

May 1986 Spec. Sess.
Senate Bill 12

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1985 Wisconsin Act 328

AN ACT to renumber 161.41 (1) (c) and (d), 161.41 (1m) (c) and (d), 161.465 (2) and 161.48 (2) and (3); to amend 14.24 (2) (c), 161.41 (1) (b), 161.41 (1m) (b), 161.41 (3), 161.46, 161.465 (1), 161.475, 161.48 (1), 161.55 (1) (d) 3 and 939.31; and to create 46.03 (18) (fm), 161.41 (1) (c), 161.41 (1m) (c), 161.41 (1r), 161.41 (1x), 161.41 (3m), 161.46 (3), 161.465 (2), 161.472, 161.48 (2), 161.49 and 971.365 of the statutes, relating to creating assessment and prosecution procedures and revising penalties for crimes involving cocaine or ecgonine.

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

SECTION 1. 14.24 (2) (c) of the statutes is amended to read:

14.24 (2) (c) In any report submitted by the council under s. 15.09 (7), review state activities in the area of alcohol and other drug abuse prevention and control, including the effects of 1985 Wisconsin Act ... (this act), and make recommendations for further legislation.

SECTION 2. 46.03 (18) (fm) of the statutes is created to read:

46.03 (18) (fm) Notwithstanding par. (a), any person who submits to an assessment under s. 161.472 shall pay a fee to the appropriate county department under s. 51.42. The department of health and social services shall set fees for each county department under s. 51.42 designed to offset all the costs to the county in providing the assessment program. The department of health and social services shall provide for the reduction or waiver of the fee for persons who are unable to pay the complete fee.

SECTION 3. 161.41 (1) (b) of the statutes is amended to read:

161.41 (1) (b) Any Except as provided in par. (c), 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;

SECTION 4. 161.41 (1) (c) and (d) of the statutes are renumbered 161.41 (1) (d) and (e).

SECTION 5. 161.41 (1) (c) of the statutes is created to read:

161.41 (1) (c) A controlled substance included under s. 161.16 (2) (b), is subject to the following penalties:

1. If the amount manufactured or delivered is 10 grams or less, the person shall be fined not less than \$1,000 nor more than \$200,000 and may be imprisoned for not more than 5 years.

2. If the amount manufactured or delivered is more than 10 grams but not more than 30 grams, the person shall be fined not less than \$1,000 nor more than \$250,000 and shall be imprisoned for not less than 6 months nor more than 5 years.

3. If the amount manufactured or delivered is more than 30 grams, the person shall be fined not less than \$1,000 nor more than \$500,000 and shall be imprisoned for not less than one year nor more than 15 years.

SECTION 6. 161.41 (1m) (b) of the statutes is amended to read:

161.41 (1m) (b) Any Except as provided in par. (c), 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;

SECTION 7. 161.41 (1m) (c) and (d) of the statutes are renumbered 161.41 (1m) (d) and (e).

SECTION 8. 161.41 (1m) (c) of the statutes is created to read:

161.41 (1m) (c) A controlled substance included under s. 161.16 (2) (b), is subject to the following penalties:

1. If the amount possessed, with intent to manufacture or deliver, is 10 grams or less, the person shall be fined not less than \$1,000 nor more than \$100,000 and may be imprisoned for not more than 5 years.

2. If the amount possessed, with intent to manufacture or deliver, is more than 10 grams but not more than 30 grams, the person shall be fined not less than \$1,000 nor more than \$200,000 and shall be imprisoned for not less than 6 months nor more than 5 years.

3. If the amount possessed, with intent to manufacture or deliver, is more than 30 grams, the person shall be fined not less than \$1,000 nor more than \$500,000 and shall be imprisoned for not less than one year nor more than 15 years.

SECTION 9. 161.41 (1r) of the statutes is created to read:

161.41 (1r) In determining amounts under subs. (1) and (1m), an amount includes the weight of the controlled substance included under s. 161.16 (2) (b) together with any compound, mixture, diluent or other substance mixed or combined with the controlled substance.

SECTION 9m. 161.41 (1x) of the statutes is created to read:

161.41 (1x) Any person who conspires, as specified in s. 939.31, to commit a crime under sub. (1) (c) or (1m) (c) is subject to the applicable penalties under sub. (1) (c) or (1m) (c).

SECTION 10. 161.41 (3) of the statutes is amended to read:

161.41 (3) ~~It~~ Except as provided in sub. (3m), 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 or her 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.

SECTION 11. 161.41 (3m) of the statutes is created to read:

161.41 (3m) It is unlawful for any person to possess a controlled substance included under s. 161.16 (2) (b), 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 or her professional practice, or except as otherwise authorized by this chapter. Any person who violates this subsection shall be fined not less than \$250 nor more than \$5,000 and may be imprisoned for not more than one year in the county jail.

SECTION 12. 161.46 of the statutes is amended to read:

161.46 Distribution to persons under age 18. (1) 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 or her 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~~

(2) Except as provided in sub. (3), 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 or her junior is punishable by the fine authorized by s. 161.41 (1) (b), ~~(e) or (d) or (e)~~ or a term of imprisonment of up to twice that authorized by s. 161.41 (1) (b), ~~(e) or (d) or (e)~~ or both.

SECTION 13. 161.46 (3) of the statutes is created to read:

161.46 (3) If any person 18 years of age or over violates s. 161.41 (1) (c) by distributing a controlled substance included under s. 161.16 (2) (b) to a person under 18 years of age who is at least 3 years his or her junior, any applicable minimum and maximum fines and minimum and maximum periods of imprisonment under s. 161.41 (1) (c) are doubled.

SECTION 14. 161.465 (1) of the statutes is amended to read:

161.465 (1) ~~Any~~ Except as provided in sub. (2), 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.

SECTION 15. 161.465 (2) of the statutes is renumbered 161.465 (3).

SECTION 16. 161.465 (2) of the statutes is created to read:

161.465 (2) If a person violates s. 161.41 (1) (c) or (1m) (c) by delivering or possessing with intent to deliver a controlled substance included under s. 161.16 (2) (b) to a prisoner within the precincts of any prison, jail or house of correction, any applicable minimum and maximum fines and minimum and maximum periods of imprisonment under s. 161.41 (1) (c) or (1m) (c) are doubled.

SECTION 17. 161.472 of the statutes is created to read:

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

(2) Except as provided in sub. (5), if a person pleads guilty or is found guilty of possession of a controlled substance under s. 161.41 (3m), the court shall order the person to comply with an assessment of the person's use of controlled substances. The court's order

shall designate a facility which is operated by or pursuant to a contract with the county department established under s. 51.42 and which is certified by the department of health and social services to provide assessment services to perform the assessment and, if appropriate, to develop a proposed treatment plan. The court shall notify the person that noncompliance with the order limits the court's ability to determine whether the treatment option under s. 161.475 is appropriate. The court shall also notify the person of the fee provisions under s. 46.03 (18) (fm).

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

(4) The court shall consider the assessment report in determining whether the treatment option under s. 161.475 is appropriate.

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

SECTION 18. 161.475 of the statutes is amended to read:

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) or (3m), the court may, upon request of ~~such~~ the person and with the consent of a treatment facility with special inpatient or outpatient programs for the treatment of drug dependent persons, allow the person to enter ~~such~~ the treatment programs voluntarily for purposes of treatment and rehabilitation. Treatment shall be for the period the treatment facility feels is necessary and required, but shall not exceed the maximum sentence allowable unless the person consents to ~~such~~ the continued treatment. At the end of ~~such~~ the necessary and required treatment, with the consent of the court, the person may be released from sentence. If treatment efforts are ineffective or the person ceases to cooperate with treatment rehabilitation efforts, the person may be remanded to the court for completion of sentencing.

SECTION 19. 161.48 (1) of the statutes is amended to read:

161.48 (1) Any Except as provided in subs. (2) and (4), 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.

SECTION 20. 161.48 (2) and (3) of the statutes are renumbered 161.48 (3) and (4).

SECTION 21. 161.48 (2) of the statutes is created to read:

161.48 (2) If any person is convicted of a 2nd or subsequent offense under this chapter which is speci-

fied in s. 161.41 (1) (c), (1m) (c) or (3m), any applicable minimum and maximum fines and minimum and maximum periods of imprisonment under s. 161.41 (1) (c), (1m) (c) or (3m) are doubled. A 2nd offense under s. 161.41 (3m) is a felony and the person may be imprisoned in state prison.

SECTION 21m. 161.49 of the statutes is created to read:

161.49 Distribution on school grounds; cocaine or ecgonine. If any person violates s. 161.41 (1) (c) by distributing a controlled substance included under s. 161.16 (2) (b) while within 1,000 feet of any private or public school building, the maximum term of imprisonment prescribed by law for that crime may be increased by 5 years.

SECTION 22. 161.55 (1) (d) 3 of the statutes is amended to read:

161.55 (1) (d) 3. A vehicle is not subject to forfeiture for a violation of s. 161.41 (3) or (3m); and

SECTION 22g. 939.31 of the statutes is amended to read:

939.31 Conspiracy. Except as provided in ss. 161.41 (1x), 940.43 (4) and 940.45 (4), whoever, with intent that a crime be committed, agrees or combines with another for the purpose of committing that crime may, if one or more of the parties to the conspiracy does an act to effect its object, be fined or imprisoned or both not to exceed the maximum provided for the completed crime; except that for a conspiracy to commit a crime for which the penalty is life imprisonment, the actor is guilty of a Class B felony.

SECTION 22m. 971.365 of the statutes is created to read:

971.365 Crimes involving cocaine or ecgonine. (1) (a) In any case under s. 161.41 (1) (c) involving more than one violation, all violations may be prosecuted as a single crime if the violations were pursuant to a single intent and design.

(b) In any case under s. 161.41 (1m) (c) involving more than one violation, all violations may be prosecuted as a single crime if the violations were pursuant to a single intent and design.

(c) In any case under s. 161.41 (3m) involving more than one violation, all violations may be prosecuted as a single crime if the violations were pursuant to a single intent and design.

(2) An acquittal or conviction under sub. (1) does not bar a subsequent prosecution for any acts in violation of s. 161.41 (1) (c), (1m) (c) or (3m) on which no evidence was received at the trial on the original charge.

SECTION 23. **Nonstatutory provisions.** The department of health and social services and the department of justice shall jointly study the issue of having persons who commit crimes involving cocaine or ecgonine make payments to be used for law enforcement services costs, and prevention, intervention and treatment costs, relating to controlled sub-

stances. The departments shall report their recommendations to the legislature when it convenes in 1987.

SECTION 24. Program responsibility changes. In the sections of the statutes listed in Column A, the program responsibilities references shown in Column B are deleted and the program responsibilities references shown in Column C are inserted:

| A | B | C |
|------------------|--------------------|---------------------|
| Statute Sections | References Deleted | References Inserted |
| 15.191 (intro.) | none | 161.472 (2) |

SECTION 25. Initial applicability. This act applies to offenses occurring on or after the effective date of this SECTION, but does not preclude the counting of other offenses as prior offenses for sentencing a person.

SECTION 26. Effective date. This act takes effect on September 1, 1986.

