CHAPTER 961

UNIFORM CONTROLLED SUBSTANCES ACT

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

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

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

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

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

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

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

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

**History:** 1971 c. 219; 1995 a. 448 s. 322; Stats. 1995 s. 961.61; 2005 a. 14 s. 39; Stats. 2005 s. 961.003.

### 961.005 Short title.
This chapter may be cited as the “Uniform Controlled Substances Act”.

**History:** 1971 c. 219; 1995 a. 448 s. 323; Stats. 1995 s. 961.62; 2005 a. 14 s. 40; Stats. 2005 s. 961.005.

#### SUBCHAPTER I

**DEFINITIONS**

### 961.01 Definitions.

As used in this chapter:

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

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

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

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

(2) “Agent”, unless the context otherwise requires, means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor or dispenser. “Agent” does not include a common or contract carrier, public warehouse keeper or manufacturer, distributor or dispenser. “Agent” does not include a common or contract carrier, public warehouse keeper or manufacturer, distributor or dispenser.

(3r) “Anabolic steroid” means any drug or hormonal substance, chemically or pharmacologically related to testosterone, except estrogens, progesterin, and corticosteroids, that promotes muscle growth. The term includes all of the substances included in s. 961.18 (7), and any of their esters, isomers, esters of isomers, salts and salts of esters, isomers and esters of isomers, that are theoretically possible within the specific chemical designation, and if such esters, isomers, esters of isomers, salts and salts of esters, isomers and esters of isomers promote muscle growth.

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

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

(3r) “Cannabidiol product” means a derivative or extract of the plant Cannabis sativa L. that contains cannabidiol and a delta−9−tetrahydrocannabinol concentration at a level without a psychoactive effect.

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

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

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

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

(b) “Controlled substance analog” does not include:

1. A controlled substance;

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

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

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

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

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

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

(8) “Dispenser” means a practitioner who dispenses.

(9) “Distributor” means to deliver other than by administering or dispensing a controlled substance or controlled substance analog.

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

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

(11) (a) “Drug” means any of the following:

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

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

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

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

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

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

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

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

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

(12g) “Isomer” means an optical isomer, but in s. 961.16 (2) (a) 1. “isomer” includes any geometric isomer; in s. 961.20 (4) (am) “isomer” includes any positional isomer; and in ss. 961.14 (2) (nd) and (4) and 961.18 (2m) “isomer” includes any positional or geometric isomer.

(12m) “Jail or correctional facility” means any of the following:
(a) A Type 1 prison, as defined in s. 301.01 (5).
(b) A jail, as defined in s. 302.30.
(c) A house of correction.
(d) A Huber facility under s. 303.09.
(e) A lockup facility, as defined in s. 302.30.
(f) A work camp under s. 303.10.

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

(13) “Manufacture” means the production, preparation, propagation, compounding, conversion or processing of, or to produce, prepare, propagate, compound, convert or process, a controlled substance or controlled substance analog, directly or indirectly, by extraction from substances of natural origin, chemical synthesis or a combination of extraction and chemical synthesis, including to package or repackage or the packaging or repackaging of the substance, or to label or to relabel or the labeling or relabeling of its container. “Manufacture” does not mean to prepare, compound, package, repackage, label or relabel or the preparation, compounding, packaging, repackaging, labeling or relabeling of a controlled substance:
(a) By a practitioner as an incident to the practitioner’s administering or dispensing of a controlled substance in the course of the practitioner’s professional practice; or
(b) By a practitioner, or by the practitioner’s authorized agent under the practitioner’s supervision, for the purpose of, or as an incident to, research, teaching or chemical analysis and not for sale.

(14) “Marijuana” means all parts of the plants of the genus Cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin, including tetrahydrocannabinols. “Marijuana” does not include the mature stalks if mixed with other parts of the plant, but does not include fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil or cake or the sterilized seed of the plant which is incapable of germination. “Marijuana” does not include hemp, as defined in s. 94.55 (1).  

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

(15) “Narcotic drug” means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:
(a) Opium and substances derived from opium, and any compound, derivative or preparation of opium or substances derived from opium, including any of their salts, isomers and salts of isomers that are theoretically possible within the specific chemical designation. The term does not include the isoquinoline alkaloids of opium.
(bm) Synthetic opiate, and any derivative of synthetic opiate, including any of their isomers, esters, ethers, esters and ethers of isomers, salts and salts of isomers, esters, ethers and esters and ethers of isomers that are theoretically possible within the specific chemical designation.
(c) Opium poppy, poppy straw and concentrate of poppy straw.
(d) Any compound, mixture or preparation containing any quantity of any substance included in pars. (a) to (c).

(16) “Opiate” means any substance having an addiction−forming or addiction−sustaining liability similar to morphine or being capable of conversion into a drug having addiction−forming or addiction−sustaining liability. “Opiate” includes opium, substances derived from opium and synthetic opiates. “Opiate” does not include, unless specifically scheduled as a controlled substance under s. 961.11, the dextrorotatory isomer of 3−methoxy−N−N−methylmorphinan and its salts (dextromethorphan). “Opiate” does include the racemic and levorotatory forms of dextromethorphan.

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

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

(19) “Practitioner” means:
(a) A physician, advanced practice nurse, dentist, veterinarian, podiatrist, optometrist, scientific investigator or, subject to s. 448.21 (3), a physician assistant, or other person licensed, registered, certified or otherwise permitted to distribute, dispense, conduct research with respect to or administer in the course of professional practice or research in this state.
(b) A pharmacy, hospital or other institution licensed, registered or otherwise permitted to distribute, dispense, conduct research with respect to or administer a controlled substance in the course of professional practice or research in this state.

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

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

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

(20g) “Public housing project” means any housing project or development administered by a housing authority, as defined in s. 16.301 (2).

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

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

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

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

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

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

(1m) In making a determination regarding a substance, the board shall consider the following:
(a) The actual or relative potential for abuse;
(b) The scientific evidence of its pharmacological effect, if known;
(c) The state of current scientific knowledge regarding the substance;
(d) The history and current pattern of abuse;
(e) The scope, duration and significance of abuse;
(f) The risk to the public health;
(g) The potential of the substance to produce psychological or physical dependence liability; and
(h) Whether the substance is an immediate precursor of a substance already controlled under this chapter.

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

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

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

(4) If a substance is designated, rescheduled or deleted as a controlled substance under federal law and notice thereof is given to the controlled substances board, the board by affirmative action shall similarly treat the substance under this chapter after the expiration of 30 days from the date of publication in the federal register of a final order designating the substance as a controlled substance or rescheduling or deleting the substance or from the date of issuance of an order of temporary scheduling under 21 USC 811 (h), unless within that 30-day period, the board or an interested party objects to the treatment of the substance. If no objection is made, the board shall promulgate, without making the determinations or findings required by subs. (1), (1m), (1r) and (2) or ss. 961.13, 961.15, 961.17, 961.19 or 961.21, a final rule, for which notice of proposed rule making is omitted, rescheduling or deleting cannabinol or nabiximols.

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

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

(6) (a) The controlled substances board shall not have authority to control a nonnarcotic substance if the substance may, under the federal food, drug and cosmetic act and the laws of this state, be lawfully sold over the counter without a prescription. This paragraph does not apply to the promulgation of rules by the controlled substances board under s. 961.01 (20c).
(b) If the board finds that any nonnarcotic substance barred from control under this chapter by par. (a) is dangerous to or is being so used as to endanger the public health and welfare, it may request the department of justice in the name of the state to seek a temporary restraining order or temporary injunction under ch. 813 to either ban or regulate the sale and possession of the substance. The order or injunction shall continue until the adjournment of the legislature convened next following its issuance. In making its findings as to nonnarcotic substances under this paragraph, the board shall consider the items specified in sub. (1m).

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

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

(1m) Synthetic Opiates. Any material, compound, mixture or preparation which contains any of the following synthetic opiates, including any of their isomers, esters, ethers and esters of isomers, salts and salts of isomers, esters, ethers and esters of isomers of that are theoretically possible within the specific chemical designation:

(a) Acetyl fentanyl (N-[1 - phenethylpiridin-4-yl]N-phenylacetamide);
(b) Acetyl alpha-methylfentanyl (N-[1 - (1-methyl-2-phenylethyl)4-piperidinyl]-N-phenylacetamide);
(c) Acetyl fentanyl (N-[1-phenethylpiridin-4-yl]-N-phenylacetamide);
(d) Acetyl alpha-methylfentanyl (N-[1 - (1-methyl-2-phenylethyl)4-piperidinyl]-N-phenylacetamide);
(e) Acetyl fentanyl (N-[1-phenethylpiridin-4-yl]-N-phenylacetamide);
(f) Acetyl fentanyl (N-[1-phenethylpiridin-4-yl]-N-phenylacetamide);
18. Tetrahydrofuran fentanyl (N−(1−phenethylpiperidin−4−yl)−N−phenylethyltetrahydrofuran−2−carboxamide);
19. Thiopentone (N−[1−(2−thiényl)ethyl]−4−piperidinyl)−N−phenylpropanamide);

NOTE: This paragraph was created eff. 6−5−20 by the creation of s. CSB 2.72, Wis. Adm. Code, by emergency rule EmR2013 under s. 961.11 (4m). EmR2013 expires 6−4−21 unless replaced sooner by the creation of s. CSB 2.72 by permanent rule.

(pm) Ketobemidone;
(qm) Levomoramide;
(rm) Noradamnil;
(sm) Normorphine;
(tm) Phenadoxone;
(u) Phenethol;
(v) Phenoperidine;
(y) Tilidine.

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

(a) Acetorphine;
(b) Acetyldihydrocodeine;
(c) Benzylmorphine;
(d) Codeine methylbromide;
(e) Codeine−N−oxide;
(f) Cyprenorphine;
(g) Desomorphine;
(h) Dihydromorphone;
(hm) Drotebanol;
(j) Etorphine, except its hydrochloride salts;
(k) Heroin;
(m) Hydromorphone;
(n) Methyldesomorphine;
(p) Methyldihydromorphine;
(q) Morphine methylbromide;
(r) Morphine methylsulfonate;
(s) Morphine−N−oxide;
(t) Myrophine;
(u) Nicocodine;
(v) Nicomorphine;
(x) Normorphine;
(y) Thebacon.

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

(a) 3,4−methyleneoxyamphetamine, commonly known as “MDA”;
(b) 3,4−methyleneoxyethylampheta mine, commonly known as “MDE”;
(c) 3,4−methyleneoxymethamphetamine, commonly known as “MDMA”;
(d) N−hydroxy−3,4−methyleneoxyamphetamine;
(e) 5−methoxy−3,4−methyleneoxyamphetamine;
(f) 4−ethyl−2,5−dimethoxyamphetamine, commonly known as “DOET”;
(g) 3,4,5−trimethoxyamphetamine;
(h) Alpha−ethyltryptamine;
(i) Bufotenine;
(j) Diethyltryptamine;
(k) Dimethyltryptamine;
(l) 4−methyl−2,5−dimethoxyamphetamine, commonly known as “STP”;
(m) Ibogaine;
(n) Lysergic acid diethylamide, commonly known as “LSD”;
(o) 1−protopinol−lysergic acid diethylamide, commonly known as “IP−LSD”;

NOTE: This paragraph was created eff. 6−5−20 by the creation of s. CSB 2.72, Wis. Adm. Code, by emergency rule EmR2013 under s. 961.11 (4m). EmR2013 expires 6−4−21 unless replaced sooner by the creation of s. CSB 2.72 by permanent rule.

(m) Mescaline, in any form, including mescaline contained in peyote, obtained from peyote or chemically synthesized;
(n) Paraphenyl (3−hexyl−1−hydroxy−7, 8, 9, 10−tetrahydro−6, 6, 9−trimethyl−6H−dibenz(o, d)pyran);
(nm) Phenacyclidine, commonly known as “PCP”;
(p) N−ethyl−3−piperidyl benzilate;
(q) N−methyl−3−piperidyl benzilate;
(r) Psilocybin;
(s) Psilocin;
(sm) Salvinorin A;
(t) Synthetic cannabinoids, commonly known as “THC”, in any form including tetrahydrocannabinols contained in marijuana, obtained from marijuana, or chemically synthesized, except that tetrahydrocannabinols do not include any of the following:

1. Tetrahydrocannabinols contained in a cannabidiol product that is dispensed as provided in s. 961.38 (1n) (a) or that is possessed as provided in s. 961.32 (2m) (b).
2. Tetrahydrocannabinols contained in fiber produced from the stalks, oil or cake made from the seeds of a Cannabis plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil or cake of a Cannabis plant which is incapable of germination.
3. Tetrahydrocannabinols contained in hemp, as defined in s. 94.55 (1).
4. Artificial cannabinoids, including:

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

- a. 1−pentyl−2−methyl−3−(1−naphthoyl)indole, commonly known as JWH−007;
- b. 1−propyl−2−methyl−3−(1−naphthoyl)indole, commonly known as JWH−015;
- c. 1−pentyl−3−(1−naphthoyl)indole, commonly known as JWH−018 or AM−678;
- d. 1−hexyl−3−(1−naphthoyl)indole, commonly known as JWH−019;
- e. 1−butyl−3−(1−naphthoyl)indole, commonly known as JWH−073;
- f. 1−pentyl−3−(4−methoxy−1−naphthoyl)indole, commonly known as JWH−081;
- g. 1−pentyl−2−methyl−3−(4−methoxy−1−naphthoyl)indole, commonly known as JWH−098;
- h. 1−pentyl−3−(4−methyl−1−naphthoyl)indole, commonly known as JWH−122;
  - i. 1−pentyl−3−(7−methoxy−1−naphthoyl)indole, commonly known as JWH−164;
  - j. 1−[2−(4−(morpholinyl)ethyl)]−3−(1−naphthoyl)indole, commonly known as JWH−200;
  - k. 1−pentyl−3−(4−ethyl−1−naphthoyl)indole, commonly known as JWH−210;
  - L. 1−pentyl−3−(4−chloro−1−naphthoyl)indole, commonly known as JWH−398;
- m. 1−pentyl−3−(4−fluoro−1−naphthoyl)indole, commonly known as JWH−412;
- n. 1−[1−(N−methyl−2−piperidinyl)methyl]−3−(1−naphthoyl)indole, commonly known as AM−1220;
- o. 1−(5−fluoropentyl)−3−(1−naphthoyl)indole, commonly known as AM−2201;
- p. 1−(5−fluoropentyl)−3−(4−methyl−1−naphthoyl)indole, commonly known as MAM−2201;
- q. 1−(5−chloropentyl)−3−(1−naphthoyl)indole, commonly known as AM−2201 (5−chloropentyl);
- r. 1−(5−bromopentyl)−3−(1−naphthoyl)indole, commonly known as AM−2201 (5−bromopentyl);
- s. 1−(4−cyanobutyl)−3−(1−naphthoyl)indole, commonly known as AM−2232;
- t. (R)−(+)[2,3−dihydro−5−methyl−3−(4−morpholinyl)methyl]pyrrolol[1,2,3−de]−1,4−benzoxazin−6−yl]−1−naphthalenyl−methanone, commonly known as WIN 55,212−2;

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

- a. 1−pentyl−5−(2−fluorophenyl)−3−(1−naphthoyl)pyrrole, commonly known as JWH−307;
- b. 1−pentyl−5−(2−methylphenyl)−3−(1−naphthoyl)pyrrole, commonly known as JWH−370;
- c. 1−pentyl−3−(1−naphthoyl)pyrrole, commonly known as JWH−380;
- d. 1−hexyl−5−phenyl−3−(1−naphthoyl)pyrrole, commonly known as JWH−147;

3. Any compound structurally derived from 3−naphthylmethylindene by substitution at the 1−position of the indene ring by alkyl, haloalkyl, cyanoalkyl, alkenyl, cycloalkylethyl, cycloalkylethyl, 1−(N−methyl−2−piperidinyl)methyl, 2−(4−morpholinyl)ethyl, 1−(N−methyl−2−pyrrolidinyl)methyl, 1−(N−methyl−3−morpholinyl)methyl, or (tetrahydropyran−4−yl)methyl group, whether or not further substituted in the indene ring to any extent, whether or not substituted in the naphthyl ring to any extent. Substances specified under this subdivision include 1−pentyl−3−(1−naphthyl)indene, commonly known as JWH−176;

4. Any compound structurally derived from 3−(benzyl)indole by substitution at the nitrogen atom of the indole ring with alkyl, haloalkyl, cyanoalkyl, alkenyl, cycloalkylethyl, cycloalkylethyl, 1−(N−methyl−2−piperidinyl)methyl, 2−(4−morpholinyl)ethyl, 1−(N−methyl−2−pyrrolidinyl)methyl, 1−(N−methyl−3−morpholinyl)methyl, or (tetrahydropyran−4−yl)methyl group, whether or not further substituted in the indole ring to any extent, whether or not substituted in the naphthyl ring to any extent. Substances specified under this subdivision include 1−pentyl−3−(1−naphthyl)indene, commonly known as JWH−176;

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

- a. 2−[(1R,3S)−3−hydroxyhexahydro-1H-inden-2-yl]phenol, commonly known as CP 47,497;
- b. 2−[(1R,3S)−3−hydroxyhexahydro-1H-inden-2-yl]phenol, commonly known as CP 47,497 C8 homologue, or cannabicyclohexanol;

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

- a. 1−pentyl−3−(2−iodobenzoyl)indole, commonly known as AM−679;
- b. 1−(5−fluoropentyl)−3−(2−iodobenzoyl)indole, commonly known as AM−694;
- c. 1−pentyl−3−(4−methoxybenzoyl)indole, commonly known as RCS−4;
d. 1−butyl−3−(4−methoxybenzoyl)indole, commonly known as RCS−4−C4 homologue;
e. 1−pentyl−3−(4−methoxybenzoyl)indole, commonly known as RCS−4−2−methoxy isomer;
f. 1−butyl−3−(2−methoxybenzoyl)indole, a C4 homologue, 2−methoxy isomer of RCS−4;
g. [2−(4−(morpholinyl)ethyl)−2−methyl−3−(4−methoxybenzyl)−6−iodo−indole, commonly known as pravadoine, or WIN 48,098;
h. 1−[2−(4−(morpholinyl)ethyl)−2−methyl−3−(4−methoxybenzyl)−6−iodo−indole, commonly known as pravadoine, or WIN 48,098;
i. 1−[1−(N−methyl−2−piperidinyl)methyl]−3−(2−iodo−5−nitrobenzoyl)indole, commonly known as AM−630;
j. 1−[1−(N−methyl−2−piperidinyl)methyl]−3−(2−iodo−5−nitrobenzoyl)indole, commonly known as AM−1241;
k. 1−[1−(N−methyl−2−piperidinyl)methyl]−3−(1−adamantyl)cyclopropyl−1H−indole−3−carboxamide by substitution at the nitrogen atom of the indole ring with alkyl, haloalkyl, cyanoalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1−(N−methyl−2−piperidinyl)methyl, 2−(4−morpholinyl)ethyl, 1−(N−methyl−2−pyrrolidinyl)methyl, 1−(N−methyl−3−morpholinyl)methyl, or (tetrahydropryan−4−yl)methyl group, whether or not further substituted in the indole ring to any extent, whether or not substituted in the adamantyl ring to any extent. Substances specified under this subdivision include:
a. 1−pentyl−N−[(1−adamantyl)−1H−indole−3−carboxamide, commonly known as AKB48;
b. 1−(5−fluoropentyl)−N−[(1−adamantyl)−1H−indole−3−carboxamide, commonly known as 5F−AKB48.
11. Any compound structurally derived from N−naphth−1H−indole−3−carboxamide by substitution at either nitrogen atom of the indole ring with alkyl, haloalkyl, cyanoalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1−(N−methyl−2−piperidinyl)methyl, 2−(4−morpholinyl)ethyl, 1−(N−methyl−2−pyrrolidinyl)methyl, 1−(N−methyl−3−morpholinyl)methyl, or (tetrahydropryan−4−yl)methyl group, whether or not further substituted in the indole ring to any extent, whether or not substituted in the adamantyl ring to any extent. Substances specified under this subdivision include:
a. 1−pentyl−N−[(1−adamantyl)−1H−indole−3−carboxamide, commonly known as AKB48;
b. 1−(5−fluoropentyl)−N−[(1−adamantyl)−1H−indole−3−carboxamide, commonly known as 5F−AKB48.
12. 1−[1′′−biphenyl]−3−yl−carboxylic acid, cyclohexyl ester, commonly known as URB−602;
13. ((6S,Sar,9R,10aR)−9−hydroxy−6−methyl−3−[(2R)−5−phenylpentan−2−yl]oxy−5,6,6a,7,8,9,10,10a−octahydrophenanthridin−1−yl) acetate, commonly known as CP 50,556−1;
14. (6aR,10aR)−9−(hydroxymethyl)−6,6−dime-thyl−3−(2−methyloctan−2−yl)−6a,7,10,10a−tetrahydrobenzo[c]chromene−1−ol, commonly known as HU−210;
15. (6aS,10aS)−9−(hydroxymethyl)−6,6−dime-thyl−3−(2−methyloctan−2−yl)−6a,7,10,10a−tetrahydrobenzo[c]chromene−1−ol, commonly known as HU−211;
16. 3−hydroxy−2−[(1R,6S)−3−methyl−6−(1−methylethyl−nyl)−2−cyclohexen−1−yl]−5−pentyl−2,5−cycloxeda-diene−1,4−dione, commonly known as HU−331;
17. (6aR,10aR)−6,6−dime-thyl−3−(2−methyloctan−2−yl)−6a,7,10,10a−tetrahydrobenzo[c]chromene−9−yl)methanol, commonly known as JWH−051;
18. (6aR,10aR)−3−(1,1−Dimethylbutyl)−6a,7,10,10a−tetrahydro−6,6,9−trimethyl−6H−dibenzo[b,d]pyran, commonly known as JWH−133;
nitrogen atom of the indole ring by alkyl, haloalkyl, cyanoalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or (tetrahydropryan-4-yl)methyl group, whether or not further substituted in the indole ring to any extent, whether or not substituted in the quinoline ring to any extent. Substances specified under this subdivision include:

a. 1-pentyl-1H-indole-3-carboxylic acid 8-quinolyl ester, commonly known as PB-22;
b. 1-(5-fluoropentyl)-1H-indole-3-carboxylic acid 8-quinolyl ester, commonly known as 5F-PB-22;
c. 1-(cyclohexylmethyl)-1H-indole-3-carboxylic acid 8-quinolyl ester, commonly known as BB-22.

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

a. 1-pentyl-N-(1-naphthyl)-1H-indole-3-carboxamide, commonly known as NNEI or MN-24;
b. 1-(5-fluoropentyl)-N-(1-naphthyl)-1H-indole-3-carboxamide, commonly known as 5F-NNEI or 5F-MN-24.

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

a. 1-pentyl-3-(3-pyridinoyl)indole;
b. 1-(5-fluoropentyl)-3-(3-pyridinoyl)indole.

32. N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1H-indazole-3-carboxamide, commonly known as AB-FUBINACA.

33. N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide, commonly known as ADB-PINACA.

34. N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide, commonly known as ADB-CHMINACA.

35. N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide, commonly known as ADB-PINACA.

36. 1-(5-fluoropentyl)-1H-indazol-3-yl(naphthalen-1-yl)methane, commonly known as THJ-2201.

37. N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1H-indazole-3-carboxamide, commonly known as MAB-CHMINACA or ADB-CHMINACA.

38. Methyl 2-(1-(5-fluoropentyl)-1H-indazole-3-carboxamido)-3,3-dimethylbutanoate, commonly known as 5F-ADB.

39. Methyl 2-(1-(5-fluoropentyl)-1H-indazole-3-carboxamido)-3-methylbutanoate, commonly known as 5F-AMB.

40. N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1H-indazole-3-carboxamide, commonly known as ADB-FUBINACA.
theoretically possible within the specific chemical designation: including any of their salts, isomers and salts of isomers that are known as 2C−T−2. known as 2C−C. known as 2C−D. 961.14 UNIFORM CONTROLLED SUBSTANCES ACT known as 2C−N. 2C−H. monly known as 5−APDB. monly known as 2C−P. 2C−H. 2C−N. 2C−P. (ws) Any compound structurally derived from N-benzyl−2−(2,5−dimethoxyphenyl)ethanamine by substitution at the nitrogen atom, or on either ring, with alkyl, alkoxy, alkylenedioxy, haloalkyl, hydroxyl, halide or nitro substituents, or by any combination of these modifications. Substances specified under this paragraph include: 1. 2−(4−iodo−2,5−dimethoxyphenyl)−N−[(2−methoxyphenyl)methyl]ethanamine, commonly known as 25I−NBOMe. 2. 2−(4−chloro−2,5−dimethoxyphenyl)−N−[(2−methoxyphenyl)methyl]ethanamine, commonly known as 25C−NBOMe. 3. 2−(4−bromo−2,5−dimethoxyphenyl)−N−[(2−methoxyphenyl)methyl]ethanamine, commonly known as 25B−NBOMe. 4. 2−(4−ethyl−2,5−dimethoxyphenyl)−N−(2−methoxybenzyl)ethanamine, commonly known as 25E−NBOMe. (ww) N,N−diallyl−5−methoxytryptamine, commonly known as 5−MeO−DALT. (ww) 5−(2−aminopropyl)benzofuran, commonly known as 5−APB. (wx) 6−(2−aminopropyl)benzofuran, commonly known as 6−APB. (wy) 5−(2−aminopropyl)−2,3−dihydrobenzofuran, commonly known as 5−APDB. (wz) 6−(2−aminopropyl)−2,3−dihydrobenzofuran, commonly known as 6−APDB. (x) 4−methoxyamphetamine, commonly known as “PMA.” (xa) 5−iodo−2−aminoindane, commonly known as 5−IAI. (xb) 4−methoxymethamphetamine, commonly known as PMMA. (5) DEPRESSANTS. Any material, compound, mixture or preparation which contains any quantity of any of the following substances having a depressant effect on the central nervous system, including any of their salts, isomers and salts of isomers that are theoretically possible within the specific chemical designation: (ag) Gamma−hydroxybutyric acid (commonly known as gamma hydroxybutyrate or “GHB”), gamma−butyrolactone, and 1,4−butanediol. (am) Mecloqualone. (b) Methaqualone. (6) IMMEDIATE PRECURSORS. Any material, compound, mixture or preparation which contains any quantity of any of the following substances or their salts: (a) Immediate precursors to phencyclidine: 1. 1−phenylcyclohexylamine. 2. 1−piperidinocyclohexane carboxonitrile. (7) STIMULANTS. Any material, compound, mixture or preparation which contains any quantity of any of the following substances having a stimulant effect on the central nervous system, including any of their salts, isomers and salts of isomers that are theoretically possible within the specific chemical designation: (ag) Cathinone. (am) Aminorex. (b) Fenethylline.
30. N,N-diethyl-3,4-methylenedioxyxycathine.
31. Alpha-methylamino−valerophenone, commonly known as pentedrone.
32. 4−methyl−alpha−pyrrolidinopropiophenone, commonly known as 4−MePPP.
33. Alpha−pyrrolidinobutophenone, commonly known as a−PB.
34. N−Ethylpentylone, commonly known as ephylone.
35. N−Ethylhexedrone.
36. Alpha−pyrrolidinoheptaphenone, commonly known as a−PHP.
37. 4−methyl−alpha−ethylinopentophenone, commonly known as 4−MEAP.
38. 4′−methyl−alpha−pyrrolidinohexophenone, commonly known as MPHP.
39. Alpha−pyrrolidinohexaphenone, commonly known as PV8.
40. 4′−choloro−alpha−pyrrolidinovalerophenone, commonly known as 4−choro−a−PVP.

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

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

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

Stems and branches supporting marijuana leaves or buds are not “mature stalks” under s. 961.01 (14). State v. Martínez, 210 Wis. 2d 396, 563 N.W.2d 922 (Ct. App. 1997), 96−1899.

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

(a) The substance has high potential for abuse;
(b) The substance has currently accepted medical use in treatment in the United States, or currently accepted medical use with severe restrictions; and
(c) The abuse of the substance may lead to severe psychological or physical dependence.

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

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

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

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

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

1. Opium, including raw opium, opium extracts, opium fluid extracts, powdered opium, granulated opium and tincture of opium.
2. Opium poppy and poppy straw.
3. Concentrate of poppy straw, which is the crude extract of poppy straw in either liquid, solid or powder form containing the phenanthrene alkaloids of the opium poppy.
4m. Dihydrocodeine.
4r. Dihydroetorphine.
5. Ethylmorphine.
7. Hydrocodone, also known as dihydrocodeine.
8. Hydromorphone, also known as dihydromorphone.
10. Morphine.
10m. Noroxycodone.
11. Oxycodone.
12. Oxymorphone.
13. Thebaine.

(b) Coca leaves and any salt, compound, derivative or preparation of coca leaves. Decocainized coca leaves or extracts which do not contain cocaine or ecgonine are excluded from this paragraph. (1m) [1H]Flupane is excluded from this paragraph. The following substances and any of their salts, esters, isolomers and salts of esters and isolomers that are theoretically possible within the specific chemical designation, are included in this paragraph:

1. Coca.
2. Ecgonine.

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

(a) Alfentanil;
(am) Alphaprodine;
(b) Anileridine;
(c) Bezitramide;
(cm) Carfentanil;
(e) Diphenoxylate;
(f) Fentanyl;
(g) Isomethadone;
(gm) Levo−alphacetylmethadol (LAAM);
(h) Levonemorphan;
(j) Levorphanol;
(k) Meperidine, also known as pethidine;
(m) Meperidine — Intermediate — A, 4−cyanof−1−methyl−4−phenylpiperidine;
(n) Meperidine — Intermediate — B, ethyl−4−phenylpiperidone−4−carboxylate;
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(s) Methadone — Intermediate, 4-cyano-2-dimethylamino-4,4-diphenylbutane;
(t) Moramide — Intermediate, 2-methyl-3-morpholino-1,1-diphenylpropionic carboxylic acid;
(b) Oripavine;
(u) Phenazocine;
(v) Piminodine;
(w) Racemethorpham;
(x) Racemorpham;
(xm) Remifentanil;
(y) Sufentanil;
(zt) Tapentadol;
(zx) Thiafentanil.

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

(a) Amphetamine.
(b) Methamphetamine.
(c) Phenmetrazine.
(d) Methylphenidate.
(e) Lisdexamfetamine.

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

(a) Amobarbital.
(b) Secobarbital.
(c) Pentobarbital.

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

(a) An immediate precursor to amphetamine or methamphetamine:
1. Phenylacetone, commonly known as “P2P”.
(b) An immediate precursor to fentanyl, including 4-aminon-N-phenethyl-4-piperidine, commonly known as ANPP.

(10) **HALLUCINOCGENIC SUBSTANCES.** (a) Dronabinol ([−]−delta-9−tetrahydrocannabinol (delta-9−THC)) in an oral solution in a drug product approved by the U.S. food and drug administration.
(b) Nabilone (another name for nabilone is (−)−delta-9−(trans)−tetrahydrocannabinol.)

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

At a preliminary hearing, the state must show that a substance was probably one of the following:

1. Amobarbital.
2. Secobarbital.
3. Pentobarbital.
4. Any drug product containing gamma-hydroxybutyric acid, including its salts, isomers, and salts of isomers, for which an application is approved under section 505 of the federal food, drug and cosmetic act.

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

(a) Ketamine.
(b) Nalorphine.

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

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

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

(a) Benzphetamine;
(b) Chlorphentermine;
(c) Clortaloridine;
(e) Phendimetrazine.

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

(a) Any substance which contains a derivative of barbituric acid;
(b) Chlorhexadol;
(d) Lysergic acid;
(e) Lysergic acid amide;
(f) Methyprylon;
(h) Sulfondiethylmethane;
(j) Sulfonethylmethane;
(k) Sulfonmethane;
(km) Tiletamine and Zoletapam in combination;
(m) Any compound, mixture, or preparation containing any of the following drugs and one or more other active medicinal ingredients not included in any schedule:

1. Secobarbital.
2. Pentobarbital.
3. Nalorphine.

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

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

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

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

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

(a) Ketamine.
(b) Nalorphine.

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

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

(a) The substance has a potential for abuse less than the substances included in schedules I and II;
(b) The substance has currently accepted medical use in treatment in the United States;
(c) Abuse of the substance may lead to moderate or low physical dependence or high psychological dependence.

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

**History:** 1971 c. 219; 1995 a. 448 ss. 179, 180, 474; Stats. 1995 s. 961.17.
salts, isomers or salts of isomers, calculated as the free anhydrous base or alkaloid, in limited quantities as follows:

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

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

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

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

(e) 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.

(f) 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.

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

(a) Buprenorphine

(6) EXCEPTIONS. The controlled substances board may except by rule any compound, mixture or preparation containing any stimulant or depressant substance included in sub. (2m) or (3) from the application of all or any part of this chapter if the compound, mixture or preparation contains one or more active medicinal ingredients not having a stimulant or depressant effect on the central nervous system, and if the admixtures are included therein in combinations, quantity, proportion or concentration that vitiate the potential for abuse of the substances which have a stimulant or depressant effect on the central nervous system.

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

(a) Boldenone;

(19−Nor−4,9(10)−androstadienedione; (az) Boldione;

(b) 4−chlorostestosterone, which is also called clostebol;

(c) Dehydrochloromethyltestosterone;

(d) 4−dihydrotestosterone, which is also called stanolone;

(e) Drostanolone;

(em) Desoxymethyltestosterone;

(f) Ethylestrenol;

(g) Fluoxymesterone;

(h) Formebulone, which is also called fromebolone;

(i) Mesterolone;

(j) Methandienone, which is also called methandrostenolone;

(k) Methandriol;

(L) Methenolone;

(m) Methyltestosterone;

(n) Mibolerone;

(o) Nandrolone;

(p) Norethandrolone;

(q) Oxandrolone;

(r) Oxymesterone;

(s) Oxymetholone;

(t) Stanazolol;

(u) Testolactone;

(v) Testosterone;

(w) Trenbolone.

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

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

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

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

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

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


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

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

(a) Alprazolam;

(am) Barbital;

(ap) Brexanolone;

(ar) Bromazepam;

(av) Camazepam;

(ax) Carisoprodol;

(b) Chloral betaine;

(c) Chloral hydrate;

(cd) Clobazam;

(ce) Clotiazepam;

(cm) Chloridiazepoxide;

(cn) Clonazepam;

(co) Cloxazolam;

(cp) Clorazepate;

(cq) Delorazepam;

(cr) Diazepam;

(cs) Dichloralphenazone;

(ce) Estazolam;

(d) Ethchlorvynol;

(e) Ethinamate;

(ed) Ethyl loflazepate;

(eg) Fludiazepam;

(ej) Flunitrazepam;

(ek) Flurazepam;

(em) Fluroxazepam;

(eq) Halazepam;

(ep) Haloazolam;

(eq) Ketazolam;

(eqm) Lemborexant;
961.20 UNIFORM CONTROLLED SUBSTANCES ACT

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

(a) The substance has low potential for abuse relative to the controlled substances included in schedule IV;  
(b) The substance has currently accepted medical use in treatment in the United States; and  
(c) The substance has limited physical dependence or psychological dependence liability relative to the controlled substances included in schedule IV.

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

History: 1971 c. 219; 1995 a. 448 ss. 203 to 220, 478, 479; Stats. 1995 s. 961.21.  

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

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

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

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

(a) Pyrovalerone.

(4) **EZOGABINE.** Ezogabine or any of its salts, isomers, or salts of isomers.

(5) **PREGABALIN.** Pregabalin or any of its salts, isomers, or salts of salts of isomers.

(6) **BRIVARACETAM.** Brivaracetam ((2S)−2−[(4R)−2−oxo−4−propylpyrrolidin−1−yl]butanamide), including its salts, isomers or salts of isomers.

(7) **APPROVED CANNABIDIOL DRUGS.** A drug product in finished dosage formulation that has been approved by the United States Food and Drug Administration that contains cannabidiol (2−[(1R)−3−methyl−6−(1−methylvinyl)−2−cyclohexen−1−yl]−5−pentyl−1,3−benzenediol) derived from cannabis and no more than 0.1 percent (w/w) residual tetrahydrocannabinols.

(8) **LASMIDTAN.** Lasmiditan [2,4,6−trifluoro−N−(6−(1−methylpiperidine−4−carbonyl)pyridine−2−yl)benzamide].

(9) **CENOBAMATE.** Cenobamate [(1R)−1−(2−chlorophenyl)−2−2−(tetrazol−2−yl)ethyl] carbamate; 2H−tetrazole−2−ethanol, alpha−(2−chlorophenyl)−, carbamate (ester), (alphaR);− carbamic acid (R)+(−1−(2−chlorophenyl)−2−(2H−tetrazorol−2−yl)ethyl ester).

**History:** 1971 c. 219; 1973 c. 12, s. 37; 1981 c. 206; 1993 a. 482; 1995 a. 448 s. 228; Stats. 1995 s. 961.23; 2005 a. 14, 262; 2013 a. 351; ss. CSB 2.15, 2.17, 2.43, 2.65, 2.71, 2.73, Wis. adm. cods. s. 35.17 correction in (8) (title).

### 961.235 Records relating to sales of pseudoephedrine products

In this section:

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

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

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

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

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

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

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

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

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

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


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


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

History: 1995 c. 448.

SUBCHAPTER III

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

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

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

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

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

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

1. An agent or employee of any registered manufacturer, distributor or dispenser of any controlled substance if the agent or employee is acting in the usual course of the agent’s or employee’s business or employment;

2. A common or contract carrier or warehousekeeper, or an employee thereof, whose possession of any controlled substance is in the usual course of business or employment;

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

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

5. A person actively engaged in the direct operation or implementation of a drug disposal program that is authorized under s. 165.65 (2) or (3) or is authorized under federal law, as defined in s. 165.65 (1) (a).

(2m) (a) In this subsection, “certification” means a letter or other official document issued by a physician licensed under s. 448.04 (1) (a) that contains all of the following:

1. The name, address, and telephone number of the physician.

2. The name and address of the patient who is issued the letter or document.

3. The date on which the letter or document is issued.

(b) An individual may possess a cannabinoid product if the individual has certification stating that the individual possesses a cannabinoid product to treat a medical condition, if the certification has an issue date that is no more than one year prior to the possession, and if any expiration date provided by the physician in the certification has not passed. A certification is not required to possess hemp, as defined in s. 94.55 (1), or a prescription drug product that has been approved by the U.S. food and drug administration.

(3) (a) In this subsection:

1. “Cannabis” means the plant Cannabis sativa L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not.

2. “Hemp” means the meaning given in s. 94.55 (1).

(b) A person who is not otherwise violating s. 94.55 or rules promulgated by the department of agriculture, trade and consumer protection under s. 94.55 may not be prosecuted for a criminal offense under this chapter, or under an ordinance enacted under s. 59.54 (25) or 66.0107 (1) (b), for any of the following:

1. Planting, growing, cultivating, harvesting, producing, processing, or transporting cannabis that contains a delta-9-tetrahydrocannabinol concentration of the crop of not more than 0.7 percent above the permissible limit for hemp on a dry weight basis or that is grown from hemp seed certified under s. 94.55 (2) (c) or approved for growing by the department of agriculture, trade and consumer protection under s. 94.55 (2) (f).

3. Selling, transferring, importing, exporting, processing, transporting, harvesting, or taking possession of cannabis that has been tested and certified, by the department of agriculture, trade and consumer protection or a person approved by the department of agriculture, trade and consumer protection under s. 94.55 (2) (b) 4g., as meeting the permissible delta-9-tetrahydrocannabinol concentration limit for hemp if the person has no reason to believe that the test certification is incorrect.

4. Possessing cannabis that contains a delta-9-tetrahydrocannabinol concentration of not more than 0.7 percent above the permissible limit for hemp on a dry weight basis if the possessor reconditions or processes the cannabis to a delta-9-tetrahydrocannabinol concentration at or below the permissible limit for hemp with the approval of the department of agriculture, trade and consumer protection of those actions.

4m. Temporarily possessing cannabis during the normal course of processing hemp if the possessor reconditions or processes the cannabis to a delta-9-tetrahydrocannabinol concentration at or below the permissible limit for hemp within a reasonable amount of time.

4r. Possessing cannabis purchased or obtained at retail that contains a delta-9-tetrahydrocannabinol concentration of not more than 0.7 percent above the permissible limit for hemp if the possessor has no reason to believe that the cannabis contains a...
delta-9-tetrahydrocannabinol concentration above the permissible limit for hemp.

5. Taking samples of cannabis, transporting samples to a testing facility, or testing samples for their delta-9-tetrahydrocannabinol concentration or for the presence of other substances.

(c) A person who violates s. 94.55 or a rule promulgated under s. 94.55 may not be prosecuted under s. 94.55 or this chapter unless the person is referred to the district attorney for the county in which the violation occurred or to the department of justice by the department of agriculture, trade and consumer protection, and may not be prosecuted under an ordinance enacted under s. 59.54 (25) or 66.0107 (1) (bm), unless the person is referred to the local prosecuting authority by the department of agriculture, trade and consumer protection.

(cm) A hemp producer that negligently violates s. 94.55 or a rule promulgated under s. 94.55, as described under s. 94.55 (2g) (a), may not be prosecuted under s. 94.55 or this chapter or an ordinance enacted under s. 59.54 (25) or 66.0107 (1) (bm).

(d) Notwithstanding s. 961.41 (4) (am) 2. a., engaging in an activity described under s. 94.55 (2) (a) does not constitute prima facie evidence of a prohibited representation under s. 961.41 (4) (am) 1. a. or b.


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

961.335 Special use authorization. (1) (a) Upon application the controlled substances board may issue a permit authorizing a person to manufacture, obtain, possess, use, administer, or dispense a controlled substance for purposes of scientific research, instructional activities, chemical analysis, or other special uses, without restriction because of enumeration.

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

(c) 1. A person who is actively engaged in the direct operation or implementation of a drug disposal program that is authorized under s. 165.65 (2) or (3) or is authorized under federal law, as defined in s. 165.65 (1) (a), may, without a permit issued under this section, obtain or possess a controlled substance for the purposes of operating and implementing the drug disposal program.

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

3. An individual who is designated and authorized to receive a permit under this section for a college or university department, research unit, or similar administrative organizational unit, and students, laboratory technicians, research specialists, or chemical analysts under his or her supervision, may, without an additional permit issued under this section, possess and use a controlled substance, for the purposes authorized in the permit received for the department or unit.

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

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

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

(a) The name and address of the permittee.

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

(c) The controlled substances to be used in the project, by name if included in schedule I, and by name or schedule if included in any other schedule, except that, for any permit issued to a state crime laboratory, the permit is effective for any controlled substance whether or not the name or schedule is specified.

(d) Whether dispensing to human subjects is authorized.

(5) A permit shall be effective only for the person, project, and, except as provided in sub. (4) (c), substances specified on its face and for additional projects which derive directly from the stated project. Upon application, a valid permit may be amended to add a further activity or to add further substances or schedules to the project permitted thereunder. The fee for such amendment shall be determined by the controlled substances board but shall not exceed $5.

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

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

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

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

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

History: 1971 c. 219; 1975 c. 110, 199; 1977 c. 26; 1995 a. 448 s. 233; Stats. 1995 s. 961.335; 2013 a. 198; 2015 a. 298.

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

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

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

History: 2013 a. 198.

961.34 Controlled substances therapeutic research. (1) Upon the request of any practitioner, the controlled substances board shall aid the practitioner in applying for and processing an investigational drug permit for marijuana under 21 USC 355 (i). If the federal food and drug administration issues an investigational drug permit, the controlled substances board shall approve which pharmacies can distribute the marijuana to patients upon written prescription. Only pharmacies located within hospitals that are eligible to receive the marijuana for distribution. The controlled substances board shall also approve which practitioners can write prescriptions for the marijuana.

(2) Upon the request of any physician, the controlled substances board shall aid the physician in applying for and processing an investigational drug permit under 21 USC 355 (i) for cannabidiol as treatment for a medical condition.

History: 1981 c. 193; 1983 a. 189 s. 329 (18); 1985 a. 146 s. 8; 1995 a. 448 ss. 16 to 19; Stats. 1995 s. 961.34; 2013 a. 267; 2019 a. 68.

961.36 Controlled substances board duties relating to diversion control and prevention, compliance with controlled substances law and advice and assistance.  
(1) The controlled substances board shall regularly prepare and make available to state regulatory, licensing and law enforcement agencies descriptive and analytic reports on the potential for diversion and actual patterns and trends of distribution, diversion and abuse within the state of certain controlled substances the board selects that are listed in s. 961.16, 961.18, 961.20 or 961.22.  
(2) At the request of the department of safety and professional services or a board, examining board or affiliated credentialing board in the department of safety and professional services, the controlled substances board shall provide advice and assistance in matters related to the controlled substances law to the department or to the board, examining board or affiliated credentialing board in the department making the request for advice or assistance.  
(3) The controlled substances board shall evaluate the outcome of its program under this section and shall annually submit a report to the chief clerk of each house of the legislature, for distribution to the legislature under s. 13.172 (3), on its findings with respect to its effect on distribution and abuse of controlled substances, including recommendations for improving control and prevention of the diversion of controlled substances.


961.37 Law enforcement duty.  (1) A law enforcement officer shall report as provided in sub. (2) if the law enforcement officer, while acting in an official capacity, does any of the following:  
(a) Encounters a situation in which the law enforcement officer reasonably suspects that a violation of this chapter involving a monitored prescription drug, as defined in s. 961.385 (1) (ag), is occurring or has occurred.  
(b) Encounters an individual who the law enforcement officer believes is undergoing or has immediately prior experienced an opioid–related drug overdose, as defined in s. 256.40 (1) (d), or a deceased individual who the law enforcement officer believes died as a result of using a narcotic drug.  
(c) Receives a report of a stolen controlled–substance prescription.  
(2) A law enforcement officer under sub. (1) shall report to the law enforcement agency that employs him or her all of the following:  
(a) The name and date of birth of all of the following, if applicable:  
1. The individual who is suspected of violating this chapter.  
2. The individual who experienced an opioid–related drug overdose.  
3. The individual who died as a result of using a narcotic drug.
4. The individual who filed the report of a stolen controlled–substance prescription.  
5. The individual for whom a prescription drug related to an event under subd. 1., 2., 3., or 4. was prescribed.  
(b) The name of the prescribing practitioner, the prescription number, and the name of the drug as it appears on the prescription order or prescription medicine container if a prescription medicine container was in the vicinity of the suspected violation, drug overdose, or death or if a controlled–substance prescription was reported stolen.  


961.38 Prescriptions.  (1g) In this section, “medical treatment” includes dispensing or administering a narcotic drug for pain, including intractable pain.  
(1n) (a) A physician or pharmacist approved under s. 961.34 (2) may dispense cannabidiol products as a treatment for a medical condition.  
(b) A physician licensed under s. 448.04 (1) (a) may issue an individual a certification, as defined in s. 961.32 (2m) (a), stating that the individual possesses a cannabidiol product to treat a medical condition.

History: 2015 a. 268.

961.39 Penalties.  (1m) An agreement must specify the roles and responsibilities of each agency that has information or authority to identify, prevent or control drug diversion and drug abuse. The board shall assist and promote cooperation and exchange of information among agencies and with other states and the federal government.


2017–18 Wisconsin Statutes updated through 2019 Wis. Act 186 and through all Supreme Court and Controlled Substances Board Orders filed before and in effect on June 19, 2020. Published and certified under s. 35.18. Changes effective after June 19, 2020, are designated by NOTES. (Published 6–19–20)
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961.385 Prescription drug monitoring program. (1) In this section:

(a) “Administer” means the direct application of a monitored prescription drug, whether by injection, ingestion, or any other means, to the body of a patient by any of the following:
1. A practitioner or his or her agent.
2. A patient at the direction of a practitioner.
3. A pharmacist.

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

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

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

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

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

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

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

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

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

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

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

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

(a) Require a pharmacy or a practitioner to generate a record documenting each dispensing of a monitored prescription drug at the pharmacy or, if the monitored prescription drug is not dispensed at a pharmacy, by the practitioner and to submit the record to the board no later than 11:59 p.m. of the next business day after the monitored prescription drug is dispensed, except that the program may not require the generation of a record in any of the following circumstances:
1. A monitored prescription drug is administered directly to a patient.
2. A monitored prescription drug is compounded, packaged, or labeled in preparation for delivery but is not delivered.
3. The prescription order is for a monitored prescription drug that is in a substance listed in the schedule in s. 961.22 and is not a narcotic drug, and the prescription order is for a number of doses that is intended to last the patient 7 days or less.

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

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

(cm) Permit the board to disclose a record generated by the program to any of the following:
1. A practitioner, pharmacist, registered nurse licensed under s. 441.06, or substance abuse counselor, as defined in s. 440.88 (1) (b), or an individual licensed under s. 457.08 (4), 457.10, 457.11, 457.12, 457.13, or 457.14 (1) (d) to (f) who treats alcohol or substance dependency or abuse as a specialty, if any of the following is applicable:
   a. The practitioner, pharmacist, registered nurse, substance abuse counselor, or individual is directly treating or rendering assistance to the patient.
   b. The practitioner, pharmacist, registered nurse, substance abuse counselor, or individual is being consulted regarding the health of the patient by an individual who is directly treating or rendering assistance to the patient.
2. A person who medically coordinates, directs, or supervises, or establishes standard operating procedures for, a practitioner, pharmacist, registered nurse, substance abuse counselor, or individual to whom records may be disclosed under subd. 1., if the person is evaluating the job performance of the practitioner, pharmacist, registered nurse, substance abuse counselor, or individual, or is performing quality assessment and improvement activities, including outcomes evaluation or development of clinical guidelines, and if the disclosure does not contain personally identifiable information, as defined in s. 19.62 (5), of a patient and is limited to only those records about the practitioner, pharmacist, registered nurse, substance abuse counselor, or individual the person medically coordinates, directs, or supervises, or for whom the person establishes standard operating procedures.
3. Relevant state boards and agencies, relevant agencies of other states, relevant law enforcement agencies, as defined in s. 165.77 (1) (b), and relevant prosecutorial units, as defined in s. 978.001 (2), if any of the following is true:
   a. The state board or agency, agency of another state, law enforcement agency, or prosecutorial unit makes a written request for the record and is engaged in an active and specific investigation or prosecution of a violation of any state or federal law involving a monitored prescription drug, and the record being requested is reasonably related to that investigation or prosecution.
   b. The state board or agency, agency of another state, law enforcement agency, or prosecutorial unit makes a written request for the record and is monitoring the patient as part of a drug court, as defined in s. 165.955 (1).
   c. The circumstances indicate suspicious or critically dangerous conduct or practices of a pharmacy, pharmacist, practitioner, or patient. The board shall define what constitutes suspicious or critically dangerous conduct or practices for purposes of this subd.
3. An agent of a pharmacist if disclosure to the practitioner or pharmacist is authorized subject to subd. 1.

(cs) 1. Require that a patient’s records under the program be reviewed before the practitioner issues a prescription order for the patient. The review required under this subdivision may be performed by the practitioner or by the practitioner’s agent in accordance with applicable standards of practice. This subdivision does not apply after April 1, 2025.

2. The requirement under subd. 1. that a patient’s records under the program be reviewed before the practitioner issues a prescription order for the patient does not apply if any of the following is true:
   a. The patient is receiving hospice care, as defined in s. 50.94 (1) (a).
   b. The prescription order is for a number of doses that is intended to last the patient 3 days or less and is not subject to refill.
c. The monitored prescription drug is lawfully administered to the patient.

d. Due to emergency, it is not possible to review the patient’s records under the program before the practitioner issues a prescription order for the patient.

e. It is not possible to review the patient’s records under the program because the digital platform for the program is not operational or due to other technological failure if that failure is reported to the board.

(d) Specify a secure electronic format for submittal of a record generated under the program and authorize the board to grant a pharmacy or practitioner a waiver of the specified format.

(e) Specify a deadline for the submittal of a record to the board.

(f) Permit the board to refer the appropriate licensing or regulatory board for discipline a pharmacist, pharmacy, or practitioner that fails to comply with rules promulgated under this subsection, including by failure to generate a record that is required by the program.

(fm) Permit the board to refer a pharmacist, pharmacy, or practitioner to the appropriate law enforcement agency for investigation and possible prosecution when the board has determined that a criminal violation may have occurred.

(g) Maximize the potential for funding the operation of the program with available federal funding sources.

(h) Ensure that the program complies with s. 146.82, except as otherwise provided in this section, and 45 CFR part 164, subpart E.

(i) Disclose information submitted to the program by a law enforcement agency under s. 961.37 (3) (a) to relevant practitioners, pharmacists, and others to whom the board may make disclosures under par. (c).

(2m) (a) The rules promulgated under sub. (2) may not require that a record submitted to the board before 2 years after April 9, 2014, contain the name recorded under s. 450.11 (1b) (bm).

(b) After consultation with representatives of licensed pharmacists and pharmacies, and subject to the approval of the secretary of safety and professional services, the board may delay the requirement that a record submitted to the board contain the name recorded under s. 450.11 (1b) (bm) for an additional period beyond the date specified in par. (a).

(3) (a) A pharmacy, pharmacist, or practitioner is immune from civil or criminal liability or professional discipline arising from the pharmacy's, pharmacist's, or practitioner's compliance in good faith with this section or with rules promulgated under this section.

(b) Nothing in this section may be construed to require a pharmacy or pharmacist to obtain, before dispensing a monitored prescription drug to a patient, information about the patient that has been collected pursuant to the program established under sub. (2).

(4) Records generated under the program under this section are not subject to inspection or copying under s. 19.35.

(5) (a) Beginning with the 3rd calendar quarter of 2016, no later than 30 days after the end of each calendar quarter, the board shall conduct a review of the program under this section to evaluate the actual outcomes of the program compared with projected outcomes, as determined by the board. The board’s review shall include an evaluation of all of the following:

1. The satisfaction with the program of pharmacists, pharmacies, practitioners, and other users of the program.

2. The program’s impact on referrals of pharmacists, pharmacies, and practitioners to licensing or regulatory boards for discipline and to law enforcement agencies for investigation and possible prosecution.

(b) This subsection does not apply after October 30, 2025.

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

(a) The results of the board’s review under sub. (5). This paragraph does not apply after October 30, 2025.

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

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

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

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

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

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

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

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

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

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

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

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

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


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

961.39 Limitations on optometrists. An optometrist who is allowed under s. 449.18 (1) (1) to use therapeutic pharmaceutical agents and under s. 449.18 (6) (am) 2. b. to dispense a contact lens that delivers a therapeutic pharmaceutical agent:

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

(2) May prescribe, disperse, or administer only those controlled substances included in schedules III, IV, and V that are permitted for prescription or administration under the rules promulgated under s. 449.18 (6) (cm).

(2m) Notwithstanding sub. (1), may prescribe, disperse, or administer any of the following, if permitted for prescription or administration under the rules promulgated under s. 449.18 (6) (cm):

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

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

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

(a) A statement that he or she is allowed under s. 449.18 (1) to use therapeutic pharmaceutical agents.

(b) The indicated use of the controlled substance included in schedule III, IV, or V so prescribed or the indicated use of the controlled substance under sub. (2m) (a) or (b) so prescribed.

(4) May not dispense other than as provided under s. 449.18 (6) (am) 2.


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

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

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

History: 1995 s. 448.

SUBCHAPTER IV

OFFENSES AND PENALTIES

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. Two grams or less, the person is guilty of a Class I felony.

2. More than 200 grams but not more than 1,000 grams, or more than 4 plants containing tetrahydrocannabinols but not more than 20 plants containing tetrahydrocannabinols, or a substance specified in s. 961.14 (7) (L), and the amount manufactured, distributed, or delivered is:

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

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

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

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

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

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

(hm) Certain other schedule I controlled substances and ketamine. If the person violates this subsection with respect to gamma-hydroxybutyric acid, gamma-butyrolactone, 1,4-butanediol, 3,4-methylenedioxymethamphetamine, 4-bromo-2,5-dimethoxymethylphenylamine, 4-methylthioamphetamine, ketamine, a substance specified in s. 961.14 (4) (a) to (h), (m) to (q), (sm), or (u) to (xb), or a controlled substance analog of gamma-hydroxybutyric acid, gamma-butyrolactone, 1,4-butanediol, 3,4-methylenedioxymethamphetamine, 4-bromo-2,5-dimethoxymethylphenylamine, 4-methylthioamphetamine, ketamine, or a substance specified in s. 961.14 (4) (a) to (h), (m) to (q), (sm), or (u) to (xb), and the amount manufactured, distributed, or delivered is:
1. Three grams or less, the person is guilty of a Class F felony.
2. More than 3 grams but not more than 10 grams, the person is guilty of a Class E felony.
3. More than 10 grams but not more than 50 grams, the person is guilty of a Class D felony.
4. More than 50 grams, the person is guilty of a Class C felony.

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

(im) Flunitrazepam. If a person violates this subsection with respect to flunitrazepam and the amount manufactured, distributed, or delivered is:
1. Three grams or less, the person is guilty of a Class F felony.
2. More than 3 grams but not more than 10 grams, the person is guilty of a Class E felony.
3. More than 10 grams but not more than 50 grams, the person is guilty of a Class D felony.
4. More than 50 grams, the person is guilty of a Class C felony.

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

(1m) Possession with intent to manufacture, distribute or deliver. Except as authorized by this chapter, it is unlawful for any person to possess, with intent to manufacture, distribute or deliver, a controlled substance or a controlled substance analog. Intent under this subsection may be demonstrated by, without limitation, evidence of intent to manufacture, distribute or deliver, a controlled substance or a controlled substance analog.

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

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

(cm) Cocaine and cocaine base. If a person violates this subsection with respect to cocaine or cocaine base, or a controlled substance analog of cocaine or cocaine base, and the amount possessed, with intent to manufacture, distribute or deliver, is:
1g. One gram or less, the person is guilty of a Class G felony.
1r. More than one gram but not more than 5 grams, the person is guilty of a Class F felony.
2. More than 5 grams but not more than 15 grams, the person is guilty of a Class E felony.
3. More than 15 grams but not more than 40 grams, the person is guilty of a Class D felony.
4. More than 40 grams, the person is guilty of a Class C felony.
(d) Heroin. If a person violates this subsection with respect to heroin or a controlled substance analog of heroin and the amount possessed, with intent to manufacture, distribute or deliver, is:
1. Three grams or less, the person is guilty of a Class F felony.
2. More than 3 grams but not more than 10 grams, the person is guilty of a Class E felony.
3. More than 10 grams but not more than 50 grams, the person is guilty of a Class D felony.
4. More than 50 grams, the person is guilty of a Class C felony.
(e) Phencyclidine, amphetamine, methamphetamine, methcathinone, cathinone, N-benzylpiperazine, and a substance specified in s. 961.14 (7) (L). If a person violates this subsection with respect to phencyclidine, amphetamine, methamphetamine, methcathinone, cathinone, N-benzylpiperazine, a substance specified in s. 961.14 (7) (L), or a controlled substance analog of phencyclidine, amphetamine, methamphetamine, methcathinone, cathinone, N-benzylpiperazine, or a substance specified in s. 961.14 (7) (L), and the amount possessed, with intent to manufacture, distribute, or deliver, is:
1. Three grams or less, the person is guilty of a Class F felony.
2. More than 3 grams but not more than 10 grams, the person is guilty of a Class E felony.
3. More than 10 grams but not more than 50 grams, the person is guilty of a Class D felony.
4. More than 50 grams, the person is guilty of a Class C felony.

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

(f) Lysergic acid diethylamide. If a person violates this subsection with respect to lysergic acid diethylamide or a controlled substance analog of lysergic acid diethylamide and the amount possessed, with intent to manufacture, distribute or deliver, is:
1. One gram or less, the person is guilty of a Class G felony.
2. More than one gram but not more than 5 grams, the person is guilty of a Class F felony.
3. More than 5 grams, the person is guilty of a Class E felony.

(g) Psilocin and psilocybin. If a person violates this subsection with respect to psilocin or psilocybin, or a controlled substance analog of psilocin or psilocybin, and the amount possessed, with intent to manufacture, distribute or deliver, is:
1. One hundred grams or less, the person is guilty of a Class G felony.

2017–18 Wisconsin Statutes updated through 2019 Wis. Act 186 and through all Supreme Court and Controlled Substances Board Orders filed before and in effect on June 19, 2020. Published and certified under s. 35.18. Changes effective after June 19, 2020, are designated by NOTES. (Published 6–19–20)
2. More than 100 grams but not more than 500 grams, the person is guilty of a Class F felony.
3. More than 500 grams, the person is guilty of a Class E felony.

(h) Tetrahydrocannabinols. If a person violates this subsection with respect to tetrahydrocannabinols, included under s. 961.14 (4) (t), or a controlled substance analog of tetrahydrocannabinols, and the amount possessed, with intent to manufacture, distribute, or deliver, is:
1. Two hundred grams or less, or 4 or fewer plants containing tetrahydrocannabinols, the person is guilty of a Class I felony.
2. More than 200 grams but not more than 1,000 grams, or more than 4 plants containing tetrahydrocannabinols but not more than 20 plants containing tetrahydrocannabinols, the person is guilty of a Class H felony.
3. More than 1,000 grams but not more than 2,500 grams, or more than 20 plants containing tetrahydrocannabinols but not more than 50 plants containing tetrahydrocannabinols, the person is guilty of a Class G felony.
4. More than 2,500 grams but not more than 10,000 grams, or more than 50 plants containing tetrahydrocannabinols but not more than 200 plants containing tetrahydrocannabinols, the person is guilty of a Class F felony.
5. More than 10,000 grams, or more than 200 plants containing tetrahydrocannabinols, the person is guilty of a Class E felony.

(hm) Certain other schedule I controlled substances and ketamine. If the person violates this subsection with respect to gamma-hydroxybutyric acid, gamma-butyrolactone, 1,4-butanediol, 3,4-methylenedioxyamphetamine, 4-bromo-2,5-dimethoxy-benzene, tryptamine, a substance specified in s. 961.14 (4) (a) to (h), (k) to (q), (sm) or (u) to (xb), or a controlled substance analog of gamma-hydroxybutyric acid, gamma-butyrolactone, 1,4-butanediol, 3,4-methylenedioxyamphetamine, 4-bromo-2,5-dimethoxy-benzene, tryptamine, or a substance specified in s. 961.14 (4) (a) to (h), (k) to (q), (sm), or (u) to (xb) is subject to the following penalties if the amount possessed, with intent to manufacture, distribute, or deliver is:
1. Three grams or less, the person is guilty of a Class F felony.
2. More than 3 grams but not more than 10 grams, the person is guilty of a Class E felony.
3. More than 10 grams but not more than 50 grams, the person is guilty of a Class D felony.
4. More than 50 grams, the person is guilty of a Class C felony.

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

(im) Flunitrazepam. If a person violates this subsection with respect to flunitrazepam and the amount possessed, with intent to manufacture, distribute, or deliver, is:
1. Three grams or less, the person is guilty of a Class F felony.
2. More than 3 grams but not more than 10 grams, the person is guilty of a Class E felony.
3. More than 10 grams but not more than 50 grams, the person is guilty of a Class D felony.
4. More than 50 grams, the person is guilty of a Class C felony.

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

(1n) Piperidine possession. (a) No person may possess any quantity of piperidine or its salts with the intent to use the piperidine or its salts to manufacture a controlled substance or controlled substance analog in violation of this chapter.
(b) No person may possess any quantity of piperidine or its salts if he or she knows has reason to know that the piperidine or its salts will be used to manufacture a controlled substance or controlled substance analog in violation of this chapter.
(c) A person who violates par. (a) or (b) is guilty of a Class F felony.

(1q) Penalty relating to tetrahydrocannabinols in certain cases. Under s. 961.49 (2), 1999 stats., and subs. (1) (h) and (1m) (h), if different penalty provisions apply to a person depending on whether the weight of tetrahydrocannabinols or the number of plants containing tetrahydrocannabinols is considered, the greater penalty provision applies.

(1r) Determining weight of substance. In determining amounts under s. 961.49 (2) (b), 1999 stats., and subs. (1) and (1m) of this section, if different penalty provisions apply to a person depending on whether the weight of tetrahydrocannabinols or the number of plants containing tetrahydrocannabinols is considered, the greater penalty provision applies.

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

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

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

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

(bm) Counterfeit of phencyclidine and certain other drugs. If a person violates this subsection with respect to a counterfeit substance that is a counterfeit of phencyclidine, methamphetamine, lysergic acid diethylamide, gamma-hydroxybutyric acid, gamma-butyrolactone, 1,4-butanediol, 3,4-methylenedioxyamphetamine, methamphetamine, 4-bromo-2,5-dimethoxy-beta-phenylethylamine, 4-methylthioamphetamine, ketamine, or a substance subject to the applicable penalties for a narcotic drug, the person is guilty of a Class I felony.

(cm) Counterfeit flunitrazepam. If a person violates this subsection with respect to a counterfeit substance that is flunitrazepam, the person is subject to the applicable penalties for manufacture, delivery, possession, with intent to manufacture, distribute, or deliver, of the genuine controlled substance under sub. (1) or (1m).

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

(3g) Possession. No person may possess or attempt to possess a controlled substance or a controlled substance analog unless the person obtains the substance or the analog directly from, or pursuant to a valid prescription or order of, a practitioner who is acting in the course of his or her professional practice, or unless the person is otherwise authorized by this chapter to possess the substance or the analog. Any person who violates this subsection is subject to the following penalties.
(am) Schedule I and II narcotic drugs. If a person possesses or attempts to possess a controlled substance included in schedule I or II which is a narcotic drug, or a controlled substance analog of a controlled substance included in schedule I or II which is a narcotic drug, the person is guilty of a Class I felony.

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

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

(d) Certain hallucinogenic and stimulant drugs. If a person possesses or attempts to possess lysergic acid diethylamide, phenylcyclohexanol, amphetamine, 3,4-methylenedioxyamphetamine, methcathinone, cathinone, N-benzylpiperazine, a substance specified in s. 961.14 (4) (a) to (h), (m) to (q), (sm), (u) to (xb), or (7) (L), psilocin, or psilocybin, or a controlled substance analog of lysergic acid diethylamide, phenylcyclohexanol, amphetamine, 3,4-methylenedioxyamphetamine, methcathinone, cathinone, N-benzylpiperazine, a substance specified in s. 961.14 (4) (a) to (h), (m) to (q), (sm), (u) to (xb), or (7) (L), psilocin, or psilocybin, the person may be fined not more than $5,000 or imprisoned for not more than one year in the county jail or both upon a first conviction and is guilty of a Class I felony for a 2nd or subsequent offense. For purposes of this paragraph, an offense is considered a 2nd or subsequent offense if, prior to the offender's conviction of the offense, the offender has at any time been convicted of any felony or misdemeanor under this chapter or under any statute of the United States or of any state relating to controlled substances, controlled substance analogs, narcotic drugs, marijuana, or depressant, stimulant, or hallucinogenic drugs.

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

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

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

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

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

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

a. That the substance is a controlled substance.

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

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

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

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

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

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

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

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

(5) DRUG ABUSE PROGRAM IMPROVEMENT SURCHARGE. (a) When a court imposes a fine for a violation of this section, it shall also impose a drug abuse program improvement surcharge under ch. 814 in an amount of 75 percent of the fine and penalty surcharge imposed.

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

(c) 1. The first $850,000 plus two-thirds of all moneys in excess of $1,275,000 collected in each fiscal year from drug surcharges under this subsection shall be credited to the appropriation account under s. 20.435 (5) (gb).
2. All moneys in excess of $850,000 and up to $1,275,000 plus one-third of moneys in excess of $1,275,000 collected in each fiscal year from drug surcharges under this subsection shall be credited to the appropriation account under s. 20.455 (2) (kv).


An inference of knowledge could be drawn from possession of hashish with a street value of $2,000 to $4,000 and opium with a street value of $2,000 to $24,000. State v. Trumbell, 64 Wis. 2d 379, 239 N.W.2d 369 (1974).

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

Evidence of a defendant’s possession of a pipe containing burned residue of marijuana was insufficient to impute knowledge to the defendant of possession of a controlled substance. Kabat v. State, 76 Wis. 2d 124, 251 N.W.2d 38 (1977).

This section prohibits the act of manufacture, as defined in s. 961.01 (13) [now s. 961.01 (13)]. Possession of a controlled substance created by an accused is not required for conviction. This section is not unconstitutional. State ex rel. Bell v. Columbia County Ct. Cl. 82 Wis. 2d 401, 238 N.W.2d 162 (1978).

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

Testimony that weapons were found at the accused’s home was admissible as part of a distinct fact situation. Relevant to the accused’s intent to deliver heroin. State v. Wedgeworth, 100 Wis. 2d 514, 302 N.W.2d 810 (1981).

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

When police confiscated a large quantity of drugs from an empty home and the next day searched the defendant upon his return to the home, confiscating a small quantity of the same drugs, the defendant’s conviction of forgery for the lesser-included offense of possession and the greater offense of possession with intent to deliver did not violate double jeopardy. State v. Stevens, 123 Wis. 2d 303, 367 N.W.2d 788 (1985).

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

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

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

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

The state is not required to prove that a defendant knew the exact nature or precise chemical name of a possessed controlled substance. The state must only prove that a person would believe him or her to be, suffering from an overdose due to the use of a controlled substance. Leonard v. Warden, Dodge Correctional Inst. 631 F. Supp. 1403 (1986).

**961.444 Penalties under other laws.** Any law 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; 1981 c. 90; 1995 a. 448 s. 267; Stats. 1995 s. 961.43; 1997 a. 283; 2001 a. 109.

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

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

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

**History:** 2017 a. 100; 2019 a. 68.

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

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

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

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

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

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

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

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


The decision of whether immunity under sub. (2) applies should be made by the court pursuant to a pretrial motion. The defendant bears the burden of proving by a preponderance of the evidence his or her entitlement to immunity. State v. Williams, 2016 WI App 82, 372 Wis. 2d 363, 888 N.W.2d 1, 15–204.

If the court determines that immunity is to be provided for bail jumping offenses founded in part upon violations of the statutes cited in sub. (2), it could have easily written that into this section. It did not. State v. Williams, 2016 WI App 82, 372 Wis. 2d 363, 888 N.W.2d 1, 15–204.

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

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

Under this section, a “prosecution” is to be equated with a conviction or acquittal. The discretion with which a sentence is imposed is not relevant to the determination of whether a “prosecution” has occurred. State v. Petty, 201 Wis. 2d 337, 548 N.W.2d 817 (1996), 93–2200.

This section bars a Wisconsin prosecution under ch. 961 for the same conduct on which a prior federal conviction is based. The restriction is not limited to the same crime as defined by its statutory elements. State v. Hansen, 2001 WI 53, 243 Wis. 2d 328, 627 N.W.2d 195, 90–1158.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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


961.453 Purchases of pseudoephedrine products on behalf of another person. (1) (a) No person may, with the intent to acquire more than 7.5 grams of pseudoephedrine contained in a pseudoephedrine product within a 30–day period, knowingly solicit, hire, direct, employ, or use another to purchase a pseudoephedrine product on his or her behalf.

(b) 1. Except as provided in subd. 2., a person who violates par. (a) is guilty of a Class I felony.
2. If the person who is solicited, hired, directed, employed, or used to purchase the pseudoephedrine product is an individual who is less than 18 years of age, the actor is guilty of a Class H felony.

(2) No person may purchase a pseudoephedrine product on behalf of another with the intent to facilitate another person's manufacture of methamphetamine. A person who violates this subsection is guilty of a Class I felony.


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

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

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

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


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


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

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


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

(2) Except as provided in sub. (5), if a person pleads guilty or is found guilty of possession or attempted possession of a controlled substance or controlled substance analog under s. 961.41 (3g) (am), (c), (d), or (g), the court shall order the person to comply with an assessment of the person’s use of controlled substances.

The court’s order shall designate a facility that is operated by or pursuant to a contract with the county department established under s. 51.42 and that is certified by the department of health services to provide assessment services to perform the assessment and, if appropriate, to develop a proposed treatment plan. The person shall notify the person that noncompliance with the order limit the court’s ability to determine whether the treatment option under s. 961.475 is appropriate. The court shall also notify the person of the fee provisions under s. 46.03 (18) (fm).

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

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

(5) The court is not required to enter an order under sub. (2) if any of the following applies:

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

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


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

History: 2017 a. 261.

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

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

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

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

(2m) (a) Whenever a person charged with a felony offense under this chapter may be subject to a conviction for a 2nd or subsequent offense, he or she is not subject to an enhanced penalty under s. 939.62 if the person is convicted of that 2nd or subsequent offense, the maximum term of imprisonment for the offense may be increased as follows:

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

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

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

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

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

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

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

History:

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

For offenses under ch. 61 (now ch. 961), the court may apply this section or s. 939.62, but not both. State v. Roy, 166 Wis. 2d 855, 481 N.W.2d 288 (Ct. App. 1992).

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

Sentencing under this section was improper when the defendant did not admit a prior conviction and the state did not offer proof of one. State v. Coolidge, 173 Wis. 2d 783, 496 N.W.2d 703 (Ct. App. 1993).

Conviction under this section for a second or subsequent offense does not require proof of prior offenses at trial beyond a reasonable doubt. State v. Miles, 221 Wis. 2d 56, 584 N.W.2d 703 (Ct. App. 1998), 97–1364.

A conviction for possessing drug paraphernalia under s. 961.573 qualifies as a prior offense under sub. (3). State v. Moline, 229 Wis. 2d 38, 598 N.W.2d 929 (Ct. App. 1999), 98–2176.

A conviction for possessing drug paraphernalia under s. 961.573 qualifies as a prior offense under sub. (3). State v. Moline, 229 Wis. 2d 38, 598 N.W.2d 929 (Ct. App. 1999), 98–2176.

A defendant convicted of a second or subsequent controlled substance offense is subject to the penalty enhancements provided for under s. 939.62 and sub. (2) if the application of each enhancer is based on a separate and distinct prior conviction or convictions. State v. Maxey, 2003 WI App 94, 264 Wis. 2d 878, 663 N.W.2d 811, 02–1171.

961.49 Offenses involving intent to deliver or distribute a controlled substance or on or near certain places.

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

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

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

1. A state, county, city, village or town park.
2. A jail or correctional facility.
3. A multiunit public housing project.
4. A swimming pool open to members of the public.
5. A youth center or a community center.
6. Any private or public school premises and any premises of a tribal school, as defined in s. 115.001 (15m).
7. A school bus, as defined in s. 340.01 (56).

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

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

(2m) If any person violates s. 961.65 and, during the violation, the person intends to deliver or distribute methamphetamine or a controlled substance analog of methamphetamine under any of the circumstances listed under sub. (1m) (a), (b), (c) or (d), the maximum term of imprisonment for that crime is increased by 5 years.
961.50 Suspension or revocation of operating privilege. (1) If a court suspends a person’s operating privilege under this subsection, the court may, in addition to any other penalties that may apply to the crime, suspend the person’s operating privilege, as defined in s. 961.495; Stats. 1995 s. 961.495; 1999 a. 57; 2009 a. 302.

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

(3) The 5-year period under this section shall be measured from the dates of the violations which resulted in the convictions.

(4) If the person’s operating privilege is suspended or revoked or the person does not currently possess a valid operator’s license issued under ch. 343, the suspension or revocation under this section is effective on the date on which the person is first eligible for issuance, renewal, or reinstatement of an operator’s license under ch. 343. A warrant issued pursuant to this section must be executed by the judge or rules hereunder, and seizures of property appropriate to the identification exist or that there is probable cause to believe they exist, the judge shall issue a warrant identifying the area, premises, building or conveyance to be inspected, the purpose of the inspection, and, if appropriate, the type of property to be inspected, if any. The warrant shall:

1. State the grounds for its issuance and the name of each person whose affidavit has been taken in support thereof;
2. Be directed to a person authorized by law to execute it;
3. Command the person to whom it is directed to inspect the area, premises, building or conveyance identified for the purpose specified and, if appropriate, direct the seizure of the property specified;
4. Identify the item or types of property to be seized, if any;
5. Direct that it be served during normal business hours and designate the judge to whom it shall be returned.

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

(4) 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.

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

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

1. Places where persons authorized under s. 961.32 (1m) to possess controlled substances in this state are required by federal law to keep records; and
2. Places including factories, warehouses, establishments and conveyances in which persons authorized under s. 961.32 (1m) to possess controlled substances in this state are permitted by federal law to hold, manufacture, compound, process, sell, deliver or otherwise dispose of any controlled substance.

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

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

1. Inspect and copy records relating to controlled substances; and
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.


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

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

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

1. Arrange for the exchange of information among governmental officials concerning the use and abuse of controlled substances;
2. Coordinate and cooperate in training programs concerning controlled substance law enforcement at local and state levels;
3. Cooperate with the bureau by establishing a centralized unit to accept, catalog, file and collect statistics, including records, files, papers, processes, controls and facilities bearing on violation of this chapter; and
4. Conduct programs of eradication aimed at destroying wild or illicit growth of plant species from which controlled substances may be extracted.

History: 1971 c. 219, 336; 1975 c. 110; 1995 a. 448 s. 296; Stats. 1995 s. 961.54.

961.55 Forfeitures. (1) Subject to subs. (1g) and (1m), the following are subject to forfeiture:

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

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

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

(d) All vehicles which are used, or intended for use, to transport, or in any manner to facilitate the transportation, for the purpose of sale or receipt of property described in pars. (a) and (b) or for the purpose of transporting any property or weapon used or to be used or received in the commission of any felony under this chapter, except that a vehicle is not subject to forfeiture for a violation of s. 961.41 (3g) (b) to (g).

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

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

(g) Any drug paraphernalia, as defined in s. 961.571, used in violation of this chapter.

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

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

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

(1m) The property of an innocent owner may not be forfeited. A person who claims to be an innocent owner may follow the procedures under s. 961.555 (5).

(1r) If a law enforcement officer or agency or state or local employee or agency refers seized property to a federal agency directly, indirectly, by adoption, through an intergovernmental joint task force, or by other means, for the purposes of forfeiture litigation, the agency shall produce an itemized report of actual forfeiture expenses, as defined in sub. (5) (b), and submit the report to the department of administration to make it available on the department's website. If there is a federal or state criminal conviction for the crime that was the basis for the seizure, the agency may accept all proceeds. If there is no federal or state criminal conviction, the agency may not accept any proceeds, except that the agency may accept all proceeds if one of the following circumstances applies and is explained in the report submitted under this subsection:

(a) The defendant has died.

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

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

(d) The defendant fled the jurisdiction.

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

(2) Property subject to forfeiture under this chapter may be seized by any officer or employee designated in s. 961.51 (1) or (2) or a law enforcement officer upon process issued by any court of record having jurisdiction over the property. Seizure without process may be made if:

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

(2r) A person who has been subject to a seizure of property has a right to a pretrial hearing under s. 968.20.
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(c) The officer or employee or a law enforcement officer has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

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

(3) In the event of seizure under sub. (2), proceedings under sub. (4) shall be instituted promptly. All dispositions and forfeitures under this section and ss. 961.555 and 961.56 shall be made with due provision for the rights of innocent persons under subs. (1g), (1h), and (1l). Any property seized but not forfeited shall be returned to its rightful owner. Any person claiming the right to possession of property seized may apply for its return to the circuit court for the county in which the property was seized. The court shall order such notice as it deems adequate to be given the district attorney and all persons who have or may have an interest in the property and shall hold a hearing to hear all claims to its true ownership. If the right to possession is proved to the court’s satisfaction, it shall order the property returned if:

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

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

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

(a) Place the property under seal;

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

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

(5) When property is forfeited under this chapter, the agency whose officer or employee seized the property shall do one of the following:

(a) If the property is a vehicle, retain it for official use for a period of up to one year. Before the end of that period, the agency shall do one of the following:

1. Sell the property and use a portion, not to exceed 50 percent, of the amount received for payment of forfeiture expenses if the agency produces an itemized report of actual forfeiture expenses and submits the report to the department of administration to make it available on the department’s website. The remainder shall be deposited in the school fund as proceeds of the forfeiture.

2. Continue to retain the property, if the agency deposits 30 percent of the value of the vehicle, as determined by the department of revenue, in the school fund as proceeds of the forfeiture. If the agency sells the vehicle at a later time and receives as proceeds from the sale an amount in excess of the amount previously deposited in the school fund, the agency shall deposit the excess in the school fund.

(b) Sell that which is not required to be destroyed by law and which is not harmful to the public. The agency may use a portion, not to exceed 50 percent, of the amount received for payment of forfeiture expenses if the agency produces an itemized report of actual forfeiture expenses and submits the report to the department of administration to make it available on the department’s website. The remainder shall be deposited in the school fund as proceeds of the forfeiture. In this subsection, “forfeiture expenses” include 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.

(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.

(d) Forward it to the bureau for disposition.

(e) If the property forfeited is money, retain a portion, not to exceed 50 percent, of the amount received for payment of forfeiture expenses, as defined in par. (b), if the agency produces an itemized report of actual forfeiture expenses and submits the report to the department of administration to make it available on the department’s website and deposit the money in the school fund.

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

(6m) Flunitrazepam or ketamine that is possessed, transferred, sold, offered for sale or attempted to be possessed in violation of this chapter, or which of the owners or cultivators are unknown, or which are wild growths, may be seized and summarily forfeited to the state.

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

(8) The failure, upon demand by any officer or employee designated in s. 961.51 (1) or (2), of the person in occupancy or control of land or premises upon which the species of plants are growing or being stored, to produce any of the following constitutes authority for the seizure and forfeiture of the plants described in sub. (7):

(a) An appropriate federal registration, or proof that the person is the holder thereof.

(b) Proof that the person is growing or storing the plants in accordance with the requirements, if any, imposed by the department of agriculture, trade and consumer protection under s. 94.55.

(9) If a crop intended to be hemp, as defined in s. 94.55 (1), is tested for delta-9-tetrahydrocannabinol levels and the average concentration of delta-9-tetrahydrocannabinol is found to exceed 0.7 percent above the permissible limit for hemp on a dry weight basis, as tested using post-decarboxylation or other similarly reliable methods, the entire crop at the growing location where the plant was found shall be seized and destroyed. Before a crop is seized and destroyed under this subsection, the agency whose officers or employees intend to seize and destroy the crop shall provide, to the person licensed under s. 94.55 to grow the crop or to the person’s agent or employee, written documentation verifying the test results for the crop that is subject to seizure and destruction.


A vehicle obtained out of state and used to transport a controlled substance is subject to forfeiture under sub. (1) (d). State v. S. & S. Meats, Inc. 92 Wis. 2d 64, 284 N.W.2d 712 (Ct. App. 1979).

A vehicle subject to sub. (1) (d) 4. is not subject to forfeiture unless the secured party consents. State v. Fosse, 120 Wis. 2d 471, 355 N.W.2d 366 (Ct. App. 1984).

Under sub. (1) (f), the state may seize property from an owner not charged with a crime. State v. Hooper, 121 Wis. 2d 748, 364 N.W.2d 175 (Ct. App. 1985).

This section and s. 973.075 both include the same “innocent owner” defense language, which bars forfeiture if the crime was committed without the property owner’s
knowledge or consent. In the absence of contrary evidence, the legislature intended "owner" to have the same meaning in both provisions. Ownership under s. 973.075 (1) (b) 2. (renumbered s. 973.075 (1) (b) 2m. h.) is not controlled by legal title, but will be found based on consideration of possession, title, control, and financial stake. State v. Kirkh, 222 Wis. 2d 598, 587 N.W.2d 919 (Ct. App. 1998), 98-0582.

The "seized but not forfeited" language of sub. (3) means that the portion of that subject returned to return of property is only triggered by an unsuccessful forfeiture action brought by the state; in the event that the district attorney elects not to bring a forfeiture action, a person seeking the return of seized property may so do under s. 961.20. Jones v. State, 226 Wis. 2d 738 (1999), 97-2306.

For purposes of the statutory "innocent owner" exception in this case, while one co-titleholder had the largest financial interest in the forfeited vehicle, the 2nd co-titleholder, who used the vehicle in drug sales was the actual owner of the vehicle when that 2nd titleholder had nearly complete possession and control of the vehicle and paid for insurance, gas, and maintenance while the first vehicle had a different vehicle identification number. However, while forfeiture of the vehicle and 2nd co-titleholder's financial interest in the vehicle was unconstitutional under the Excessive Fines Clause, State v. Kirch, 961.55 (5) and (6). State v. One 2013, Toyota Corolla, 2015 WI App 84, 365 Wis. 2d 582, 872 N.W.2d 98, 14-2226.

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

961.555 Forfeiture proceedings. (1) TYPE OF ACTION: WHERE BROUGHT. In an action brought to cause the forfeiture of any property under s. 961.55, the court may render a judgment in rem or against a person personally, or both. The circuit court for the county in which the property was seized shall have jurisdiction over any proceedings regarding the property when the action is commenced in state court. Subject to s. 961.55 (1r), any property seized may be the subject of a federal forfeiture action.

(2) 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, and the forfeiture proceedings shall be adjourned until after the defendant is convicted of any charge concerning a crime which was the basis for the seizure of the property. If property is seized, a charge shall be issued within 6 months after the seizure, except that an unlimited number of 6-month extensions may be granted if, for each extension, a judge determines probable cause is shown and the additional time is warranted. If no charge is issued within 6 months after the seizure, or a 6-month extension is not granted, the seized property shall be returned to the owner. The forfeiture action shall be commenced by filing a summons, complaint and affidavit of the person who seized the property with the clerk of circuit court, provided service of authenticated copies of those papers are made within 90 days after filing upon the person from whom the property was seized and upon any person known to have a bona fide perfected security interest in the property.

(3) PRIORITY. (a) Upon motion by the prosecuting attorney, the court may waive the conviction requirement under par. (a) if the prosecuting attorney shows by clear and convincing evidence that any of the following applies:

1. The defendant has died.
2. The defendant was deported by the U.S. government.
3. The defendant has been granted immunity in exchange for testifying or otherwise assisting a law enforcement investigation or prosecution.
4. The defendant fled the jurisdiction.
5. The property has been unclaimed for a period of at least 9 months.
6. The property is contraband that is subject to forfeiture under s. 961.55 (6), (6m), or (7).

(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 750,000 or more, the district attorney or corporation counsel may proceed under par. (a).

(d) If no answer is served or no issue of law or fact has been joined and the time for that service or joining issue has expired, or if any defendant fails to appear at trial after answering or joining issue, the court may render a default judgment as provided in s. 806.02.

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

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

(c) An injured person has a right or claim to forfeited property or the proceeds derived from forfeited property under this subsection that is superior to any right or claim the state has in the property or proceeds. This paragraph does not grant the injured person priority over state claims or rights by reason of a tax lien or other rights not covered by this section or by s. 961.55 or 961.56. All rights, titles, and interest in property specified in s. 961.55 (1) vest in the state upon the commission of the act giving rise to forfeiture under this subsection.

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

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

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

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

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

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

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

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

(4) ACTION AGAINST OTHER PROPERTY OF THE PERSON. The court may order the forfeiture of any other property of a defendant up to the value of property found by the court to be subject to for-

feiture under s. 961.55 if the property subject to forfeiture meets any of the following conditions:

(a) Cannot be located.
(b) Has been transferred or conveyed to, sold to or deposited with a 3rd party.
(c) Is beyond the jurisdiction of the court.
(d) Has been substantially diminished in value while not in the actual physical custody of the law enforcement agency.
(e) Has been commingled with other property that cannot be divided without difficulty.

(5) OWNERS. (a) Notwithstanding sub. (2) (a), a person who claims to have an ownership interest in property subject to forfeiture as an innocent owner may petition the court for the return of his or her seized property at any time.
(b) A person who has an ownership interest in property subject to forfeiture that exists at the occurrence of the illegal conduct giving rise to the forfeiture and who claims to be an innocent owner has the burden of proving by clear and convincing evidence that he or she has a legal right, title, or interest in the property seized under this chapter.
(c) If the requisite showing under par. (b) has been made, in order to proceed with a forfeiture action against the property, the state has the burden of proving by clear and convincing evidence that the person had actual or constructive knowledge of the underlying crime giving rise to the forfeiture.
(d) A person who has an ownership interest in property subject to forfeiture that he or she acquired after the occurrence of the conduct giving rise to the forfeiture and who claims to be an innocent owner has the burden of proving by clear and convincing evidence that he or she has a legal right, title, or interest in the property seized under this chapter.
(e) If the requisite showing under par. (d) has been made, in order to proceed with a forfeiture action against the property, the state has the burden of proving by clear and convincing evidence that the person had actual or constructive knowledge that the property was subject to forfeiture or that the person was not a bona fide purchaser without notice of any defect in title and for valuable consideration.

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

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

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


Judicial Council Committee Note, 1974: The district attorney would be required to file within the 15 [now 30] day period. The answer need not be verified. [Re Order effective Jan. 1, 1976]

Judicial Council Note, 1984: Sub. (2) (a) has been amended by allowing 60 days after the action is commenced for service of the summons, complaint and affidavit on the defendants. The prior statute, requiring service within 30 days after seizure of the property, was an exception to the general rule of s. 801.02 (2), stats. [Re Order effective Jan. 1, 1985]
or preparing controlled substances or controlled substance analogs.

3. Isomerization devices used, designed for use or primarily intended for use in increasing the potency of any species of plant that is a controlled substance.

4. Testing equipment used, designed for use or primarily intended for use in identifying, or in analyzing the strength, effectiveness or purity of, controlled substances or controlled substance analogs.

5. Scales and balances used, designed for use or primarily intended for use in weighing or measuring controlled substances or controlled substance analogs.

6. Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose and lactose, used, designed for use or primarily intended for use in cutting controlled substances or controlled substance analogs.

7. Separation gins and sifters used, designed for use or primarily intended for use in removing twigs and seeds from, or in otherwise cleaning or refining, marijuana.

8. Blenders, bowls, containers, spoons and mixing devices used, designed for use or primarily intended for use in compound controlled substances or controlled substance analogs.

9. Capsules, balloons, envelopes and other containers used, designed for use or primarily intended for use in packaging small quantities of controlled substances or controlled substance analogs.

10. Containers and other objects used, designed for use or primarily intended for use in storing or concealing controlled substances or controlled substance analogs.

11. Objects used, designed for use or primarily intended for use in ingesting, inhaling or otherwise introducing marijuana, cocaine, hashish or hashish oil into the human body, such as:
   a. Metal, wooden, acrylic, glass, stone, plastic or ceramic pipes with or without screens, permanent screens, hashish heads or punctured metal bowls.
   b. Water pipes.
   c. Carburetion tubes and devices.
   d. Smoking and carburetion masks.
   e. Roach clips: meaning objects used to hold burning material, such as a marijuana cigarette, that has become too small or too short to be held in the hand.
   f. Miniature cocaine spoons and cocaine vials.
   g. Chamber pipes.
   h. Carburetor pipes.
   i. Electric pipes.
   j. Air-driven pipes.
   k. Chilams.
   L. Bongs.
   m. Ice pipes or chillers.
   (b) “Drug paraphernalia” excludes:
      1. Hypodermic syringes, needles and other objects used or intended for use in parenterally injecting substances into the human body.
      2. Any items, including pipes, papers and accessories, that are designed for use or primarily intended for use with tobacco products.

(2) “Primarily” means chiefly or mainly.


A tobacco pipe is excluded from the definition of drug paraphernalia under sub. (1) (b) 2. The presence of residue of a controlled substance in the pipe does not change that result. State v. Martinez, 210 Wis. 2d 396, 563 N.W.2d 922 (Ct. App. 1997), 96–1899.

961.572 Determination. (1) In determining whether an object is drug paraphernalia, a court or other authority shall consider, in addition to all other legally relevant factors, the following:

(a) Statements by an owner or by anyone in control of the object concerning its use.
(b) The proximity of the object, in time and space, to a direct violation of this chapter.
(c) The proximity of the object to controlled substances or controlled substance analogs.
(d) The existence of any residue of controlled substances or controlled substance analogs on the object.
(e) Direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver it to persons whom he or she knows intend to use the object to facilitate a violation of this chapter; the innocence of an owner, or of anyone in control of the object, as to a direct violation of this chapter shall not prevent a finding that the object is designed for use or primarily intended for use as drug paraphernalia.
(f) Instructions, oral or written, provided with the object concerning its use.
(g) Descriptive materials accompanying the object that explain or depict its use.
(h) Local advertising concerning its use.
(i) The manner in which the object is displayed for sale.
(j) Whether the owner, or anyone in control of the object, is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products.
(k) The existence and scope of legitimate uses for the object in the community.
(L) Expert testimony concerning its use.

(2) In determining under this subchapter whether an item is designed for a particular use, a court or other authority shall consider the objective physical characteristics and design features of the item.

(3) In determining under this subchapter whether an item is primarily intended for a particular use, a court or other authority shall consider the subjective intent of the defendant.

fined not more than $1,000 or imprisoned for not more than 90 days or both.

(2) Any person who violates sub. (1) who is under 17 years of age is subject to a disposition under s. 938.344 (2e).

(3) No person may deliver, possess with intent to deliver, or manufacture with intent to deliver, drug paraphernalia, knowing that it will be primarily used to manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack or store methamphetamine or a controlled substance analog of methamphetamine in violation of this chapter. Any person who violates this subsection is guilty of a Class H felony.


961.575 Delivery of drug paraphernalia to a minor. (1) Any person 17 years of age or over who violates s. 961.574 (1) by delivering drug paraphernalia to a person 17 years of age or under who is at least 3 years younger than the violator may be fined not more than $10,000 or imprisoned for not more than 9 months or both.

(2) Any person who violates this section who is under 17 years of age is subject to a disposition under s. 938.344 (2e).

(3) Any person 17 years of age or over who violates s. 961.574 (3) by delivering drug paraphernalia to a person 17 years of age or under is guilty of a Class G felony.


961.576 Advertisement of drug paraphernalia. No person may place in any newspaper, magazine, handbill or other publication any advertisement, knowing that the purpose of the advertisement, in whole or in part, is to promote the sale of objects designed for use or primarily intended for use as drug paraphernalia in violation of this chapter. Any person who violates this section may be fined not more than $500 or imprisoned for not more than 30 days or both.


961.577 Municipal ordinances. Nothing in this subchapter precludes a city, village, or town from prohibiting conduct that is the same as that prohibited by s. 961.573 (1) or (2), 961.574 (1) or (2), or 961.575 (1) or (2) or a county from prohibiting conduct that is the same as that prohibited by s. 961.573 (1) or (2), 961.574 (1) or (2), or 961.575 (1) or (2).


SUBCHAPTER VII

MISCELLANEOUS

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


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

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

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

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

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

(a) Knowingly possess methamphetamine manufacturing waste.

(b) Intentionally dispose of methamphetamine manufacturing waste.

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

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

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

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

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

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

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


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

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

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

(4) No person may place on an Internet site or in any newspaper, magazine, handbill, or other publication any advertisement knowing that the purpose of the advertisement, in whole or in part, is to promote the sale of a masking agent. Any person who violates this subsection may be fined not more than $500 or imprisoned for not more than 30 days or both.

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