




State of Wisconsin


LEGISLATIVE REFERENCE BUREAU

RESEARCH APPENDIX -
PLEASE DO NOT REMOVE FROM DRAFTING FILE

Date Transfer Requested: 10/04/2013 (Per: CMH)

 **Appendix A ... segment I** 

Appendix A  The drafting file for LRB 13-0576 (used to create 13-3348)
(Representative Nygren draft)

Appendix B  The drafting file for LRB 11-0330 (used to create 13-0576)
(DOJ draft)

has been transferred to the drafting file for

2013 LRB-3348

(Representative Nygren draft)

2013 DRAFTING REQUEST

Bill

Received: 11/16/2012 Received By: mgallagh
Wanted: As time permits Same as LRB:
For: John Nygren (608) 266-2343 By/Representing: Jennifer Malcore
May Contact: Drafter: mgallagh
Subject: Criminal Law - drugs Addl. Drafters: chanaman
Occupational Reg. - misc
Extra Copies: MED

Submit via email: YES
Requester's email: Rep.Nygren@legis.wisconsin.gov
Carbon copy (CC) to: michael.gallagher@legis.wisconsin.gov
cathlene.hanaman@legis.wisconsin.gov

Pre Topic:

No specific pre topic given

Topic:

Drug disposal program

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	mgallagh 3/22/2013	kfollett 4/2/2013	jfrantze 4/2/2013	_____			
/P1	mgallagh 5/25/2013	kfollett 5/29/2013	jfrantze 5/29/2013	_____	srose 4/2/2013		State S&L
/P2	mgallagh	kfollett	jmurphy	_____	lparisi		State

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
	9/10/2013	9/10/2013	9/10/2013	_____	5/29/2013		S&L
/1				_____	lparisi	lparisi	State
				_____	9/10/2013	9/10/2013	S&L

FE Sent For:

<END>

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PA's Jacket "11" for Assembly

Instructions:

See attached

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/P1	mgallagh 5/25/2013	kfollett 5/29/2013	jfrantze 5/29/2013	_____	srose 4/2/2013	_____	State S&L
/P2	mgallagh	1/16/13 9/10	pm 9/10	self	lparisi	_____	State

Vers. Drafted
9/10/2013

Reviewed

Typed

Proofed

Submitted
5/29/2013

Jacketed

Required
S&L

FE Sent For:

<END>

2013 DRAFTING REQUEST

Bill

Received: 11/16/2012 Received By: mgallagh
Wanted: As time permits Same as LRB:
For: Justice By/Representing: Mark Rinehart
May Contact: Drafter: mgallagh
Subject: Occupational Reg. - misc Addl. Drafters: chanaman
Health - miscellaneous
Extra Copies:

Submit via email: YES
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potterkc@doj.state.wi.us

Pre Topic:

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Topic:

Drug disposal program

Instructions:

See attached

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/P1	mgallagh 5/25/2013	kfollett 5/29/2013	jfrantze 5/29/2013	_____	srose 4/2/2013		State S&L
/P2				_____	lparisi		State

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
				_____	5/29/2013		S&L

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<END>

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Wanted: As time permits Same as LRB:
For: Justice By/Representing: Mark Rinehart
May Contact: Drafter: mgallagh
Subject: Occupational Reg. - misc Addl. Drafters: chanaman
Health - miscellaneous

Extra Copies:

Submit via email: YES
Requester's email: rinehartmw@doj.state.wi.us
Carbon copy (CC) to: michael.gallagher@legis.wisconsin.gov
potterkc@doj.state.wi.us

Pre Topic:

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Topic:

Drug disposal program

Instructions:

See attached

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/P1		1 P2 kf 5/29	Rs 5/29	_____	srose 4/2/2013		State S&L

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For: Justice By/Representing: Mark Rinehart
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Pre Topic:

No specific pre topic given

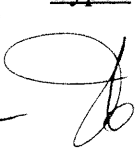
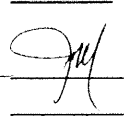
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/?	mgallagh	1/15/13 4/2		4/2 			

FE Sent For:

<END>


CORRESPONDENCE/MEMORANDUM

DEPARTMENT OF JUSTICE

Date: November 5, 2012

To: Cathlene M. Hanaman
Deputy Chief
Legislative Reference Bureau

Michael P. Gallagher
Legislative Attorney
Legislative Reference Bureau

From: Kevin C. Potter, Administrator
Legal Services Division
Department of Justice 


Subject: *Comments on Preliminary Draft LRB 11-0330/P3
Drug Disposal Statutory Revisions*

This memorandum responds to preliminary draft LRB 11-0330/P3 involving proposed legislation to facilitate the operation of community drug disposal programs.

We believe that the federal definition of "ultimate user" that is used in Section 2 and thereafter throughout the preliminary draft places undue limits upon persons who may unintentionally come into physical possession of prescription drugs, other than controlled substances or controlled substance analogs. For example, a tenant may leave such prescription drugs in an apartment that has been vacated or a departing student may leave such prescription drugs in a school locker. Both the landlord and the school may wish to take the drugs to a community drug disposal program. Other than in chapter 961, we therefore prefer to substitute language such as "person that lawfully possesses a pharmaceutical item" for the phrase "ultimate user." Such language is used on page 6, lines 16 and 17 of the draft.

To carry out this suggestion, at least the following changes to the preliminary draft appear to be necessary:

Move the definition of "ultimate user" in what is now new Wis. Stat. § 440.255(1)(f) from Section 2 of the draft to chapter 961, and limit the definition to persons in possession of controlled substances and controlled substance analogs to align with federal law.


See current
Potter's Note.

In new Wis. Stat. § 440.255(2)(b)2. on page 3, line 10, eliminate the phrase "ultimate user or by a person authorized under s. 450.115" and substitute "person that lawfully possesses a pharmaceutical item" or similar language.

In new Wis. Stat. § 440.255(3)(c) on page 4, lines 3 and 4, eliminate the phrase “ultimate user or by a person authorized under s. 450.115” and substitute “person that lawfully possesses a pharmaceutical item” or similar language. ✓

In new Wis. Stat. § 440.255(6) on page 6, line 16, please consider whether it is necessary to include Wis. Stat. § 450.11(7)(h) in the enumerated subsections in order to account for situations in which persons unintentionally come into physical possession of prescription drugs. ✓

In new Wis. Stat. § 450.01(21w) on page 7, lines 3 through 7, limit the definition of “ultimate user” to persons who lawfully possess controlled substances or controlled substance analogs. ✓

In new Wis. Stat. § 450.115(1)(d) on page 7, line 25, remove the phrase “ultimate user” and substitute suitable lawful possession language. ✓

In new Wis. Stat. § 450.115(2)(b) on page 8, lines 5 through 7, eliminate the phrase “ultimate user or by a person authorized under s. 450.115” and substitute “person that lawfully possesses a pharmaceutical item” or similar language. ✓

In new Wis. Stat. § 450.115(3)(c) on page 8, lines 17, 18, and 21, eliminate the phrase “ultimate user” and substitute suitable lawful possession language. ✓

On page 9, in new Wis. Stat. § 450.115(4), insert an additional, more specific subsection that contains explicit cautionary language concerning controlled substances and controlled substance analogs, such as the following: “A written authorization by an ultimate user to dispose of a controlled substance or a controlled substance analog is not valid unless permitted by federal law.” This change may necessitate a change to the introductory language in new Wis. Stat. § 450.115(4) (intro.) on page 8, lines 22 and 23. ✓

In new Wis. Stat. § 961.337(2) on page 11, line 3, insert “by any other person in lawful possession” after the first “or.” Some language appears to be missing at that point in the draft. ✓

We also have one other suggestion:

In new Wis. Stat. § 440.255(6)(b) on page 6, line 22, insert “and possession” after “receipt.” We are concerned that a person could receive a prescription drug consistent with the operation of a drug disposal program but then might later divert the prescription drug to an unlawful purpose. ✓

KCP:FTC:cla

See some 2012 instructions and
comment + draft letter note.

In: 3/22 Soon. Thanks



State of Wisconsin
2011 - 2012 LEGISLATURE



LRB-0330/P3
MPG&CMH:cjs:ph

PWF

Insert

D-Note

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

0576/P1

and certain medical or drug-related items,¹

for the disposal of drugs,¹ including

1 AN ACT to renumber and amend 961.335 (1); to amend subchapter III (title)
2 of chapter 961 [precedes 961.31]; and to create 66.0437, 440.255, 450.01 (21w),
3 450.01 (23) (n), 450.01 (23) (o), 450.115, 961.32 (2) (e), 961.335 (1) (c) 1. and 2.
4 and 961.337 of the statutes; relating to: the creation of drug disposal
5 programs, regulation of controlled substances, and the practice of pharmacy.

Regen.

Regulation of
Prescription Drugs

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version.

Analysis
Insert

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

6 SECTION 1. 66.0437 of the statutes is created to read:
7 66.0437 Drug disposal programs. (1) In this section, "political subdivision"
8 has the meaning given in s. 440.255 (1) (e).
9 (2) A political subdivision may operate or authorize a person to operate a drug
10 disposal program as provided under s. 440.255 (3).

a controlled substance or controlled substance analog

SECTION 2. 440.255 of the statutes is created to read:

440.255 Drug disposal program. (1) DEFINITIONS. In this section:

(a) "Controlled substance" has the meaning given in s. 961.01 (4).

(b) "Controlled substance analog" has the meaning given in s. 961.01 (4m).

(c) "Drug disposal program" means a program to receive pharmaceutical items and to recycle, destroy, or otherwise dispose of those items.

(d) "Pharmaceutical item" means a drug, as defined in s. 450.01 (10); a prescription drug, as defined in s. 450.01 (20); a device, as defined in 450.01 (6); or a hypodermic syringe, needle, or other object used for administering a drug.

(e) "Political subdivision" means a city, village, town, or county.

~~(f) "Ultimate user" means an individual who lawfully possesses a pharmaceutical item 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.~~

(2) DEPARTMENT AUTHORIZATION TO OPERATE A DRUG DISPOSAL PROGRAM. (a) Except as provided under sub. (3), no person may receive pharmaceutical items pursuant to a drug disposal program unless the department grants written authorization for that program under this subsection or the program is authorized under federal law.

~~****NOTE: Consistent with the revised drafting instructions, an exception for programs "authorized under federal law" has been inserted throughout the draft, except where otherwise indicated in the drafting instructions (see s. 440.255 (5) (c) in this draft).~~

PAR. (b)

(b) The department may, without a hearing, grant written authorization to a person to operate a drug disposal program if all of the following conditions are satisfied:

1. The person adopts written policies and procedures that comply with sub. (5).

The department shall review and either approve or disapprove in writing those

1 policies and procedures. The department shall approve the policies and procedures
2 if the department determines that the policies and procedures do not violate the
3 requirements of this section or any other applicable federal or state law, and shall
4 disapprove them otherwise. If the department disapproves the policies and
5 procedures, the department shall state the reasons for that disapproval in writing
6 to the person. At any time, the person may resubmit revised policies and procedures
7 for the department's review and approval under this subdivision.

8 2. If the drug disposal program will receive pharmaceutical items in any
9 manner other than the transfer of those pharmaceutical items in person to the
10 program by the ultimate user or by a person authorized under s. 450.115 (3), the
11 person demonstrates to the satisfaction of the department that those transfers will
12 comply with any federal or state law applicable to the transportation and delivery
13 of pharmaceutical items.

14 (c) A person may not revise policies and procedures approved by the
15 department under par. (b) 1. unless the department approves the revisions under
16 par. (b) 1.

17 (d) Any determination or action by the department under par. (b) or (c) is not
18 subject to judicial review.

19 (3) AUTHORIZATION BY A POLITICAL SUBDIVISION TO OPERATE A DRUG DISPOSAL
20 PROGRAM. A political subdivision may operate or the governing body of a political
21 subdivision may grant written authorization to operate a drug disposal program only
22 if all of the following apply:

23 (a) The political subdivision or the authorized person operates the drug
24 disposal program only within the boundaries of the political subdivision, except as
25 provided under sub. (4).

that lawfully possesses the pharmaceutical item

for a person

1 (b) The applicable requirements under sub. (5) are satisfied.

2 (c) The drug disposal program receives pharmaceutical items only by means
3 of delivery in person by an ultimate user or by a person authorized under s. 450.115

4 (3) unless the drug disposal program is authorized under federal law to receive
5 pharmaceutical items by other means.

6 (4) MULTIJURISDICTIONAL DRUG DISPOSAL PROGRAM. A drug disposal program may
7 operate within more than one political subdivision if the department authorizes that
8 program under sub. (2), all political subdivisions within which the drug disposal
9 program operates authorize that program under sub. (3), or the program is
10 authorized under federal law.

11 (5) OPERATION OF A DRUG DISPOSAL PROGRAM. (a) A person that operates a drug
12 disposal program, except a drug disposal program that is authorized under federal
13 law, shall establish and promptly update as appropriate written policies and
14 procedures that do all of the following:

15 1. Describe with specificity the manner in which the program operates,
16 including an identification of the kinds of pharmaceutical items that may be received
17 under the program, whether the program may receive controlled substances and
18 controlled substance analogs, whether pharmaceutical items will be transferred by
19 mail under the program, and the locations at which pharmaceutical items may be
20 transferred in person under the program.

21 2. List the name, address, telephone number, and 24-hour contact information
22 for one or more persons in this state who are responsible for the operation of the
23 program.

that lawfully possesses a pharmaceutical item

in detail

1 3. Ensure compliance with chs. 450 and 961; with any applicable provision
2 under chs. 287, 289, and 291 and s. 299.51 relating to medical waste, solid waste, or
3 hazardous waste; and with any other applicable federal or state law.

4 4. If controlled substances or controlled substance analogs may be received
5 under the program, ensure compliance with any applicable provision under 21 USC
6 801 to 865 relating to controlled substances or controlled substance analogs, ensure
7 that delivery of any controlled substances complies with 21 USC 822 (g) and its
8 implementing regulations, and ensure that any required permissions have been
9 obtained from the federal drug enforcement administration.

~~****NOTE: Does it still make sense to include subd. 4. if, as requested in the revised drafting instructions, a program authorized under federal law is exempt from the requirement to provide policies and procedures to the Department of Safety and Professional Services (DPS)? (See par. (5) (a) (intro.) above). Under 21 USC 822 (g), a person may only receive a controlled substance for disposal if that person is authorized under that federal law to dispose of controlled substances. Subd. 4. only applies to the receipt of controlled substances and controlled substance analogs (under 21 USC 813, a controlled substance analogue is treated as a controlled substance for purposes of federal law, including the disposal authorization). Note that subd. 1., above, requires a drug disposal program to disclose to DPS the kinds of pharmaceutical items the program may receive, including whether the program may receive controlled substances and controlled substance analogues.~~

10 (b) 1. The policies and procedures for a drug disposal program authorized under
11 sub. (2) and any changes to those policies and procedures are subject to review and
12 approval under sub. (2) (b) 1.

13 2. Legal counsel for the political subdivision, or, at the discretion of the political
14 subdivision, the department if the political subdivision's legal counsel is not an
15 employee of the political subdivision, shall review and either approve or disapprove
16 the policies and procedures for a drug disposal program implemented or authorized
17 under sub. (3) and any changes to those policies and procedures. Legal counsel, or
18 the department if appropriate, shall approve the policies and procedures or changes
19 if it determines that the policies and procedures or changes do not violate the

1 requirements of this section or any other applicable federal or state law, and shall
2 disapprove them otherwise. Any approval under this subdivision shall be in writing.
3 The political subdivision shall provide a copy of the approval and a copy of the policies
4 and procedures or changes to the policies and procedures to the department.

5 (c) The operation of a drug disposal program, including a drug disposal program
6 that is authorized under federal law, shall immediately cease if a law enforcement
7 officer, as defined in s. 165.85 (2) (c), a federal law enforcement officer, as defined in
8 s. 175.40 (7) (a) 1., or the department, or another federal or state agency notifies a
9 designated contact person for the program that the program is in violation of any
10 federal or state law enforceable by the officer, department, or other agency. That
11 notification is not subject to judicial review. The operation of the program may be
12 resumed only upon the program's receipt of written notice from the officer,
13 department, or other agency that the program is no longer in violation of the federal
14 or state law.

Program may resume

15 (6) TRANSFER AND RECEIPT OF PHARMACEUTICAL ITEMS. (a) Notwithstanding ss.
16 450.03 (1) and 450.11 (7) (g) and (9) (b), a person that lawfully possesses a
17 pharmaceutical item may transfer, and it is not a crime for such a person to transfer,
18 the pharmaceutical item to a drug disposal program if the program is authorized
19 under sub. (2) or (3) or under federal law.

20 (b) Notwithstanding s. 450.11 (7) (g) and (h) and (9) (b), a person may receive,
21 and it is not a crime for a person to possess, a pharmaceutical item pursuant to a drug
22 disposal program if the receipt is within the scope of the program and the program
23 is authorized under sub. (2) or (3) or under federal law or, if the receipt is not within
24 the scope of the program, the receipt is inadvertent and the program promptly

OR POSSESSION

1 notifies an appropriate law enforcement officer of the receipt ^{or possession} and complies with any
2 instructions the law enforcement officer provides.

3 SECTION 3. 450.01 (21w) of the statutes is created to read:

4 450.01 (21w) "Ultimate user" means an individual who lawfully possesses a
5 prescription drug for that individual's own use or for the use of a member of that
6 individual's household or for administering to an animal owned by that individual
7 or by a member of that individual's household.

8 SECTION 4. 450.01 (23) (n) of the statutes is created to read:

9 450.01 (23) (n) The operation or implementation of a drug disposal program
10 that is authorized under s. 440.255 (2) or (3) or under federal law or the possession
11 or delivery of a pharmaceutical item, as defined in s. 440.255 (1) (d), within the scope
12 of such a drug disposal program.

13 SECTION 5. 450.01 (23) (o) of the statutes is created to read:

14 450.01 (23) (o) The possession or delivery of a prescription drug within the
15 scope of a written authorization under s. 450.115 (3).

16 SECTION 6. 450.115 of the statutes is created to read:

17 450.115 Drug disposal programs and authorizations. (1) In this section:

18 (a) "Guardian" means the person named by the court under ch. 880, 2003 stats.,
19 or ch. 48 or 54 that has the duty and authority of guardianship.

20 (b) "Personal representative" means an executor, administrator, or special
21 administrator of a decedent's estate, a person legally authorized to perform
22 substantially the same functions, or a successor to any of those persons.

23 (c) "Trustee" means a person that holds in trust title to or power over property.

24 "Trustee" includes an original, added, or successor trustee.

A PERSON

25 (d) "Ward" means an ultimate user for whom a guardian has been appointed.

that is authorized under s. 440.255 (2) or (3) or under federal law

of a prescription drug

(2) Nothing in this chapter, or rules promulgated under this chapter, prohibits any of the following:

(a) The direct operation or implementation of a drug disposal program that is authorized under s. 440.255 (2) or (3) or under federal law.

(b) The transfer by the ultimate user of a person authorized under sub. (3) of a prescription drug to a drug disposal program that is authorized under s. 440.255 (2) or (3) or under federal law and that accepts the prescription drug.

(c) Subject to sub. (4), the possession of a prescription drug under a written authorization described in sub. (3).

(3) (a) A guardian may grant written authorization to an adult who is related to the guardian's ward by blood, marriage, or adoption within the 3rd degree of kinship as computed under s. 990.001 (16), or to a domestic partner of the ward under ch. 770, for the disposal of a prescription drug that belongs to the ward.

(b) A personal representative or a trustee may grant written authorization to an adult beneficiary, as defined in s. 701.20 (2) (b), of the estate or trust for the disposal of a prescription drug that belongs to the estate or trust.

(c) An ultimate user who is a competent adult may grant written authorization to that ultimate user's domestic partner under ch. 770 or to another adult who is related to that ultimate user by blood, marriage, or adoption within the 3rd degree of kinship as computed under s. 990.001 (16), for the disposal of a prescription drug that belongs to that ultimate user.

(4) A written authorization under sub. (3) is valid only to the extent permitted under federal law and only if all of the following conditions are satisfied:

(a) The authorization describes with reasonable specificity each prescription drug that is to be disposed of.

persons

written

that lawfully possesses a prescription drug

A person

lawfully

1 (b) The authorization is in the physical possession of the person authorized to
2 dispose of the prescription drug and each prescription drug described in the
3 authorization is, within 24 hours after the authorization is signed by the person
4 granting the authorization, transferred to a drug disposal program under s. 440.255
5 or otherwise lawfully disposed of.

6 (c) The authorization and each prescription drug to be disposed of were
7 obtained without consideration.

8 SECTION 7. Subchapter III (title) of chapter 961 [precedes 961.31] of the
9 statutes is amended to read:

10 CHAPTER 961

11 SUBCHAPTER III

12 REGULATION OF MANUFACTURE,

13 DISTRIBUTION AND DISPENSING,

14 AND POSSESSION OF CONTROLLED

15 SUBSTANCES

16 SECTION 8. 961.32 (2) (e) of the statutes is created to read:

17 961.32 (2) (e) A person actively engaged in the direct operation or
18 implementation of a drug disposal program that is authorized under s. 440.255 (2)
19 or (3) or under federal law.

20 SECTION 9. 961.335 (1) of the statutes is renumbered 961.335 (1) (a) and
21 amended to read:

22 961.335 (1) (a) Upon application the controlled substances board may issue a
23 permit authorizing a person to manufacture, obtain, possess, use, administer, or
24 dispense a controlled substance for purposes of scientific research, instructional

1 activities, chemical analysis, or other special uses, without restriction because of
2 enumeration. No

3 (b) Except as provide in par. (c), no person shall may engage in any such activity
4 described under par. (a) without a permit issued under this section, ~~except that an~~.

5 (c) 3. An individual may be who is designated and authorized to receive ~~the a~~
6 permit under this section for a college or university department, research unit, or
7 similar administrative organizational unit, and students, laboratory technicians,
8 research specialists, or chemical analysts under his or her supervision, may be
9 ~~permitted possession and use of controlled substances for these purposes,~~ without
10 obtaining an individual additional permit issued under this section, possess and use
11 a controlled substance, for the purposes authorized in the permit received for the
12 department or unit.

13 **SECTION 10.** 961.335 (1) (c) 1. and 2. of the statutes are created to read:

14 961.335 (1) (c) 1. A person who is actively engaged in the direct operation or
15 implementation of a drug disposal program that is authorized under s. 440.255 (2)
16 or (3) or under federal law may, without a permit issued under this section, obtain
17 or possess a controlled substance for the purposes of operating and implementing the
18 drug disposal program.

19 2. A person who is authorized under federal law to dispose of a controlled
20 substance may, without a permit issued under this section, possess the controlled
21 substance for the purpose of disposing of the controlled substance.

22 **SECTION 11.** 961.337 of the statutes is created to read:

23 **961.337 Drug disposal programs.** Nothing in this chapter, or rules
24 promulgated under this chapter, prohibits any of the following:

1 (1) The direct operation or implementation of a drug disposal program that is
2 authorized under s. 440.255 (2) or (3) or under federal law.

3 (2) The transfer by the ultimate user, or of a controlled substance or controlled
4 substance analog to a drug disposal program that has been authorized under s.
5 440.255 (2) or (3) or under federal law and that accepts the controlled substance or
6 controlled substance analog.

7 **SECTION 12. Effective date.**

8 (1) This act takes effect on the first day of the 4th month beginning after
9 publication.

10 (END)

by another person that lawfully possesses
the controlled substance or controlled
substance analog;

O-Note

"RESEARCH APPENDIX"

... Drafting History Reproduction Request Form ...

 DRAFTING ATTORNEYS: PLEASE COMPLETE THIS FORM AND GIVE TO MIKE BARMAN

(Request Made By: MPG) (Date: 1/18/2013)

Note:

BOTH DRAFTS SHOULD HAVE THE SAME "REQUESTOR"

(exception: companion bills)



Please transfer the drafting file for 2011 LRB 0330 (For: Rep. / Sen. DO5)

to the drafting file for

2013 LRB 0576 (For: Rep. / Sen. DO5)

-----OR-----

Please copy the drafting file for 2013 LRB (For: Rep. / Sen. _____)

and place it in the drafting file for

2013 LRB (For: Rep. / Sen. _____)

Are These "Companion Bills" ?? ... Yes No

If yes, who in the initial requestor's office authorized the copy/transfer of the drafting history

("guts") from the original file: _____

1

ANALYSIS INSERT

Under current law, a person may not, and it is often a crime to, deliver, receive, or possess certain drugs unless the person is a licensed pharmacist or other licensed practitioner or has a valid prescription for the drug.

Under this bill, the Department of Safety and Professional Service (DSPS) may authorize the operation of drug disposal programs in this state to receive, for destruction, drugs, including prescription drugs, controlled substances and controlled substance analogs, and certain medical and drug delivery devices (collectively, pharmaceutical items). DSPS may authorize a person to operate a drug disposal program if, among other things, the person demonstrates to the satisfaction of DSPS that the program's receipt of pharmaceutical items will comply with federal and state laws applicable to the transportation and delivery of pharmaceutical items. The bill requires a drug disposal program to adopt policies and procedures that describe in detail the place and manner of the program's operation, provide the 24-hour contact information for at least one person in this state who is responsible for the program, and ensure compliance with applicable state and federal laws. DSPS must approve the policies and procedures before a drug disposal program may begin operation.

The bill also provides that a city, village, town, or county (political subdivision) may operate or authorize another person to operate a drug disposal program within the political subdivision's borders. A drug disposal program that a political subdivision operates or authorizes must adopt policies and procedures similar to those described above, but the program need not obtain approval from DSPS. However, without DSPS approval, the program may not receive pharmaceutical items except by means of in-person delivery within the political subdivision's borders.

Finally, the bill authorizes a person who lawfully possesses a prescription drug, or the person's guardian, trustee, or personal representative, to grant written authorization to certain other persons to destroy the prescription drug. Under the bill, such a written authorization is only valid if the authorization satisfies certain conditions, including that the authorization describes the prescription drug with reasonable specificity and that the authorization and the prescription drug were obtained by the person authorized to destroy the prescription drug without the payment of money or something else of value.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

2

END ANALYSIS INSERT

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0576/P1dn
MPG: *lgf*

Date

Kevin Potter and Mark Rinehart:

Please review this draft carefully to ensure that it is consistent with your intent.

I did not include the item from page 2 in the new drafting instructions requesting that a provision be added to s. 450.115 (4) in the draft to the effect that a written authorization under s. 450.115 (3) in the draft to dispose of a controlled substance or controlled substance analog is only valid if permitted by federal law. I did not include that item because, based on previous drafting instructions (see page 4 of the instructions dated June 15, 2012), the authorizations under s. 450.115 (3) in the draft only apply to prescription drugs other than controlled substances included in schedules II to V of ch. 961, stats. See s. 450.01 (20) (b), stats. (including controlled substances in the definition of "prescription drug" for only certain provisions of ch. 450, stats.). Please let me know if the intent behind that previous drafting instruction has changed. In any case, the draft, in s. 450.115 (4) (intro.), already specifies that an authorization under s. 450.115 (3) is "valid only to the extent permitted under federal law."

Also, the new drafting instructions, on page 1, request to move the definition of "ultimate user" from s. 440.255 in the draft to ch. 961 and to "limit the definition to persons in possession of controlled substances and controlled substance analogs." This redraft eliminates the term "ultimate user" from s. 440.255 in the draft. However, "ultimate user" is already defined under s. 961.01 (21), stats., but that definition applies only to possession of controlled substances. It does not include controlled substance analogs. Do you want to amend the definition of "ultimate user" in s. 961.01 (21), stats. to include controlled substance analogs?

Finally, if a drug disposal program is authorized under federal law, the draft exempts the program from the draft's requirements. Whether or not a program is "authorized under federal law" may be vague. Do you want to include anything more specific concerning such an authorization or a cite to 21 USC 822 (g)? Do you want to include a notice requirement to DSPS or a relevant political subdivision for a program that is authorized under federal law? See also my drafter's note on page 5 of LRB-0330/P3, drafted for the 2011-12 legislative session.

Please do not hesitate to contact me with any questions.

Thank you.

Michael Gallagher
Legislative Attorney
Phone: (608) 267-7511
E-mail: michael.gallagher@legis.wisconsin.gov

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0576/P1dn
MPG:kjf:jf

April 2, 2013

Kevin Potter and Mark Rinehart:

Please review this draft carefully to ensure that it is consistent with your intent.

I did not include the item from page 2 in the new drafting instructions requesting that a provision be added to s. 450.115 (4) in the draft to the effect that a written authorization under s. 450.115 (3) in the draft to dispose of a controlled substance or controlled substance analog is only valid if permitted by federal law. I did not include that item because, based on previous drafting instructions (see page 4 of the instructions dated June 15, 2012), the authorizations under s. 450.115 (3) in the draft only apply to prescription drugs other than controlled substances included in schedules II to V of ch. 961, stats. See s. 450.01 (20) (b), stats. (including controlled substances in the definition of "prescription drug" for only certain provisions of ch. 450, stats.). Please let me know if the intent behind that previous drafting instruction has changed. In any case, the draft, in s. 450.115 (4) (intro.), already specifies that an authorization under s. 450.115 (3) is "valid only to the extent permitted under federal law."

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Please do not hesitate to contact me with any questions.

Thank you.

Michael Gallagher
Legislative Attorney
Phone: (608) 267-7511
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CORRESPONDENCE/MEMORANDUM**DEPARTMENT OF JUSTICE**

Date: April 12, 2013

To: Michael P. Gallagher
Legislative Attorney
Legislative Reference Bureau

From: Kevin C. Potter, Administrator
Legal Services Division
Department of Justice



Subject: *Comments on Preliminary Draft LRB-0576/P1
Drug Disposal Statutory Revisions*

This memorandum responds to preliminary draft LRB-0576/P1 involving proposed legislation to facilitate the operation of community drug disposal programs. This response addresses the drafter's note dated April 2, 2013.

We agree with the comments contained in the first paragraph of the note. No further changes are necessary.

In response to the comments contained in the second paragraph of the note, we do not want to amend the definition of "ultimate user" in Wis. Stat. § 961.01. We want to conform as closely as possible to federal law concerning the regulation of controlled substances. We therefore prefer to retain the federal definition of "ultimate user" in 21 U.S.C. § 802(27).

In response to the comments contained in the third paragraph of the note, we do want to include a more specific reference to federal law. Although the proposed reference to 21 U.S.C. § 822 and its implementing regulations is precise, please consider a broader reference to the Controlled Substance Act, 21 U.S.C. § 801-971, and its implementing regulations, 21 C.F.R., parts 1300 to 1321. Whatever cross-reference is used, we want to be certain that all of the proposed rules described at 77 Fed. Reg. 75783-75817 (December 21, 2012) are included. We do not want to include a provision for notice to the Department of Safety and Professional Services or to a political subdivision in connection with programs that are authorized under federal law. Finally, in response to the drafter's note on page 5 of LRB-0330/P3, which we apparently had not previously addressed, we agree that the new Wis. Stat. § 440.255(5)(a)4. on page five of the current draft should be eliminated.

We have no other comments concerning the April 2, 2013 drafter's note or the draft itself.

KCP:FTC:cla