controlled substance classified in schedule I and II which is a narcotic drug, may be fined not more than \$25,000 or imprisoned not more than 15 years or both;

(b) Any other controlled substance classified in schedule I, II or III, may be fined not more than \$15,000 or imprisoned not more than 5 years or both;

(c) A substance classified in schedule IV, may be fined not more than \$10,000 or imprisoned not more than 3 years or both;

(d) A substance classified in schedule V, may be fined not more than \$5,000 or imprisoned not more than one year or both.

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

(a) A counterfeit substance classified in schedule I or II which is a narcotic drug, may be fined not more than \$25,000 or imprisoned not more than 15 years or both;

(b) Any other counterfeit substance classified in schedule I, II or III, may be fined not more than \$15,000 or imprisoned not more than 5 years or both;

(c) A counterfeit substance classified in schedule IV, may be fined not more than \$10,000 or imprisoned not more than 3 years or both;

(d) A counterfeit substance classified in schedule V, may be fined not more than \$5,000 or imprisoned not more than one year or both.

(2m) It is unlawful for any person to agree, consent or offer to lawfully manufacture, deliver or dispense any controlled substance to any person, or to offer, arrange or negotiate to have any controlled substance unlawfully manufactured, delivered or dispensed, and then manufacture, deliver, or dispense or offer, arrange or negotiate to have manufactured, delivered, or dispensed to any such person a substance which is not a controlled substance. Any person who violates this subsection may be fined not more than \$500 or imprisoned not more than 6 months or both.

(2r) (a) It is unlawful for any person to possess a controlled substance classified in schedule I or II which is a narcotic drug unless the substance was obtained directly from, or pursuant to a valid prescription or order of, a practitioner while acting in the course of his professional practice, or except as otherwise authorized by this chapter. Any person who violates this subsection, upon a first conviction, may be fined not more than \$5,000 or imprisoned not more than one year or both, and for a 2nd or subsequent offense, may be fined not more than \$10,000 or imprisoned not more than 2 years or both.

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

(3) It is unlawful for any person to possess a controlled substance, other than a controlled substance classified in schedule I or II which is a narcotic drug, unless the substance was obtained directly from, or pursuant to a valid prescription or order of, a practitioner while acting in the course of his professional practice, or except as otherwise authorized by this chapter. Any person who violates this subsection is guilty of a misdemeanor, punishable under s. 939.61.

(4) (a) No person may knowingly deliver, attempt to deliver or cause to be delivered a noncontrolled substance and expressly or impliedly represent to the recipient:

1. The substance is a controlled substance; or
2. The substance is of a nature, appearance or effect that will allow the recipient to display, sell, distribute or use the noncontrolled substance as a controlled substance.

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

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

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

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

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

(c) A person convicted of violating this subsection may be fined not more than \$5,000 or imprisoned not more than one year or both.

**History:** 1971 c 219, 307; 1973 c 12; 1981 c 90, 314  
Inference of intent may be drawn from possession of hashish with a street value of \$2,000 to \$4,000 and opium with a street value of \$20,000 to \$24,000. *State v. Trimbell*, 64 W (2d) 379, 219 NW (2d) 369

No presumption of intent to deliver is raised by (1m). Statute merely lists evidence from which intent may be inferred. *State ex rel Bena v. Hon. John J. Crosetto*, 73 W (2d) 261, 243 NW (2d) 442

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

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

Conviction under 161.41 (1m) upheld where defendant possessed 1/3 gram of cocaine divided into 4 packages, and evidence of defendant's prior sales of other drugs was admitted under 904.04 (2) as probative of intent to deliver the cocaine. *Peasley v. State*, 83 W (2d) 224, 265 NW (2d) 506 (1978)

State must prove that defendant knew exact nature or chemical name of controlled substance only when evidence points to substances of different schedules and different pen-

**161.41 UNIFORM CONTROLLED SUBSTANCES ACT**

3292

alties. *State v. Smallwood*, 97 W (2d) 673, 294 NW (2d) 51 (Ct App. 1980).

See note to 904.02, citing *State v. Wedgeworth*, 100 W (2d) 514, 302 NW (2d) 810 (1981).

Procuring agent theory is not valid defense to charge under this section. By facilitating drug deal, defendant was party to crime. *State v. Hecht*, 116 W (2d) 605, 342 NW (2d) 721 (1984).

**161.42 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 may be fined not more than \$25,000 or imprisoned not more than one year or both.

**History:** 1971 c. 219

**161.43 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) 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 counterfeit a drug; or

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

**(2)** Any person who violates this section may be fined not more than \$30,000 or imprisoned not more than 4 years or both.

**History:** 1971 c. 219; 1981 c. 90

**161.435 Specific penalty.** Any person who violates s. 161.38 (5) may be fined not more than \$500 or imprisoned not more than 30 days or both.

**History:** 1975 c. 190

**161.44 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

**161.45 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

**161.46 Distribution to persons under age 18.**

Any person 18 years of age or over who violates s. 161.41 (1) by distributing a controlled substance listed in schedule I or II which is a narcotic drug to a person under 18 years of age who is at least 3 years his junior is punishable by the fine authorized by s. 161.41 (1) (a) or a term of imprisonment of up to twice that authorized by s. 161.41 (1) (a), or both. Any person 18 years of age or over who violates s. 161.41 (1) by distributing any other controlled substance listed in schedule I, II, III, IV or V to a person under 18 years of age who is at least 3 years his junior is punishable by the fine authorized by s. 161.41 (1) (b), (c) or (d) or a term of imprisonment of up to twice that authorized by s. 161.41 (1) (b), (c) or (d) or both.

**History:** 1971 c. 219

**161.465 Distribution to prisoners. (1)** Any

person who violates s. 161.41 (1) or (1m) by delivering or possessing with intent to deliver a controlled substance to a prisoner within the precincts of any prison, jail or house of correction is subject to the applicable fine under s. 161.41 (1) or (1m) or a term of imprisonment of up to twice that authorized by s. 161.41 (1) or (1m) or both.

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

**History:** 1979 c. 116

**161.47 Conditional discharge for 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 relating to narcotic drugs, marijuana or stimulant, depressant or hallucinogenic drugs, pleads guilty to or is found guilty of possession of a controlled substance under s. 161.41 (3), the court, without entering a judgment of guilt and with the consent of the accused, may defer further proceedings and place him on probation upon terms and conditions. Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as otherwise provided. Upon fulfillment of the terms and conditions, the court shall discharge the person and dismiss the proceedings against him. 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 im-

posed for 2nd or subsequent convictions under s. 161.48. 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 division of law enforcement services in the department of justice of the name of individual granted probation and any other information required by the division. This report shall be upon forms provided by the division.

**History:** 1971 c. 219

If a defendant desires either a final judgment or order in the nature of a final judgment for appeal purposes, he has only to withhold his consent. *State v. Ryback*, 64 W (2d) 574, 219 NW (2d) 263

**161.475 Treatment option.** Whenever any person pleads guilty to or is found guilty of possession of a controlled substance under s. 161.41 (2r) or (3), the court may, upon request of such 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 such 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 such continued treatment. At the end of such necessary and required treatment, with the consent of the court, the person may be released from sentence. If treatment efforts are ineffective or the person ceases to cooperate with treatment rehabilitation efforts, the person may be remanded to the court for completion of sentencing.

**History:** 1971 c. 219, 336

**161.48 Second or subsequent offenses. (1)** Any person convicted of a 2nd or subsequent offense under this chapter may be fined an amount up to twice that otherwise authorized or imprisoned for a term up to twice the term otherwise authorized or both.

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

(3) This section does not apply to offenses under s. 161.41 (2r) and (3).

**History:** 1971 c. 219

The trial court erred in imposing a 2nd sentence on a defendant convicted of a 2nd violation of 161.41 (1) (a) and 161.14 (3) (k), while the repeater statute, 161.48, 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 W (2d) 605, 230 NW (2d) 634

## SUBCHAPTER V

### ENFORCEMENT AND ADMINISTRATIVE PROVISIONS

#### 161.51 Powers of enforcement personnel.

(1) Any officer or employe 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 his presence, or if he has reasonable grounds to believe that the person to be arrested has committed or is committing a violation of this chapter which may constitute a felony; and

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

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

**History:** 1971 c. 219

**161.52 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 employe of the pharmacy examining board or the division of criminal investigation in the department of justice having knowledge of the facts alleged, sworn to before the judge and establishing the grounds for issuing the warrant. If the judge is satisfied that grounds for the application exist or that there is probable cause to believe they exist, he shall issue a warrant identifying the area, premises, building or conveyance to be inspected, the purpose of the inspection, and, if

**161.52 UNIFORM CONTROLLED SUBSTANCES ACT**

3294

appropriate, the type of property to be inspected, if any. The warrant shall:

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

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

3. Command the person to whom it is directed to inspect the area, premises, building or conveyance identified for the purpose specified and, if appropriate, direct the seizure of the property specified;

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

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

(c) A warrant issued pursuant to this section must be executed and returned within 10 days of its date unless, upon a showing of a need for additional time, the court orders otherwise. If property is seized pursuant to a warrant, a copy shall be given to the person from whom or from whose premises the property is taken, together with a receipt for the property taken. The return of the warrant shall be made promptly, accompanied by a written inventory of any property taken. The inventory shall be made in the presence of the person executing the warrant and of the person from whose possession or premises the property was taken, if present, or in the presence of at least one credible person other than the person executing the warrant. A copy of the inventory shall be delivered to the person from whom or from whose premises the property was taken and to the applicant for the warrant.

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

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

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

1. Places where persons authorized under s. 161.32 to possess controlled substances in this state are required by federal law to keep records; and

2. Places including factories, warehouses, establishments and conveyances in which persons authorized under s. 161.32 to possess controlled substances in this state are permitted by federal law to hold, manufacture, compound, process, sell, deliver or otherwise dispose of any controlled substance.

(b) When authorized by an administrative inspection warrant issued pursuant to sub (1), an officer or employe designated by the pharmacy examining board or the division of criminal investigation, upon presenting the warrant and appropriate credentials to the owner, operator or agent in charge, may enter controlled premises for the purpose of conducting an administrative inspection.

(c) When authorized by an administrative inspection warrant, an officer or employe designated by the pharmacy examining board or the division of criminal investigation may:

1. Inspect and copy records relating to controlled substances;

2. Inspect, within reasonable limits and in a reasonable manner, controlled premises and all pertinent equipment, finished and unfinished material, containers and labeling found therein, and, except as provided in par. (e), all other things therein, including records, files, papers, processes, controls and facilities bearing on violation of this chapter; and

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

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

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

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

3. In situations involving inspection of conveyances if there is reasonable cause to believe that the mobility of the conveyance makes it impracticable to obtain a warrant;

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

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

(e) An inspection authorized by this section shall not extend to financial data, sales data, other than shipment data, or pricing data unless the owner, operator or agent in charge of the controlled premises consents in writing.

History: 1971 c. 219; 1983 a. 538.

**161.53 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 W (2d) 775.

**161.54 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 sup-

pressing 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. 161.335 (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.

**161.55 Forfeitures. (1)** The following are subject to forfeiture:

(a) All controlled substances which have been manufactured, distributed, dispensed or acquired in violation of this chapter;

(b) All raw materials, products and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing or exporting any controlled substance in violation of this chapter;

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

(d) All vehicles, as defined in s. 939.22 (44), which are used, or intended for use, to transport, or in any manner to facilitate the transportation, for the purpose of sale or receipt of property described in pars. (a) and (b) or for the purpose of transporting any property or weapon used or to be used or received in the commission of any felony under this chapter, but:

1. No vehicle used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless it appears that the owner or other person in charge of the vehicle is a consenting party or privy to a violation of this chapter;

2. No vehicle is subject to forfeiture under this section by reason of any act or omission established by the owner thereof to have been committed or omitted without his knowledge or consent;

3. A vehicle is not subject to forfeiture for a violation of s. 161.41 (3); and

4. A forfeiture of a vehicle encumbered by a bona fide perfected security interest is subject to the interest of the secured party if he or she neither had knowledge of nor consented to the act or omission.

(e) All books, records, and research products and materials, including formulas, microfilm, tapes and data, which are used, or intended for use, in violation of this chapter.

(f) All property, real or personal, including money, directly or indirectly derived from or realized through the commission of any crime under this chapter.

(2) Property subject to forfeiture under this chapter may be seized by any officer or employe designated in s. 161.51 (1) or (2) or a law enforcement officer upon process issued by any court of record having jurisdiction over the property. Seizure without process may be made if:

(a) The seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant;

(b) The property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding based upon this chapter;

(c) The officer or employe or a law enforcement officer has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(d) The officer or employe or a law enforcement officer has probable cause to believe that the property was used or is intended to be used in violation of this chapter, that the property was derived from or realized through a crime under this chapter or that the property is a vehicle which was used as described in sub. (1) (d).

(3) In the event of seizure under sub. (2), proceedings under sub. (4) shall be instituted promptly. All dispositions and forfeitures under this section and ss. 161.555 and 161.56 shall be made with due provision for the rights of innocent persons. Any property seized but not forfeited shall be returned to its rightful owner. Any person claiming the right to possession of property seized may apply for its return to the circuit court for the county in which the property was seized. The court shall order such notice as it deems adequate to be given the district attorney and all persons who have or may have an interest in the property and shall hold a hearing to hear all claims to its true ownership. If the right to possession is proved to the court's satisfaction, it shall order the property returned if:



**161.55 UNIFORM CONTROLLED SUBSTANCES ACT**

3296

(a) The property is not needed as evidence or, if needed, satisfactory arrangements can be made for its return for subsequent use as evidence; or

(b) All proceedings in which it might be required have been completed.

(4) Property taken or detained under this section shall not be subject to replevin, but is deemed to be in the custody of the sheriff of the county in which the seizure was made subject only to the orders and decrees of the court having jurisdiction over the forfeiture proceedings. When property is seized under this chapter, the person seizing the property may:

(a) Place the property under seal;

(b) Remove the property to a place designated by it; or

(c) Require the sheriff of the county in which the seizure was made to take custody of the property and remove it to an appropriate location for disposition in accordance with law.

(5) When property is forfeited under this chapter, the agency whose officer or employe seized the property may:

(a) Retain it for official use;

(b) Sell that which is not required to be destroyed by law and which is not harmful to the public. The agency may use 50% of the amount received for payment of all proper expenses of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising and court costs and the costs of investigation and prosecution reasonably incurred. The remainder shall be deposited in the school fund as proceeds of the forfeiture. If the property forfeited is money, all the money shall be deposited in the school fund;

(c) Require the sheriff of the county in which the property was seized to take custody of the property and remove it for disposition in accordance with law; or

(d) Forward it to the bureau for disposition.

(6) Controlled substances listed in schedule I that are possessed, transferred, sold or offered for sale in violation of this chapter are contraband and shall be seized and summarily forfeited to the state. Controlled substances listed in schedule I which are seized or come into the possession of the state, the owners of which are unknown, are contraband and shall be summarily forfeited to the state.

(7) Species of plants from which controlled substances in schedules I and II may be derived which have been planted or cultivated in violation of this chapter, or of which the owners or cultivators are unknown, or which are wild growths, may be seized and summarily forfeited to the state.

(8) The failure, upon demand by any officer or employe designated in s. 161.51 (1) or (2), of the person in occupancy or in control of land or premises upon which the species of plants are growing or being stored, to produce an appropriate federal registration, or proof that he is the holder thereof, constitutes authority for the seizure and forfeiture of the plants.

**History:** 1971 c. 219, 307; 1981 c. 267

Vehicle used to transport controlled substance obtained out of state is subject to forfeiture under (1) (d). *State v. S & S Meats, Inc* 92 W (2d) 64, 284 NW (2d) 712 (Ct. App. 1979).

**161.555 Forfeiture proceedings. (1) TYPE OF ACTION; WHERE BROUGHT.** An action brought to cause the forfeiture of any property seized under s. 161.55 is an action in rem. The circuit court for the county in which the property was seized shall have exclusive jurisdiction over any proceedings regarding the property.

(2) **COMMENCEMENT.** (a) The district attorney of the county within which the property was seized shall commence the forfeiture action within 30 days after the seizure of the property, except that the defendant may request that the forfeiture proceedings be adjourned until after adjudication of any charge concerning a crime which was the basis for the seizure of the property. The request shall be granted. The forfeiture action shall be commenced by filing a summons, complaint and affidavit of the person who seized the property with the clerk of circuit court, provided service of authenticated copies of those papers is made in accordance with ch. 801 within 60 days after filing upon the person from whom the property was seized and upon any person known to have a bona fide perfected security interest in the property.

(b) Upon service of an answer, the action shall be set for hearing within 60 days of the service of the answer but may be continued for cause or upon stipulation of the parties.

(c) In counties having a population of 500,000 or more, the district attorney or corporation counsel may proceed under par. (a).

(3) **BURDEN OF PROOF.** The state shall have the burden of satisfying or convincing to a reasonable certainty by the greater weight of the credible evidence that the property is subject to forfeiture under s. 161.55.

**History:** 1971 c. 219; Sup. Ct. Order, 67 W (2d) 752; 1981 c. 113, 267; Sup. Ct. Order, eff. 1-1-85.

**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]

Time provisions of sub. (2) are mandatory and jurisdictional. *State v. Rosen*, 72 W (2d) 200, 240 NW (2d) 168.

**UNIFORM CONTROLLED SUBSTANCES ACT 161.62**

Persons served under (2) (a) must be named as defendants. Action cannot be brought against inanimate object as sole "defendant". See note to 801.01, citing State v. One 1973 Cadillac, 95 W (2d) 641, 291 NW (2d) 626 (Ct. App 1980)

**161.56 Burden of proof; liabilities. (1)** It is not necessary for the state to negate any exemption or exception in this chapter in any complaint, information, indictment or other pleading or in any trial, hearing or other proceeding under this chapter. The burden of proof of any exemption or exception is upon the person claiming it.

**(2)** In the absence of proof that a person is the duly authorized holder of an appropriate federal registration or order form, he is presumed not to be the holder of the registration or form. The burden of proof is upon him to rebut the presumption.

**(3)** No liability is imposed by this chapter upon any authorized state, county or municipal

officer or employe engaged in the lawful performance of his duties.

**History:** 1971 c. 219, 307

SUBCHAPTER VI

MISCELLANEOUS

**161.61 Uniformity of interpretation.** This chapter shall be so applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among those states which enact it.

**History:** 1971 c. 219.

**161.62 Short title.** This chapter may be cited as the "Uniform Controlled Substances Act".

**History:** 1971 c. 219