



***DRUG LAWS IN WISCONSIN:
OFFENSES AND PENALTIES***

Information Memorandum 98-13

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INTRODUCTION

This Information Memorandum sets forth the major offenses, and penalties for those offenses, under the Controlled Substances Act [ch. 961, Stats.] and related provisions. The Memorandum describes: (1) current prohibitions relating to manufacture, distribution, delivery, possession with intent to deliver and possession of controlled substances; (2) controlled substances violations and sanctions applicable to children; (3) asset seizure and forfeiture for controlled substances violations; (4) offenses and penalties relating to the possession, sale or use of drug paraphernalia, including separate drug paraphernalia sanctions applicable to children; and (5) other miscellaneous offenses and sanctions under ch. 961, Stats., and other statutes (including the provisions under 1997 Wisconsin Act ____, relating to the use and possession of nitrous oxide).

This Memorandum also sets forth (in Appendix A, attached) the changes in penalties for felonies (crimes punishable by imprisonment in a state prison) in the Controlled Substances Act which will be applicable to such felonies committed on or after December 31, 1999. These penalty increases (which, in general, involve increasing maximum possible prison sentences by 50% or one year, whichever is greater) are part of 1997 Wisconsin Act 283, the so-called "Truth in Sentencing Act." Although these penalty increases will be applicable to offenses committed on or after that date, Act 283 also creates a criminal penalties sentencing committee to study the structure and levels of all felony penalties in the statutes (including the ch. 961 controlled substances penalties). This committee may or may not recommend changes in these penalty levels (the committee is to make its recommendations in a report to the Legislature and the Governor due April 30, 1999), and the Legislature and the Governor may, or may not, decide to make changes in the penalties based on the recommendations or other legislative initiatives. If no law is enacted to change any of the penalties, the penalty increases as set forth in Appendix A will be applicable to offenses committed on and after December 31, 1999.

This Memorandum includes relevant laws enacted through the 1997-98 Legislative Session and replaces Information Memorandum 96-17 of the same title, dated July 12, 1996.

* This Information Memorandum was prepared by Don Salm, Senior Staff Attorney, Legislative Council Staff.

Copies of all acts referred to in this Information Memorandum may be obtained from the Documents Room, Lower Level, One East Main Street, Madison, Wisconsin 53702; telephone: (608) 266-2400.

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A. OVERVIEW OF UNIFORM CONTROLLED SUBSTANCES ACT

The primary Wisconsin statutes governing drug-related crimes are contained in ch. 961, Stats., the Uniform Controlled Substances Act. That Act is a uniform state law developed for consideration and possible enactment by the individual states by the National Conference of Commissioners on Uniform State Laws. Chapter 961 is the Uniform Act as amended and enacted in Wisconsin.

1995 Wisconsin Act 448, which went into effect on July 9, 1996, comprehensively revised the Uniform Controlled Substances Act. Act 448 renumbered ch. 161 to ch. 961, Stats; introduced the regulation of controlled substance analogs in the same manner as the controlled substances to which they are analogs were regulated; revised chemical names of many controlled substances; broadened the authority of the Controlled Substances Board to facilitate the scheduling of immediate precursors of controlled substances; and made a few definitional and scheduling changes of controlled substances.

It should be noted, due to changes made by Act 448, that wherever the term “controlled substance” is mentioned in this Information Memorandum, that the “controlled substance analog” of the controlled substances is also regulated in the same manner.

1. Classification of Substances

Subchapter II of chapter 961 classifies all controlled substances into five different categories, or “schedules,” according to: (a) each substance’s potential for abuse; (b) the existence of any accepted medical use for the substance in treatment; and (c) the potential that abuse of the particular substance may lead to psychological or physical dependence.

Schedules I and II include substances which have a high potential for abuse. For example, Schedule I includes lysergic acid diethylamide (LSD), phencyclidine (PCP), heroin and tetrahydrocannabinols (THC, the hallucinogenic contained in marijuana), and GHB (gamma-hydroxybutyric acid; this was made a Schedule I controlled substance by 1997 Wisconsin Act 220). Examples of substances listed in Schedule II include opium, codeine, morphine, cocaine, methadone and amphetamines. **Schedules III, IV and V** contain substances with lower potentials for abuse for which there is a currently accepted medical use (e.g., two of the so-called “date rape” drugs, ketamine and flunitrazepam, are Schedule III and Schedule IV controlled substances, respectively).

The **Wisconsin Controlled Substances Board** may add, delete or reschedule substances enumerated in the five schedules, by administrative rule. The statutes direct the Controlled Substances Board to use the following criteria in placing substances in each of the five schedules.

a. Schedule I

- (1) The substance has high potential for abuse; and

(2) The substance has no currently accepted medical use in treatment in the United States and lacks accepted safety for use in treatment under medical supervision [ss. 961.13 and 961.14, Stats.].

b. Schedule II

(1) The substance has high potential for abuse;

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

(3) Abuse of the substance may lead to severe psychological or physical dependence [ss. 961.15 and 961.16, Stats.].

c. Schedule III

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

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

(3) Abuse of the substance may lead to moderate or low physical dependence or high psychological dependence [ss. 961.17 and 961.18, Stats.].

d. Schedule IV

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

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

(3) Abuse of the substance may lead to limited physical dependence or psychological dependence relative to the substances included in Schedule III [ss. 961.19 and 961.20, Stats.].

e. Schedule V

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

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

(3) The substance has limited physical dependence or psychological dependence liability relative to the controlled substances included in Schedule IV [ss. 961.21 and 961.22, Stats.].

2. Controlled Substance Analogs

Current law provides for the regulation of controlled substances analogs, defining “controlled substance analog” to mean a substance the chemical structure of which is substantially similar to the chemical structure of a controlled substance in Schedule I or II, and which:

- a. 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*
- b. A particular 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.

Current law places the same restrictions on the manufacture, distribution and possession of controlled substance analogs as it places on the manufacture, distribution and possession of controlled substances. Under current law, the unlawful manufacture, distribution or possession of a controlled substance analog is subject to the same penalties as the unlawful manufacture, distribution or possession of the controlled substance for which it is an analog. Thus, for example, the unlawful possession of an amount of a controlled substance analog of cocaine is subject to the same penalties as the unlawful possession of an identical amount of cocaine [s. 961.01 (4m), Stats.]

3. General Prohibitions

Subchapter III of chapter 961 generally prohibits the manufacture, distribution, delivery, dispensing and use of controlled substances by any person, except:

- a. A person who is registered under federal law to possess, manufacture, distribute, deliver, dispense or use the substances in Wisconsin and the person’s agents or employees;
- b. A common or contract carrier or warehousekeeper, or employe thereof, whose possession of any controlled substance is in the course of business or employment;
- c. A medical practitioner;
- d. A person to whom controlled substances have been prescribed;
- e. A person authorized to use controlled substances in research, instruction and other specialties; or
- f. A person who is otherwise authorized to possess such substances under federal law [s. 961.32, Stats.].

4. “Presumptive” Minimums: Court’s Authority to Deviate From Mandatory Minimum Sentences

Current law provides that any minimum sentence under ch. 961, Stats., is a “**presumptive**” minimum. A court may impose a sentence which is **less than** a “presumptive” minimum or place the person on **probation** only if it finds that the best interests of the community will be served and the public will not be harmed and if it places its reasons on the record. Thus, the minimum penalties are not, in fact, mandatory minimums, but presumptive minimums [s. 961.438, Stats.].

5. Probation Permitted for Crimes With Mandatory Minimums

Under current law, in general, if a crime is punishable by a mandatory minimum period of imprisonment, the offender is not eligible for probation [s. 973.09 (1), Stats.; *State v. Medaugh*, 148 Wis. 2d 204, 435 N.W. 2d 269 (Ct. App. 1988)]. However, current law creates an exception to this rule by specifying that, if a person commits a crime that is punishable by a **mandatory or presumptive minimum** period of imprisonment of one year or less, the court may place the person on probation if the court orders, as a condition of probation, that the person be confined in a county jail or Huber facility for at least the mandatory minimum period. A person confined under this provision is eligible to earn good time [s. 973.09 (1) (d), Stats.].

6. Drug Abuse Program Improvement Surcharge

1987 Wisconsin Act 339 created a surcharge equal to 1/2 of the amount of any fine imposed for the crimes of possession, manufacture, delivery and possession with intent to manufacture or deliver a controlled substance and conspiracy to engage in any of these activities. The surcharges are deposited with the Department of Health and Family Services (DHFS) to be expended on alcohol and other drug abuse prevention, intervention and treatment programs. This provision became effective on April 28, 1988, and applies only to violations occurring after that date [s. 961.41 (5), Stats.].

7. Determining Amount of Controlled Substance for Purpose of Applying Appropriate Penalty

Current law provides that, for the purpose of determining the appropriate penalty for unlawful manufacture, distribution or delivery of certain controlled substances or controlled substance analogs, unlawful possession with intent to manufacture, distribute or deliver certain controlled substances or unlawful distribution or possession with intent to distribute or deliver certain controlled substances within 1,000 feet of certain premises, the amount includes the weight of the controlled substance **together with** any compound, mixture, diluent or other substance **mixed or combined with the controlled substance** (e.g., sugar). The specified controlled substances are cocaine, cocaine base, heroin, PCP, LSD, psilocin, psilocybin, amphetamine, methamphetamine, methcathinone and THC (the chemical in marijuana) [s. 961.41 (1r), Stats.].

B. PENALTIES FOR THE MANUFACTURE, DISTRIBUTION, DELIVERY OR POSSESSION OF CONTROLLED SUBSTANCES

1. Cocaine and Cocaine Base (“Crack”) Offenses

Table 1, below, sets forth the penalty structure for cocaine offenses. For cocaine, cocaine base (“crack” cocaine) and other major controlled substances, as described in succeeding sections of this Memorandum, any applicable minimum and maximum fines and minimum and maximum periods of imprisonment are **doubled** if any of the following applies:

- a. It is the person’s second or subsequent offense.
- b. The cocaine or cocaine base was distributed or delivered by a person 18 years of age or older to a person under 18 years of age who is at least three years his or her junior.

Note that, in the tables in this Memorandum, unless otherwise specified by “may,” the penalties cited **must** be imposed by the court, subject to the concept of “presumptive” minimums described in Section A, 3, above.

TABLE 1

PENALTIES FOR ILLEGAL MANUFACTURE, DISTRIBUTION OR DELIVERY OF POSSESSION WITH INTENT TO MANUFACTURE, DISTRIBUTE OR DELIVER, OR POSSESSION OF COCAINE OR COCAINE BASE (“CRACK”)

*[s. 961.41 (1) (cm), (1m) (cm) and (3m), Stats.]**

OFFENSE	AMOUNT	PENALTY** (FINE/PERIOD OF IMPRISONMENT)***
A. MANUFACTURE, DISTRIBUTION OR DELIVERY OF COCAINE OR COCAINE BASE	5 grams or less	Not more than \$500,000 (<u>may</u> be imprisoned up to 10 years)
	More than 5 grams to 15 grams	Not more than \$500,000 (1 to 15 years)
	More than 15 grams to 40 grams	Not more than \$500,000 (3 to 20 years)
	More than 40 grams to 100 grams	Not more than \$500,000 (5 to 30 years)
	More than 100 grams	Not more than \$500,000 (10 to 30 years)
B. POSSESSION OF COCAINE OR COCAINE BASE WITH INTENT TO MANUFACTURE, DISTRIBUTE OR DELIVER	5 grams or less	Not more than \$500,000 (up to 10 years)
	More than 5 grams to 15 grams	Not more than \$500,000 (1 to 15 years)
	More than 15 grams to 40 grams	Not more than \$500,000 (3 to 20 years)
	More than 40 grams to 100 grams	Not more than \$500,000 (5 to 30 years)
	More than 100 grams	Not more than \$500,000 (10 to 30 years)
C. POSSESSION OR ATTEMPTED POSSESSION OF COCAINE OR COCAINE BASE	—	Not more than \$5,000 (<u>may</u> be imprisoned not more than one year in county jail)

*See Appendix A for penalties applicable to offenses committed on or after December 31, 1999, as set forth in 1997 Wisconsin Act 283 (“Truth in Sentencing”).

**Unless otherwise specified, a violator must be fined and imprisoned at least the minimum amounts and periods set forth in the table [see Section A, (4) in the text, above, on “presumptive” minimums].

***Upon a second or subsequent offense, the minimum and maximum fines and periods of imprisonment **are doubled**.

2. Heroin, PCP, Amphetamine, Methamphetamine and Methcathinone Offenses

Under current law, whoever illegally manufactures, distributes or delivers, or possesses with intent to manufacture, distribute or deliver, heroin, PCP (“Angel Dust”), amphetamine, methamphetamine or methcathinone (“Cat”) is subject to penalties that vary depending upon the amount of the substance involved. Current law establishes four separate penalty ranges for offenses involving more than 10 grams of heroin, PCP, amphetamine, methamphetamine or methcathinone. The penalty ranges are set forth in Table 2, below.

TABLE 2

**PENALTIES FOR ILLEGAL MANUFACTURE, DISTRIBUTION AND DELIVERY OF,
POSSESSION WITH INTENT TO MANUFACTURE, DISTRIBUTE
OR DELIVER, OR POSSESSION OF HEROIN, PCP, AMPHETAMINE,
METHAMPHETAMINE OR METHCATHINONE**

*[s. 961.41 (1) (d) and (e), (1m) (d) and (e), (3g), (a) 2. and (3g) (d), Stats.]**

OFFENSE	AMOUNT	PENALTY** (FINE/PERIOD OF IMPRISONMENT)***
A. MANUFACTURE, DISTRIBUTION OR DELIVERY OF HEROIN	3 grams or less	\$1,000 to \$200,000 (<u>may</u> be imprisoned up to 15 years)
	More than 3 grams to 10 grams	\$1,000 to \$250,000 (6 months to 15 years)
	More than 10 grams to 50 grams	\$1,000 to \$500,000 (1 to 15 years)
	More than 50 grams to 200 grams	\$1,000 to \$500,000 (3 to 15 years)
	More than 200 grams to 400 grams	\$1,000 to \$500,000 (5 to 15 years)
	More than 400 grams	\$1,000 to \$1,000,000 (10 to 30 years)
	B. MANUFACTURE, DISTRIBUTION OR DELIVERY OF PCP, AMPHETAMINE, METHAMPHETAMINE OR METHCATHINONE	3 grams or less
More than 3 grams to 10 grams		\$1,000 to \$250,000 (6 months to 5 years)
More than 10 grams to 50 grams		\$1,000 to \$500,000 (1 to 15 years)
More than 50 grams to 200 grams		\$1,000 to \$500,000 (3 to 15 years)
More than 200 grams to 400 grams		\$1,000 to \$500,000 (5 to 15 years)
More than 400 grams		\$1,000 to \$1,000,000 (10 to 30 years)

*See Appendix A for penalties applicable to offenses committed on or after December 31, 1999, as set forth in 1997 Wisconsin Act 283 (“Truth in Sentencing”).

Unless otherwise specified, a violator **must be fined and imprisoned at least the minimum amounts and periods set forth in the Table (but see Section A, 4, above, on “presumptive” minimums).

***For items A to D (in the table), upon a second or subsequent offense, the minimum and maximum fines and periods of imprisonment **are doubled**. For items E and F (in the table), upon a second or subsequent offense, the offender **may** be fined or imprisoned, or both, up to twice the amount for a first offense.

<i>OFFENSE</i>	<i>AMOUNT</i>	<i>PENALTY** (FINE/PERIOD OF IMPRISONMENT)***</i>
C. POSSESSION OF HEROIN WITH INTENT TO MANUFACTURE, DISTRIBUTE OR DELIVER	3 grams or less	\$1,000 to \$100,000 (<u>may</u> be imprisoned up to 15 years)
	More than 3 grams to 10 grams	\$1,000 to \$200,000 (6 months to 15 years)
	More than 10 grams to 50 grams	\$1,000 to \$500,000 (1 to 15 years)
	More than 50 grams to 200 grams	\$1,000 to \$500,000 (3 to 15 years)
	More than 200 grams to 400 grams	\$1,000 to \$500,000 (5 to 15 years)
	More than 400 grams	\$1,000 to \$1,000,000 (10 to 30 years)
	D. POSSESSION OF PCP, AMPHETAMINE, METHAMPHETAMINE OR METHCATHINONE WITH INTENT TO MANUFACTURE, DISTRIBUTE OR DELIVER	3 grams or less
More than 3 grams to 10 grams		\$1,000 to \$200,000 (6 months to 5 years)
More than 10 grams to 50 grams		\$1,000 to \$500,000 (1 to 15 years)
More than 50 grams to 200 grams		\$1,000 to \$500,000 (3 to 15 years)
More than 200 grams to 400 grams		\$1,000 to \$500,000 (5 to 15 years)
More than 400 grams		\$1,000 to \$1,000,000 (10 to 30 years)
E. POSSESSION OR ATTEMPTED POSSESSION OF HEROIN		---
F. POSSESSION OR ATTEMPTED POSSESSION OF PCP, AMPHETAMINE, METHAMPHETAMINE OR METHCATHINONE	---	<u>May</u> be fined up to \$5,000 (<u>may</u> be imprisoned up to 1 year) (or both)

3. Other Controlled Substances Offenses, Including Marijuana and LSD

Table 3, below, sets forth the penalty structure for manufacture, distribution, delivery or possession of controlled substances not covered by Tables 1 and 2, above, including those penalties applicable to THC, the chemical found in marijuana, and LSD.

TABLE 3

**PENALTIES FOR ILLEGAL MANUFACTURE, DISTRIBUTION OR DELIVERY OF
POSSESSION WITH INTENT TO DELIVER, OR POSSESSION OF
CONTROLLED SUBSTANCES NOT COVERED BY TABLES 1 AND 2**
[s. 961.41 (1) (a), (b), (f), (g), (h), (i) and (j), (1m) (a), (b), (f), (g), (h),
(i) and (j), (3g) (a) 1., (b), (d) and (e), Stats.]*

OFFENSE	AMOUNT	PENALTY** (FINE/PERIOD OF IMPRISONMENT)***
A. MANUFACTURING, DISTRIBUTING OR DELIVERING A CONTROLLED SUBSTANCE		
1. Other Schedule I or II narcotics	—	May be fined up to \$25,000 (may be imprisoned up to 15 years) (or both)
2. LSD	One gram or less	\$1,000 to \$200,000 (may be imprisoned up to 5 years)
3. LSD	More than 1 gram to 5 grams	\$1,000 to \$250,000 (6 months to 5 years)
4. LSD	More than 5 grams	\$1,000 to \$500,000 (1 to 15 years)
5. Psilocin or Psilocybin	100 grams or less	Same as penalty under A, 2, above
6. Psilocin or Psilocybin	More than 100 grams to 500 grams	Same as penalty under A, 3, above
7. Psilocin or Psilocybin	More than 500 grams	Same as penalty under A, 4, above
8. THC (chemical in marijuana)****	500 grams or less, or 10 or fewer plants containing THC or less	\$500 to \$25,000 (may be imprisoned up to 3 years)
9. THC****	More than 500 grams to 2,500 grams, or more than 10 plants containing THC to 50 plants containing THC	\$1,000 to \$50,000 (3 months to 5 years)

*See Appendix A for penalties applicable to offenses committed on or after December 31, 1999, as set forth in 1997 Wisconsin Act 283 (“Truth in Sentencing”).

For items A, 2 to 10; B, 2 to 10; and C, 2 and 3, upon a second or subsequent offense, the minimum and maximum fines and periods of imprisonment **are doubled. For other items in this Table, upon a second or subsequent offense, the offender **may** be fined or imprisoned, or both, up to twice the amount for the first offense.

***Unless otherwise specified, a violator **must** be fined and imprisoned at least the minimum amounts and periods set forth in the Table (but see Section A, 4, above, on “presumptive” minimums).

****If different penalty provisions apply to a person depending on whether the weight of THC or the number of marijuana plants is considered, the greater penalty provision applies [s. 961.41 (1q), Stats.].

<i>OFFENSE</i>	<i>AMOUNT</i>	<i>PENALTY** (FINE/PERIOD OF IMPRISONMENT)***</i>
10. THC****	More than 2,500 grams or more than 50 marijuana plants	\$1,000 to \$100,000 (1 to 10 years)
11. Other Schedule I or II non-narcotics	---	<u>May</u> be fined up to \$15,000 (<u>may</u> be imprisoned up to 5 years) (or both)
12. Schedule III	---	\$0 to \$15,000 (may be imprisoned up to 5 years)
13. Schedule IV	---	<u>May</u> be fined up to \$10,000 (may be imprisoned up to 3 years) (or both)
14. Schedule V	---	<u>May</u> be fined up to \$5,000 (may be imprisoned up to 2 years) (or both)
B. POSSESSION OF A CONTROLLED SUBSTANCE WITH INTENT TO MANUFACTURE, DISTRIBUTE OR DELIVER		
1. Other Schedule I or II narcotics	---	<u>May</u> be fined up to \$25,000 (<u>may</u> be imprisoned up to 15 years) (or both)
2. LSD	One gram or less	\$1,000 to \$100,000 (<u>may</u> be imprisoned up to 5 years)
3. LSD	Over one gram and up to 5 grams	\$1,000 to \$200,000 (6 months to 5 years)
4. LSD	Over 5 grams	\$1,000 to \$500,000 (1 to 15 years)
5. Psilocin or Psilocybin	100 grams or less	Same as penalty under B, 2, above
6. Psilocin or Psilocybin	Over 100 grams and up to 500 grams	Same as penalty under B, 3, above
7. Psilocin or Psilocybin	Over 500 grams	Same as penalty under B, 4, above
8. THC (chemical in marijuana)****	500 grams or less, or 10 marijuana plants or less	\$500 to \$25,000 (may be imprisoned up to 3 years)
9. THC****	Over 500 grams and up to 2,500 grams, or more than 10 plants containing THC to 50 plants containing THC	\$1,000 to \$50,000 (3 months to 5 years)
10. THC****	Over 2,500 grams, or more than 50 plants containing THC	\$1,000 to \$100,000 (1 to 10 years)
11. Other Schedule I, II or III non-narcotics	---	<u>May</u> be fined up to \$15,000 (<u>may</u> be imprisoned up to 5 years) (or both)
12. Schedule III	---	<u>May</u> be fined up to \$15,000 (may be imprisoned up to 5 years) (or both)

<i>OFFENSE</i>	<i>AMOUNT</i>	<i>PENALTY** (FINE/PERIOD OF IMPRISONMENT)***</i>
13. Schedule IV	---	<u>May</u> be fined up to \$10,000 (may be imprisoned up to 3 years) (or both)
14. Schedule V	---	<u>May</u> be fined up to \$5,000 (may be imprisoned up to 1 year) (or both)
C. UNLAWFUL POSSESSION OR ATTEMPTED POSSESSION OF CONTROLLED SUBSTANCES		
1. Other Schedule I or II narcotics	---	<u>May</u> be fined up to \$5,000 (<u>may</u> be imprisoned up to 1 year) (or both)
2. LSD, PCP, Amphetamine, Methamphetamine, Methcathinone Psilocin or Psilocybin	---	<u>May</u> be fined up to \$5,000 (<u>may</u> be imprisoned up to 1 year in county jail) (or both)
3. THC (chemical in marijuana)	---	<u>May</u> be fined up to \$1,000 (may be imprisoned up to 6 months) (or both)
4. Other Schedule I or II non-narcotics	---	<u>May</u> be fined up to \$500 (may be imprisoned up to 30 days) (or both)
5. GHB (Gamma Hydroxybutyrate), Ketamine or Flunitrazepam*****	---	<u>May</u> be fined not more than \$5,000 (may be imprisoned for not more than 2 years) (or both)
6. Schedule III, IV or V	---	Same as penalty under C, 4, above
D. CONSPIRACY TO MANUFACTURE, DISTRIBUTE, DELIVER OR POSSESS WITH INTENT TO MANUFACTURE, DISTRIBUTE OR DELIVER CONTROLLED SUBSTANCES [S. 961.41 (1X), STATS.]		
Controlled substances set forth in s. 961.41 (1) (cm) to (h) and (1m) (cm) to (h), Stats.	---	Same as penalties applicable to manufacturing, delivering or possessing with intent to manufacture or deliver the controlled substance.

TABLE 4

PENALTIES FOR SELECTED OFFENSES IN CH. 961

OFFENSE	PENALTY*
A. DISTRIBUTION OR DELIVERY OF CONTROLLED SUBSTANCES BY A PERSON 17 YEARS OF AGE OR OLDER TO A MINOR (17 YEARS OF AGE OR UNDER) THREE OR MORE YEARS YOUNGER [S. 961.46, STATS.]	
1. Cocaine, cocaine base, heroin, PCP, LSD, Psilocin, Psilocybin, Amphetamine, Methamphetamine, Methcathinone and THC	Minimum and maximum fines and prison terms applicable to distribution and delivery of the controlled substance <u>must</u> be <u>doubled</u> .
2. All controlled substances other than those under 1, above	Same fine applicable to distribution or delivery of substance; up to twice the prison term; or both.
B. DISTRIBUTION OR DELIVERY OF CONTROLLED SUBSTANCES TO PRISONERS [S. 961.465, STATS.]	
1. Cocaine, cocaine base, heroin, PCP, LSD, Psilocin, Psilocybin Amphetamine, Methamphetamine, Methcathinone and THC	Minimum and maximum fines and prison terms applicable to distribution and delivery of the controlled substance involved <u>must</u> be <u>doubled</u> .
2. All controlled substances other than those under 1 and 2, above	Same fine applicable to distribution or delivery of substance; or up to twice the prison term; or both.
C. DISTRIBUTION OR DELIVERY OF A CONTROLLED SUBSTANCE WITHIN 1,000 FEET OF CERTAIN PREMISES** [S. 961.49, STATS.]	
1. Cocaine, cocaine base, heroin, PCP, LSD, Psilocin, Psilocybin, Amphetamine, Methamphetamine, Methcathinone, any form of THC	Maximum term of imprisonment applicable to distribution of particular substance increased by 5 years.
2. Other Schedule I or II controlled substances, except under 3, below	Term of imprisonment imposed on offender <u>must</u> be <u>at least</u> 3 years; not eligible for parole for at least 3 years.
3. Not more than 25 grams of THC or not more than five plants containing THC	Term of imprisonment imposed on offender <u>must</u> be <u>at least</u> 1 year; not eligible for parole for at least 1 year.

*Upon a second or subsequent offense, the offender may be fined or imprisoned, or both, up to twice the amount for the first offense.

**The premises listed in the relevant statutes are: (1) private or public school premises; (2) a school bus; (3) a state, county, city, village or town park; (4) a swimming pool open to members of the public; (5) a youth center or community center; (6) a jail or correctional facility as defined in s. 961.01 (12m), Stats.; (7) a scattered-site public housing project, as defined in s. 961.01 (20i), Stats.; or (8) a multi-unit public housing project, as defined in s. 961.01 (14m), Stats.

<i>OFFENSE</i>	<i>PENALTY*</i>
D. POSSESSION OR ATTEMPTED POSSESSION OF A CONTROLLED SUBSTANCE WITHIN 1,000 FEET OF CERTAIN PREMISES** [SS. 948.34 (14t) AND 961.495, STATS.]	
Any Schedule I or II controlled substance***	Additional penalty of 100 hours of community service work <u>must</u> be imposed on offender. If a juvenile is adjudicated delinquent for this offense, the juvenile is required to participate in a supervised work program or 100 hours of other community service.

4. Using a Child for Illegal Drug Manufacture, Distribution or Delivery

Current law prohibits the use of a child to manufacture, distribute or deliver controlled substances. Under current law, any person who has attained the age of 17 years who knowingly solicits, hires, directs, employs or uses a person who is 17 years of age or under for the manufacture, distribution or delivery of any controlled substance may be fined not more than \$50,000 or imprisoned not more than 10 years, or both. (Note: See **Appendix A** for the effect of 1997 Wisconsin Act 283 on this penalty, for crimes committed on or after December 31, 1999.) The knowledge requirement does **not** require proof of knowledge of the age of the child and it is not a defense that the violator mistakenly believed that the child had attained the age of 18 years. This penalty, created in 1989 Wisconsin Act 121, replaces the current criminal solicitation penalties in s. 939.30, Stats., for the covered offenses.

Any individual convicted of using a child to manufacture, distribute or deliver controlled substances may also be prosecuted and convicted for manufacture, distribution and delivery of a controlled substance based on the same conduct [s. 961.455, Stats.].

5. Use of Public Transit Vehicles to Transport Certain Controlled Substances

Current law establishes a **penalty enhancer** applicable to use of public transit vehicles to transport Schedule I or II controlled substances. Under current law, if a person violates s. 961.41 (1) or (1m), Stats. (relating to manufacture, distribution or delivery of a controlled substance or possession of a controlled substance with intent to deliver), under **all** of the following circumstances, the maximum period of imprisonment for the violation **may** be increased by **not more than five years**:

a. The violation involves the distribution or delivery of, or the possession with intent to distribute or deliver, any controlled substance included in Schedule I or II.

b. The person knowingly uses a public transit vehicle during the violation. “Public transit vehicle” is defined to mean any vehicle used for providing transportation services to the

***If different penalty provisions apply to a person depending on whether the weight of THC or the number of marijuana plants is considered, the greater penalty provision applies.

general public, including the transportation of either persons or property [ss. 961.01 (20h) and 961.492, Stats.].

C. WAIVER OF JUVENILE COURT JURISDICTION OVER JUVENILES WHO COMMIT CERTAIN SERIOUS DRUG OFFENSES

1. Waiver in General

Under the Juvenile Justice Code [ch. 938, Stats., as created by 1995 Wisconsin Act 77], if a juvenile (i.e., a person who has not attained 17 years of age) does not come within the “14 or older” waiver provision under Section C, 2, below, the juvenile must be age 15 or 16 for waiver of juvenile court jurisdiction to adult court. Current law specifies that the juvenile court may waive its jurisdiction after a hearing at which the court determines the matter has “prosecutive merit,” and the court considers specified criteria, such as the personality and prior record of the juvenile, the type and seriousness of the alleged offense and the adequacy of the treatment available for the juvenile in the juvenile justice system. After a juvenile court waives its jurisdiction over a juvenile, the juvenile may be tried in a court of criminal jurisdiction (adult court) [s. 938.18, Stats.].

2. Waiver at Age 14 or Over for Serious Drug and Other Offenses

Current law authorizes a juvenile court to waive its jurisdiction and transfer to the adult court system a juvenile who, on or after the juvenile’s **14th** birthday, is alleged to have committed certain offenses, including:

a. **Actual drug manufacturing, distribution or delivery** (but **not** for drug possession with intent to manufacture, distribute or deliver).

b. A violation committed at the request of, or for the benefit of, a “criminal gang,” as defined in the statutes, that would constitute **a felony under ch. 961, Stats. (the Controlled Substances Act)**, or under the Criminal Code [chs. 939 to 948, Stats.] if committed by an adult [s. 938.18, Stats.].

D. PENALTIES AND LICENSE SANCTIONS FOR, AND OTHER PROVISIONS APPLICABLE TO, CONTROLLED SUBSTANCES OFFENSES COMMITTED BY JUVENILES

Current law specifies that, in addition to the general dispositions provided for delinquency under ch. 938, Stats. (the Juvenile Justice Code), the court may impose the following forfeitures and, for certain offenses, license sanctions on juveniles who violate the controlled substances laws, ch. 961, Stats.

1. Suspension or Revocation of Motor Vehicle Operating Privilege

Under current law, if a juvenile is found to have violated ch. 961, Stats., the judge **must** either **suspend or revoke** the juvenile's motor vehicle operating privilege (i.e., driver's license) for not less than **six months** nor more than **five years**. The court must immediately take possession of any suspended or revoked license and forward it to the Department of Transportation (DOT) together with the notice of suspension or revocation clearly stating that the suspension or revocation is for a violation of ch. 961. This provision does not apply to violations under s. 961.573 (2), 961.574 (2) (manufacture or delivery of drug paraphernalia by a child) or 961.575 (2) (delivery of drug paraphernalia by a child **to another child**), Stats., or a local ordinance that strictly conforms to one of those statutes [s. 938.34 (14r), Stats.].

2. Sanctions for Manufacture, Distribution, Delivery or Possession of Controlled Substances

a. Manufacture, Distribution, Delivery or Possession With Intent to Deliver

Under current law, in addition to the license sanction described in Section D, 1, above, other dispositions available for delinquency, illegal manufacture, distribution or delivery of controlled substances, or possession of controlled substances with intent to manufacture, distribute or deliver the substance, subjects a juvenile to the following penalties:

- (1) For a first violation, a forfeiture of not less than \$250 nor more than \$500.
- (2) For a violation committed within 12 months of a previous violation, a forfeiture of not less than \$300.
- (3) For a violation committed within 12 months of two or more previous violations, a forfeiture of \$500.

b. Possession

Under current law, in addition to the license sanction described in Section D, 1, above, and other dispositions available for delinquency, the illegal **possession or attempted possession** of controlled substances subjects a juvenile to the following penalties:

- (1) For a first violation, a forfeiture of not more than \$50.
- (2) For a violation committed within 12 months of a previous violation, a forfeiture of not more than \$100.
- (3) For a violation committed within 12 months of two or more previous violations, a forfeiture of not more than \$500.

If this offense is committed on or within 1,000 feet of certain premises, the additional penalty set forth in Table 4, item D, above, applies.

c. Stay of Order; Assessment, Education or Treatment

Under current law, the court is authorized, with the agreement of the child, to stay the execution of this order and enter an order requiring the child to do any of the following:

- (1) Submit to an alcohol and other drug abuse assessment at an approved treatment facility;
- (2) Participate in an outpatient alcohol or other drug abuse treatment program, if the assessment recommends treatment; or
- (3) Participate in a court-approved pupil assistance program provided by the juvenile's school board or an alcohol or other drug abuse education program.

The juvenile's participation in a pupil assistance program is subject to the approval of the juvenile's school board.

If the child elects not to obtain the assessment, education or treatment or does not comply with these options, the court must order the original disposition [s. 938.34 (14r), (14s) and (14t), Stats.].

E. JUVENILE COURT ORDERS APPLICABLE TO ADULTS IN GENERAL AND TO PARENTS

1. Orders Applicable to Any Person 17 Years or Older

If in the hearing of a case of a juvenile alleged to be delinquent under s. 938.12, Stats., or in need of protection or services under s. 938.13, Stats., it appears that **any person 17 years of age or over** has been guilty of contributing to, encouraging, or tending to cause by any act or omission, such condition of the juvenile, the court may make orders with respect to the conduct of such person in his or her relationship to the juvenile, including orders determining the ability of the person to provide for the maintenance or care of the juvenile and directing when, how and where funds for the maintenance or care shall be paid.

2. Orders Applicable to a Parent, Guardian or Legal Custodian

In a proceeding in which a juvenile has been adjudicated delinquent or has been found to be in need of protection or services under s. 938.13, Stats., the court may order the juvenile's parent, guardian or legal custodian to comply with any conditions determined by the court to be necessary for the juvenile's welfare. An order may include an order to participate in mental health treatment, anger management, individual or family counseling or parent training and education and to make a reasonable contribution, based on ability to pay, toward the cost of those services. A court may *not* order inpatient treatment for a juvenile's parent, guardian or legal custodian. All inpatient treatment commitments or admissions must be conducted in accordance with ch. 51, Stats.

Under 1997 Wisconsin Act 205 (effective May 13, 1998):

a. In a proceeding in which a juvenile has been found to have committed a delinquent act or a civil law or ordinance violation that has resulted in damage to the property of another, or in actual physical injury to another excluding pain and suffering, the court may order a parent who has custody, as defined in s. 895.035 (1), Stats., of the juvenile to make **reasonable restitution** for the damage or injury.

b. In a proceeding in which the court has determined under s. 938.34 (8) or 938.343 (2), Stats., that the imposition of a forfeiture would be in the best interest of the juvenile and in aid of rehabilitation, the court may order a **parent** who has custody, as defined in s. 895.035 (1), of the juvenile to pay the forfeiture. Such order must include a finding that the parent who has custody of the juvenile is financially able to pay the amount ordered and must allow up to 12 months after the date of the order for the payment.

3. Hearing

No order under Section E, 1 or 2, above, may be entered until the person who is the subject of the contemplated order is given an opportunity to be heard on the contemplated order. The court must cause notice of the time, place and purpose of the hearing to be served on the person personally at least 10 days before the date of hearing. The procedure in these cases must, as far as practicable, be the same as in other cases in the court. At the hearing, the person may be represented by counsel and may produce and cross-examine witnesses. Any person who fails to comply with any order issued by a court under Section E, 1 or 2, above, may be proceeded against for **contempt of court**. If the person's conduct involves a crime, the person may be proceeded against under the criminal law [s. 938.45, Stats.].

F. PENALTIES AND CIVIL ACTIONS APPLICABLE TO CONTROLLED SUBSTANCES OFFENSES COMMITTED BY GANGS

1. Definition of a Criminal Gang

Current law defines a "criminal gang" as an ongoing organization, association or group of **three or more people**, that has as one of its primary activities the commission of one or more of the offenses specified in the definition of "pattern of criminal gang activity"; that has a common name or an identifying symbol; and whose members individually or collectively engage in a **pattern of criminal gang activity** [s. 939.22 (9), Stats.]. "A pattern of criminal gang activity" is defined as the commission, attempt or solicitation to commit **two or more** statutorily-specified offenses, including manufacture, distribution or delivery of a controlled substance as prohibited by s. 961.41 (1), Stats.

The definition specifies that the pattern is established if: (a) at least one of the offenses occurs after December 25, 1993 (the effective date of the law creating the definition); (b) the last

of the offenses occurred within three years after a prior offense; and (c) the offenses are committed, attempted or solicited on separate occasions by two or more people [s. 939.22 (21), Stats.].

2. Gang-Related Crime: Violation of Court Order Prohibiting Contact With Gang Members

Violation of a court order prohibiting contact with gang members is a **Class A misdemeanor** (a fine of not more than \$10,000 or imprisonment for not more than nine months, or both) if **all** of the following apply:

- a. The court finds that the person subject to the court order is a gang member;
- b. The court had informed the person of the contact restriction; and
- c. The order specifies how long the restriction applies.

3. Gang-Related Crime: Intentional Solicitation of a Child for Gang Activity

Under current law, any person who **intentionally solicits** a child to participate in criminal gang activity is guilty of a **Class E felony** (a fine of not more than \$10,000 or imprisonment of not more than two years, or both). (Note: The maximum imprisonment will be increased to **five years** under 1997 Wisconsin Act 283 for crimes committed on or after December 31, 1999.) “Criminal gang activity” is defined to mean the commission of, or attempt to commit or solicitation to commit one or more of the offenses as noted in Section F, 1, above (i.e., including manufacture, distribution or delivery of a controlled substance), committed for the benefit of, at the direction of or in association with any criminal gang, with specific intent to promote, further or assist in any criminal conduct by criminal gang members.

4. Gang-Related Penalty Enhancer

Current law provides a penalty enhancement (similar to the dangerous weapons penalty enhancement under current s. 939.63, Stats.) for **any criminal drug offense under ch. 961, Stats.**, or any crime under the Criminal Code committed for the benefit of, at the direction of or in association with any criminal gang, with the specific intent to promote or assist in any criminal conduct by gang members. Penalties may be increased by **up to six months** for a **misdemeanor** and by **three to five years** for a **felony** depending on the maximum penalty for the underlying crime [s. 939.625, Stats.].

5. Civil Action for Criminal Gang Activity

a. State or Local Government Action

Current law allows the state, county, city, town, village or school district to bring a civil action for any expenditure of money for the allocation or reallocation of law enforcement, fire

fighting, emergency or other personnel or resources **relating to criminal gang activity** (including manufacture, distribution or delivery of controlled substances), as defined in item 1, above. The action may be brought against a criminal gang or any member or leader who: (1) authorizes, causes, orders, ratifies, requests or suggests a criminal gang activity; **or** (2) participates in the criminal gang activity. The criminal gang and any participating gang members must be named as defendants in the action and all unknown criminal gang members may be named as a class to the action. The civil action may be brought regardless of any criminal action or disposition.

Current law authorizes the service of a summons upon any member or leader of a criminal gang and provides that a judgment rendered after service is a binding adjudication against the criminal gang. A court is authorized to:

(1) Grant an **injunction** restraining an individual from committing an act that would injure the state, political subdivision or school district or order other relief the court determines is proper;

(2) Order a gang member to **divest** himself or herself of any interest or involvement in any criminal gang activity; and

(3) **Restrict** a gang member from engaging in any future criminal gang activity.

Current law: (1) requires that a final judgment in favor of the state, political subdivision or school district must include **compensatory damages** for any expenditure of money resulting from the criminal gang activity and compensation for the costs of investigation, prosecution and **reasonable attorneys fees**; and (2) allows the final judgment to include **punitive damages** assessed against a participating gang member or leader.

b. Individual Action

Current law allows a person to bring a civil action for any physical injury or property damage or loss resulting from any criminal gang activity. The burden of proof rests with the plaintiff who must prove his or her case by a preponderance of the evidence. The action is for the actual damages sustained and punitive damages may be awarded. Further, an award includes **attorneys fees and investigation and litigation costs**. The civil action may be brought regardless of any criminal action or disposition.

c. Statute of Limitations

Current law establishes a **six-year** statute of limitations for the civil action described in Section F, 5, a and b, above [s. 895.77, Stats.].

6. Nuisance; Condemnation of Gang Buildings

Under current law, a building or structure used to manufacture, deliver or distribute a controlled substance is a public nuisance. The city, town or village where the building or structure is located may bring an action to abate the nuisance and prevent the continuance of the nuisance. The court is required to order the removal and sale of the personal property from a building or structure that is declared a nuisance, order the building or structure closed until all building code violations are corrected or, if there is no compliance with an order to repair the premises, order the building or structure sold [ss. 66.05 (1) (b), 823.113 and 823.114, Stats.].

Current law provides that any building or structure used as a **meeting place of a criminal gang or used to facilitate the activities of a criminal gang** (refer to Section F, 1, above, for the definition of a “criminal gang”) may be declared a public nuisance. This allows a city, town or village to close and sell or raze such buildings in order to abate the activity. Further, current law provides that proceeds from any sale must be paid in equal shares to:

- a. The local law enforcement agency for gang-related law enforcement activities; and
- b. The treasurer of the city, town or village for gang abatement programs [s. 823.113, Stats.].

G. ASSET FORFEITURE AND RELATED ISSUES

1. Asset Forfeiture Proceedings Under the Uniform Controlled Substances Act or the Criminal Code

Under subch. V of ch. 961, certain items related to violations of the Controlled Substances Act may be seized by a law enforcement officer or a Pharmacy Examining Board employe and are subject to forfeiture. The items which are subject to seizure and forfeiture include:

- a. All controlled substances which have been manufactured, delivered, distributed, dispensed or acquired in violation of ch. 961, Stats.
- b. All raw materials, products and equipment used in manufacturing, distributing or delivering any controlled substance in violation of ch. 961, Stats.
- c. All property used or intended for use as a container for the substances or products described under items a and b, above.
- d. All vehicles used to transport any of the above-described items.
- e. All books, records and research products which are used or intended for use in violation of ch. 961, Stats.

f. All real and personal property, including money, derived from or realized through the commission of any crime under the ch. 961, Stats. [s. 961.55 (1), Stats.].

Under the Act, the property listed above may be seized upon process issued by a court. In addition, the property may be seized, without process, if any of the following apply:

a. The seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative warrant.

b. The property has been the subject of a prior judgment in a criminal injunction or forfeiture proceeding under ch. 961, Stats.

c. The officer or employe has probable cause to believe that the property is dangerous to health or safety.

d. The officer or employe has probable cause to believe that the property was used or is intended to be used in violation of ch. 961, Stats., that the property was derived from or realized through a crime under ch. 961, Stats., or that the property is a vehicle which was used to transport a controlled substance in violation of ch. 961, Stats.

Current law specifies: (a) proceedings which must be followed to allow persons having claims to the seized property to assert those claims; and (b) what the seizing agency may or must do with the various types of property seized.

Current law provides that in an action to cause forfeiture of property under ch. 961, Stats., the court may render judgment either: (a) **in rem** (i.e., against the property); (b) against a party personally; or (c) both. This means that a court may order the forfeiture of property which is not physically located in the county within which the court is located if the court has jurisdiction over the owner of the property.

In addition, current law provides that if the property subject to forfeiture cannot be located, has been transferred or sold to a third party, has diminished in value while not in the custody of the law enforcement agency or has been commingled with other property that cannot be easily divided, the court may order the forfeiture of any other property of the defendant up to the value of property found by the court to be subject to forfeiture [ss. 961.55 and 961.555, Stats.].

2. Criminal and Civil Asset Forfeiture Procedures Under the Wisconsin Organized Crime Control Act

Wisconsin's Organized Crime Control Act (WOCCA) is patterned, in part, after the Federal Racketeer Influenced and Corrupt Organizations (RICO) law. Under the WOCCA, criminal penalties are provided for persons engaging in either a pattern of "**racketeering activity**" [which includes the attempt, conspiracy to commit or commission of any felonies in ch. 961, Stats.] or a continuing criminal enterprise. The WOCCA also authorizes various civil

penalties, including civil forfeiture to the state of property associated with the criminal activity [ss. 946.80 to 946.88, Stats.].

Current law establishes a procedure for **criminal forfeiture** to the state of property used in or derived through with the criminal activity. Under current law, when a district attorney or the Attorney General brings a criminal action under the WOCCA, he or she must specify in the criminal complaint what property is sought under the criminal forfeiture procedure. At trial, the trier of fact (the jury or the judge, as applicable) is required to return a special verdict finding what property is subject to criminal forfeiture. If any property included in the special verdict is unreachable, the court may order forfeiture of other property of the defendant.

As in the WOCCA's provisions regarding civil forfeitures, discussed below, current law: (a) provides that all such forfeitures or dispositions must be made with due provision for the rights of innocent persons; and (b) provides that any injured party has a right to forfeited property, or proceeds thereof, superior to the right of the state.

With reference to **civil forfeitures** under the WOCCA, the state must show that conduct had resulted in a **conviction** for violation of the WOCCA in order to obtain a civil forfeiture, **unless** the defendant is released on bail, pending the criminal trial, and fails to appear in court regarding the criminal proceeding. In that case, the property used in or derived through the violation may be forfeited without a conviction. Before issuing an order for civil forfeiture of the property, the court must determine that the party bringing the action can prove that the person committed the violation which forms the basis for the forfeiture [ss. 946.87 and 946.88, Stats.].

H. SUSPENSION OR REVOCATION OF MOTOR VEHICLE OPERATING PRIVILEGE

Under current law, **except** as provided in Section D, 1, above, relating to juveniles, if a person is convicted of any violation of the Controlled Substances Act, the court must, in addition to any other penalties that may apply to the crime, suspend or revoke the person's motor vehicle operating privilege, for not less than **six months** nor more than **five years**. The court must immediately take possession of any suspended or revoked license and forward it to the DOT together with the record of conviction and notice of the suspension or revocation. If required by s. 345.54 (1), Stats., the court or judge must impose an automatic reinstatement assessment of \$50. The person is eligible for an **occupational license** as follows:

1. For the first such conviction, at any time.
2. For a second conviction within a five-year period, after the first 60 days of the suspension or revocation period.
3. For a third or subsequent conviction within a five-year period, after the first 90 days of the suspension or revocation period.

For purposes of counting the number of convictions under this provision, convictions under the law of a federally recognized American Indian tribe or band in this state, federal law or the law of another jurisdiction for any offense therein which, if the person had committed the offense in this state and been convicted of the offense under the laws of this state, would have required suspension or revocation of such person's operating privilege under this provision, must be counted and given the effect specified in items 1 to 3, above. The five-year period under this provision must be measured from the dates of the violations which resulted in the convictions [s. 961.50, Stats.]. (**Note:** Under 1997 Wisconsin Act 84, s. 961.50 will be amended to delete the references to "revocation" and permit only suspension of licenses. This Act takes effect on whichever of the following dates is later: (a) the date stated in the notice published by the Secretary of DOT in the Wisconsin Administrative Register; or (b) on May 1, 2000.)

I. DRUG PARAPHERNALIA: OFFENSES AND PENALTIES

1. Possession, Sale or Use of Drug Paraphernalia

a. Prohibitions and Penalties

1989 Wisconsin Act 121 created new offenses relating to drug paraphernalia, based on the Model Drug Paraphernalia Act developed by the Drug Enforcement Administration of the U.S. Department of Justice. These offenses are found in subch. VI of ch. 961, Stats. [ss. 961.571 to 961.577, Stats.].

Current law establishes prohibitions relating to the use, possession with the sole intent to use, manufacture, delivery, sale and advertisement of drug paraphernalia. "Drug paraphernalia" is defined to mean equipment, products and materials of any kind that are **used or designed for use** or **primarily** (defined to mean "chiefly or mainly") **intended for use** to grow, produce, package, store, test or use controlled substances. In addition, "drug paraphernalia" includes, but is not limited to, various statutorily specified items, such as roach clips and water pipes.

Current law provides that "drug paraphernalia" does **not** include: (1) hypodermic syringes, needles and other objects used or intended for use in parenterally (e.g., intravenously) injecting substances into the human body; and (2) any items, including pipes, papers and accessories, that are designed for use or primarily intended for use with tobacco products.

In determining whether an object is drug paraphernalia, a court or other authority **must consider**, in addition to all other legally relevant factors, the following:

- (1) Statements by an owner or by anyone in control of the object concerning its use.
- (2) The proximity of the object, in time and space, to a direct violation of ch. 961, Stats., the Uniform Controlled Substances Act.
- (3) The proximity of the object to controlled substances.

(4) The existence of any residue of controlled substances on the object.

(5) 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. The innocence of an owner, or of anyone in control of the object, as to a direct violation of the Uniform Controlled Substances Act, does not prevent a finding that the object is designed for use or primarily intended for use as drug paraphernalia.

(6) Instructions, oral or written, provided with the object concerning its use.

(7) Descriptive materials accompanying the object that explain or depict its use.

(8) Local advertising concerning its use.

(9) The manner in which the object is displayed for sale.

(10) 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.

(11) The existence and scope of legitimate uses for the object in the community.

(12) Expert testimony concerning its use.

Current law specifies that:

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

(2) In determining whether an item is primarily intended for a particular use, a court or other authority must consider the subjective intent of the defendant.

The drug paraphernalia offenses and penalties are summarized in Table 5, below.

TABLE 5

**PENALTIES FOR SALE, USE, MANUFACTURE OR
ADVERTISEMENT OF DRUG PARAPHERNALIA**

<i>OFFENSE</i>	<i>FINE*</i>	<i>IMPRISONMENT*</i>
Use of drug paraphernalia or possession with primary intent to use illegally	Not more than \$500	Not more than 30 days
Manufacture or delivery of drug paraphernalia knowing it will be primarily used illegally	Not more than \$1,000	Not more than 90 days
Delivery of drug paraphernalia by person 17 years of age or over to a minor (17 years of age or under) 3 or more years younger than the defendant	Not more than \$10,000	Not more than 9 months
Advertising drug paraphernalia	Not more than \$500	Not more than 30 days

In addition to the penalties summarized in Table 5, current law provides that drug paraphernalia are subject to **seizure and forfeiture** under the provisions of current law that provide for the forfeiture of illegally used controlled substances. [See Section D, 1, above.]

b. Limited Municipal Authority to Enact Drug Paraphernalia Ordinances

Under current law, a city, village or town is authorized to enact a drug paraphernalia ordinance that prohibits the same conduct prohibited under the provisions in current law relating to: (1) use, or possession with the primary intent to use, drug paraphernalia by a person under 17 years of age; (2) delivery, possession with intent to deliver, or manufacture with intent to deliver, drug paraphernalia by a person under 17 years of age; and (3) delivery of drug paraphernalia by a person over 17 years of age to a person under 17 years of age who is at least three years younger than the violator [s. 961.577, Stats.].

2. Drug Paraphernalia Offenses Committed by Children

Under current law, there is a citation and disposition system for handling certain juvenile offenses related to drug paraphernalia or alcohol beverages. Law enforcement officers may initiate a juvenile court proceeding by issuing citations similar to traffic citations.

Under current law, if a juvenile court finds that a child (i.e., a person under 17 years of age) has committed an offense relating to possession, manufacture or delivery, possession with intent to deliver or delivery of **drug paraphernalia** to a child, the court **must suspend or**

*A violator is subject to a fine or imprisonment, or both.

revoke the child's motor vehicle operating privilege for not less than six months nor more than five years and, in addition, must order one of the following penalties:

a. For a first violation, a forfeiture of not more than \$50 or participation in a supervised work program, or both.

b. For a violation committed within 12 months of a previous violation, a forfeiture of not more than \$100 or participation in a supervised work program, or both.

c. For a violation committed within 12 months of two or more previous violations, a forfeiture of not more than \$500 or participation in a supervised work program, or both.

Current law specifies that:

a. Whenever a court suspends or revokes a child's operating privilege under this provision, the court must immediately take possession of any suspended or revoked license and forward it to the DOT, together with the notice of suspension or revocation clearly stating that the suspension or revocation is for a specified drug paraphernalia violation.

b. With the agreement of the child, the court may stay the execution of the penalty order for a first offense as well as a second or subsequent offense if the child submits to an alcohol or other drug abuse assessment; or participates in an alcohol **or other drug** abuse treatment or program; or participates in a court-approved alcohol **or other drug** abuse education program [s. 938.344 (2e) and (2g), Stats.].

J. REVOCATION OR SUSPENSION OF ALCOHOL BEVERAGE LICENSES AND PERMITS FOR DRUG-RELATED ACTIVITY

Under current law, in general, any person who sells, manufactures or brews alcohol beverages must hold the appropriate license or permit required under ch. 125, Stats. Licenses are issued by the local governing body of each city, village or town and permits are issued by the Secretary of the Wisconsin Department of Revenue (DOR).

Current law provides that a municipality or DOR may **revoke, suspend or refuse to renew** a person's alcohol beverage license or permit if, among other statutorily-specified reasons:

1. The person has been **convicted** of manufacturing, distributing or delivering a controlled substance under s. 961.41 (1), Stats.; of possessing, with intent to manufacture, distribute or deliver, a controlled substance under s. 961.41 (1m), Stats.; or of possessing, with intent to manufacture, distribute or deliver, or of manufacturing, distributing or delivering a controlled substance under a substantially similar federal law or a substantially similar law of another state; or

2. The person **knowingly allows** another person, who is on the premises for which the license is issued, to possess, with the intent to manufacture, distribute or deliver, or to manufacture, distribute or deliver, a controlled substance [s. 125.12 (2) (ag) 5. and 6., Stats.].

Current law specifies that it is not employment discrimination under the Fair Employment Act because of conviction record to revoke, suspend or refuse to renew a license or permit under ch. 125, Stats. (the alcohol beverage laws), if the person holding or applying for the license or permit has been convicted of one or more of the offenses described above [s. 111.335, Stats.].

K. OTHER DRUG OFFENSES AND THEIR PENALTIES

1. “Len Bias” Provision; First-Degree Reckless Homicide

The current Criminal Code includes a provision, commonly known as the “Len Bias” provision, which specifies that whoever causes the death of another human being under any of the following circumstances is guilty of a **Class B felony** (punishable by imprisonment not to exceed 40 years; the penalty for a Class B felony will increase to **60 years** under 1997 Wisconsin Act 283 for crimes committed on or after December 31, 1999):

a. By manufacture, distribution or delivery of a controlled substance classified in Schedule I or II under ch. 961, Stats., in violation of s. 961.41, Stats. (i.e., prohibitions against manufacture, distribution or delivery of controlled substances), which another human being uses and dies as a result of that use. This provision applies:

- (1) Whether the human being dies as a result of using the controlled substance by itself or with any compound, mixture, diluent or other substance mixed or combined with the controlled substance.
- (2) Whether or not the controlled substance is mixed or combined with any compound, mixture, diluent or other substance after the violation of s. 961.41, Stats., occurs.
- (3) To any distribution or delivery described in this provision, regardless of whether the distribution or delivery is made directly to the human being who dies. If possession of the controlled substance classified in Schedule I or II under ch. 961, Stats., is transferred more than once prior to the death as described in this paragraph, **each person** who delivers the controlled substance in violation of s. 961.41, Stats., is guilty under this provision.

b. By administering or assisting in administering a controlled substance included in Schedule I or II under ch. 961, without lawful authority to do so, to another human being and that human being dies as a result of the use of the substance. This provision applies whether the human being dies as a result of using the controlled substance by itself or with any compound,

mixture, diluent or other substance mixed or combined with the controlled substance [s. 940.02 (2), Stats.].

2. Second-Degree Sexual Assault Involving Controlled Substances

1997 Wisconsin Act 220 (applicable to offenses committed on or after May 14, 1998) expands the crime of **second-degree sexual assault** to provide that a person who has sexual contact or sexual intercourse with a person who is under the influence of an intoxicant to a degree which renders that person incapable of appraising his or her conduct, and the perpetrator knows of such condition, is guilty of second-degree sexual assault. [s. 940.225 (2) (cm), Stats.] The Act defines “intoxicant” as any controlled substance, controlled substance analog or other drug; any combination of a controlled substance, controlled substance analog or other drug; or any combination of an alcohol beverage and a controlled substance, controlled substance analog or other drug. “Intoxicant” does not include any alcohol beverage [s. 940.225 (5) (ai), Stats.].

The Act specifies that consent is not an issue in determining whether a person has committed the above crime [s. 940.225 (4) (intro.)].

A person who violates this provision is guilty of a **Class BC felony**, which is punishable by a fine not to exceed \$10,000 or imprisonment not to exceed 20 years, or both. [s. 940.225 (2), Stats.] In addition, a person who is convicted of second-degree sexual assault based on this new provision, is prohibited from engaging in an occupation or participating in a volunteer position that requires him or her to work or interact primarily and directly with children under 16 years of age, if the victim was under age 18 at the time of the offense. A violation of this prohibition is a **Class C felony** which is punishable by a fine not to exceed \$10,000 or imprisonment not to exceed 10 years, or both. [s. 948.13, Stats.] (Note: Under the “Truth in Sentencing Act,” 1997 Wisconsin Act 283, the maximum imprisonment penalty will be increased to **30 years** for a Class BC felony and **15 years** for a Class C felony. These increases will be applicable to offenses committed on and after December 31, 1999.)

3. Other Offenses in Ch. 961, Stats.

Appendix B to this Information Memorandum sets forth the statutory text of other offenses under the Controlled Substances Act, which includes the penalties for commission of those offenses.

4. Nitrous Oxide

1997 Wisconsin Act ____ (1997 Assembly Bill 215) created new regulatory and criminal provisions relating to the sale, possession and distribution of nitrous oxide (often called “laughing gas”). That Act, effective _____ (delayed effective date) does the following:

a. Restrictions on Sales; Records of Certain Sales; Labeling

(1) The Act provides that, with certain specified exceptions:

- (a) No person who engages in the retail sale of cartridges of nitrous oxide may sell more than **24 cartridges** in any single retail transaction; and
- (b) During any **consecutive 48-hour period**, engage in more than one retail purchase of nitrous oxide or any nitrous oxide container.

The exceptions relate to the:

- (a) Retail sale to a bakery, restaurant, institutional food distributor or other person engaged in the food service industry if the bakery, restaurant, distributor or other person has an **emergency business need** for the cartridge;
 - (b) Any retail sale to or retail purchase by a hospital, health care clinic or other health care organization that uses nitrous oxide to provide medical or dental care; and
 - (c) A retail food establishment, as defined in s. 97.30 (1) (c), Stats.
- (2) The Act provides that, except for a retail food establishment, as defined in s. 97.30:
- (a) Every person in this state who delivers nitrous oxide or any nitrous oxide container to another must keep a register of all deliveries of nitrous oxide or any nitrous oxide container. The register must show the name and complete address of the person to whom the nitrous oxide or nitrous oxide container is delivered, the number of cartridges or other containers delivered and the date of delivery. A person required to keep a register under par. (a) shall preserve the register on his or her business premises for 2 years in such a manner as to ensure permanency and accessibility for inspection and shall permit inspection of the register at all reasonable hours by state and local law enforcement agencies and by any state agency, as defined in s. 16.61 (2) (d), Stats. No person required to keep a register under par. (a) may deliver nitrous oxide or any nitrous oxide container to another person unless the person to whom the nitrous oxide or nitrous oxide container is delivered presents an **official identification card**, as defined in s. 125.085 (1), Stats.
 - (b) No person may deliver a cartridge of nitrous oxide to another unless the cartridge bears a label, stamp or tag that sets forth in clearly legible and conspicuous form the following warning: “Nitrous oxide cartridges are to be used only for purposes of preparing food. Nitrous oxide cartridges may not be sold to persons under the age of 21. Do not inhale the contents of this cartridge. Misuse of nitrous oxide can be dangerous to your health.” In addition, no person may deliver a cartridge of nitrous oxide to another unless the packaging in which the cartridge is enclosed is marked with a label or other device that indicates the name and business address of the person delivering the cartridge of nitrous oxide.

b. Criminal Penalties: Possession, Distribution or Delivery of Nitrous Oxide

Under Act ____:

- (1) Whoever does any of the following is guilty of a **Class A misdemeanor**:
 - (a) Possesses nitrous oxide or a substance containing nitrous oxide with the intent to inhale the nitrous oxide.
 - (b) Intentionally or otherwise inhales nitrous oxide.
- (2) Whoever does any of the following is guilty of a **Class D felony**:
 - (a) Distributes or delivers, or possesses with intent to distribute or deliver, nitrous oxide to a person who has not attained the age of 21.
 - (b) Distributes or delivers, or possesses with intent to distribute or deliver, nitrous oxide or a substance containing nitrous oxide to a person aged 21 years or older knowing or having reason to know that the person will use the nitrous oxide in violation of item (1), above.
 - (c) Distributes or delivers to a person aged 21 years or older any object used, designed for use or primarily intended for use in inhaling nitrous oxide at the same time that he or she distributes or delivers nitrous oxide or a substance containing nitrous oxide to the person.

The Act contains exceptions to these provisions, as appropriate, for: (1) the administration of nitrous oxide for the purpose of providing medical or dental care; and (2) the sale to a hospital or other health care organization or to a physician or dentist of any object used or primarily intended to be used in administering nitrous oxide for medical or dental care.

The Act also contains provisions relating to the use of nitrous oxide or the possession of nitrous oxide receptacles in a motor vehicle.

L. DISCIPLINARY SANCTIONS OF POST-SECONDARY STUDENTS

1. Background

Prior to the enactment of 1989 Wisconsin Act 121, the statutes did not specify any of the reasons for which students could or were required to be expelled from the University of Wisconsin (UW) System or the Vocational, Technical and Adult Education (VTAE) System (now called the Technical College System).

Currently, the Board of Regents of the UW System must promulgate rules governing student conduct and procedures for dealing with violations. The Board may delegate the power

to expel or suspend students for misconduct or for other cause prescribed by the Board [s. 36.35 (1), Stats.]. The statutes give technical college district boards the authority to establish written policies on “district matters” [s. 38.12 (7), Stats.].

All of these institutions are subject to prohibitions against discrimination on certain bases, such as race, sex, national origin and religion.

2. Current Law

As a result of 1989 Wisconsin Act 121, current law provides that any **UW System student** who engages in an activity, on a campus or at an event sponsored by a UW center or institution or the UW System, that constitutes a violation of ch. 961, Stats., is subject to nonacademic misconduct disciplinary sanctions, as provided by the Board of Regents, by rule. In determining the appropriate sanctions for such violations, the Board or its designee must consider those penalties, including suspension or expulsion, which will contribute most effectively to maintaining a center, institution and system environment free from controlled substances [s. 36.11 (21), Stats.].

Current law contains a similar provision applicable to **technical college districts** [s. 38.12 (10), Stats.].

DLS:rjl:ksm:kjf;kja;jt

APPENDIX A

***FELONY PENALTIES UNDER CURRENT CH. 961, STATS.,
COMPARED TO FELONY PENALTIES UNDER 1997 WISCONSIN ACT 283
[“TRUTH IN SENTENCING”]***

**FELONY PENALTIES UNDER CURRENT CH. 961, STATS.,
 COMPARED TO FELONY PENALTIES UNDER 1997 WISCONSIN ACT 283
 [“TRUTH IN SENTENCING”]***

Statute	Offense	Current Penalty	Proposed Penalty
961.41(1)(a)	Manufacture, distribution and delivery of a narcotic included in schedule I or II	fine not more than \$25,000 or imprisoned not more than 15 years or both	fine not more than \$25,000 or imprisoned not more than 22 years and 6 months or both
961.41(1)(b)	Manufacture, distribution and delivery of 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	fine not more than \$15,000 or imprisoned not more than 5 years or both	fine not more than \$15,000 or imprisoned not more than 7 years and 6 months or both
961.41(1)(cm)1	Manufacture, distribution and delivery of cocaine or cocaine base, five grams or less	fine not more than \$500,000 and may be imprisoned not more than 10 years	fine not more than \$500,000 and may be imprisoned not more than 15 years
961.41(1)(cm)2	Manufacture, distribution and delivery of cocaine or cocaine base, more than 5 grams, but not more than 15 grams	fine not more than \$500,000 and imprisoned not less than one year nor more than 15 years	fine not more than \$500,000 and imprisoned not less than one year nor more than 22 years and 6 months
961.41(1)(cm)3	Manufacture, distribution and delivery of cocaine or cocaine base, more than 15 grams, but not more than 40 grams	fine not more than \$500,000 and imprisoned not less than 3 years nor more than 20 years	fine not more than \$500,000 and imprisoned not less than 3 years nor more than 30 years
961.41(1)(cm)4	Manufacture, distribution and delivery of cocaine or cocaine base, more than 40 grams, but not more than 100 grams	fine not more than \$500,000 and imprisoned not less than 5 years nor more than 30 years	fine not more than \$500,000 and imprisoned not less than 5 years nor more than 45 years

[*Note: The felony penalties in the Act will apply to crimes committed on and after December 31, 1999. Any of these penalties in the statutes could be changed by laws enacted before, on or after that date (for example, changed based on laws enacted pursuant to the recommendations of the Criminal Penalties Study Committee, created in the Act).]

Statute	Offense	Current Penalty	Proposed Penalty
961.41(1)(cm)5	Manufacture, distribution and delivery of cocaine or cocaine base, more than 100 grams	fine not more than \$500,000 and imprisoned not less than 10 years nor more than 30 years	fine not more than \$500,000 and imprisoned not less than 10 years nor more than 45 years
961.4(1)(d)1	Manufacture, distribution and delivery of heroin, three grams or less	fine not less than \$1,000 nor more than \$200,000 and may be imprisoned not more than 15 years	fine not less than \$1,000 nor more than \$200,000 and may be imprisoned not more than 22 years and 6 months
961.41(1)(d)2	Manufacture, distribution and delivery of heroin, more than 3 grams but not more than 10 grams	fine not less than \$1,000 nor more than \$250,000 and imprisoned not less than 6 months nor more than 15 years	fine not less than \$1,000 nor more than \$250,000 and imprisoned not less than 6 months nor more than 22 years and 6 months
961.41(1)(d)3	Manufacture, distribution and delivery of heroin, more than 10 grams but not more than 50 grams	fine not less than \$1,000 nor more than \$500,000 and imprisoned not less than one year nor more than 15 years	fine not less than \$1,000 nor more than \$500,000 and imprisoned not less than one year nor more than 22 years and 6 months
961.41(1)(d)4	Manufacture, distribution and delivery of heroin, more than 50 grams but not more than 200 grams	fine not less than \$1,000 nor more than \$500,000 and imprisoned not less than 3 years nor more than 15 years	fine not less than \$1,000 nor more than \$500,000 and imprisoned not less than 3 years nor more than 22 years and 6 months
961.41(1)(d)5	Manufacture, distribution and delivery of heroin, more than 200 grams but not more than 400 grams	fine not less than \$1,000 nor more than \$500,000 and imprisoned not less than 5 years nor more than 15 years	fine not less than \$1,000 nor more than \$500,000 and imprisoned not less than 5 years nor more than 22 years and 6 months

Statute	Offense	Current Penalty	Proposed Penalty
961.41(1)(d)6	Manufacture, distribution and delivery of heroin, more than 400 grams	fine not less than \$1,000 nor more than \$1,000,000 and imprisoned not less than 10 years nor more than 30 years	fine not less than \$1,000 nor more than \$1,000,000 and imprisoned not less than 10 years nor more than 45 years
961.41(1)(e)1	Manufacture, distribution and delivery of phencyclidine, amphetamine, methamphetamine or methcathinone, three grams or less	fine not less than \$1,000 nor more than \$200,000 and may be imprisoned not more than 5 years	fine not less than \$1,000 nor more than \$200,000 and may be imprisoned not more than 7 years and 6 months
961.41(1)(e)2	Manufacture, distribution and delivery of phencyclidine, amphetamine, methamphetamine or methcathinone, more than 3 grams but not more than 10 grams	fine not less than \$1,000 nor more than \$250,000 and imprisoned not less than 6 months nor more than 5 years	fine not less than \$1,000 nor more than \$250,000 and imprisoned not less than 6 months nor more than 7 years and 6 months
961.41(1)(e)3	Manufacture, distribution and delivery of phencyclidine, amphetamine, methamphetamine or methcathinone, more than 10 grams but not more than 50 grams	fine not less than \$1,000 nor more than \$500,000 and imprisoned not less than one year nor more than 15 years	fine not less than \$1,000 nor more than \$500,000 and imprisoned not less than one year nor more than 22 years and 6 months
961.41(1)(e)4	Manufacture, distribution and delivery of phencyclidine, amphetamine, methamphetamine or methcathinone, more than 50 grams but not more than 200 grams	fine not less than \$1,000 nor more than \$500,000 and imprisoned not less than 3 years nor more than 15 years	fine not less than \$1,000 nor more than \$500,000 and imprisoned not less than 3 years nor more than 22 years and 6 months
961.41(1)(e)5	Manufacture, distribution and delivery of phencyclidine, amphetamine, methamphetamine or methcathinone, more than 200 grams but not more than 400 grams	fine not less than \$1,000 nor more than \$500,000 and imprisoned not less than 5 years nor more than 15 years	fine not less than \$1,000 nor more than \$500,000 and imprisoned not less than 5 years nor more than 22 years and 6 months

Statute	Offense	Current Penalty	Proposed Penalty
961.41(1)(e)6	Manufacture, distribution and delivery of phencyclidine, amphetamine, methamphetamine or methcathinone, more than 400 grams	fine not less than \$1,000 nor more than \$1,000,000 and imprisoned not less than 10 years nor more than 30 years	fine not less than \$1,000 nor more than \$1,000,000 and imprisoned not less than 10 years nor more than 45 years
961.41(1)(f)1	Manufacture, distribution and delivery of lysergic acid diethylamide, one gram or less	fine not less than \$1,000 nor more than \$200,000 and may be imprisoned not more than 5 years	fine not less than \$1,000 nor more than \$200,000 and may be imprisoned not more than 7 years and 6 months
961.41(1)(f)2	Manufacture, distribution and delivery of lysergic acid diethylamide, more than one gram but not more than 5 grams	fine not less than \$1,000 nor more than \$250,000 and imprisoned not less than 6 months nor more than 5 years	fine not less than \$1,000 nor more than \$250,000 and imprisoned not less than 6 months nor more than 7 years and 6 months
961.41(1)(f)3	Manufacture, distribution and delivery of lysergic acid diethylamide, more than 5 grams	fine not less than \$1,000 nor more than \$500,000 and imprisoned not less than one year nor more than 15 years	fine not less than \$1,000 nor more than \$500,000 and imprisoned not less than one year nor more than 22 years and 6 months
961.41(1)(g)1	Manufacture, distribution and delivery of psilocin or psilocylin, one hundred grams or less	fine not less than \$1,000 nor more than \$200,000 and may be imprisoned not more than 5 years	fine not less than \$1,000 nor more than \$200,000 and may be imprisoned not more than 7 years and 6 months

Statute	Offense	Current Penalty	Proposed Penalty
961.41(1)(g)2	Manufacture, distribution and delivery of psilocin or psilocylin, more than 100 grams but not more than 500 grams	fine not less than \$1,000 nor more than \$250,000 and imprisoned not less than 6 months nor more than 5 years	fine not less than \$1,000 nor more than \$250,000 and imprisoned not less than 6 months nor more than 7 years and 6 months
961.41(1)(g)3	Manufacture, distribution and delivery of psilocin or psilocylin, more than 500 grams	fine not less than \$1,000 nor more than \$500,000 and imprisoned not less than one year nor more than 15 years	fine not less than \$1,000 nor more than \$500,000 and imprisoned not less than one year nor more than 22 years and 6 months
961.41(1)(h)1	Manufacture, distribution and delivery of THC, five hundred grams or less, or 10 or fewer plants containing THC	fine not less than \$500 nor more than \$25,000 and may be imprisoned not more than 3 years	fine not less than \$500 nor more than \$25,000 and may be imprisoned not more than 4 years and 6 months
961.41(1)(h)2	Manufacture, distribution and delivery of THC, more than 500 grams but not more than 2,500 grams, or more than 10 plants containing THC but not more than 50 plants containing THC	fine not less than \$1,000 nor more than \$50,000 and imprisoned not less than 3 months nor more than 5 years	fine not less than \$1,000 nor more than \$50,000 and imprisoned not less than 3 months nor more than 7 years and 6 months
961.41(1)(h)3	Manufacture, distribution and delivery of THC, more than 2,500 grams, or more than 50 plants containing THC	fine not less than \$1,000 nor more than \$100,000 and imprisoned not less than one year nor more than 10 years	fine not less than \$1,000 nor more than \$100,000 and imprisoned not less than one year nor more than 15 years
961.41(1)(i)	A substance included in schedule IV	fine not more than \$10,000 or imprisoned not more than 3 years or both	fine not more than \$10,000 or imprisoned not more than 4 years and 6 months or both
961.41(1)(j)	A substance included in schedule V	fine not more than \$5,000 or imprisoned not more than one year or both	fine not more than \$5,000 or imprisoned not more than 2 years or both

Statute	Offense	Current Penalty	Proposed Penalty
961.41(1m)(a)	Possession with intent to manufacture, distribute or deliver of a narcotic included in schedule I or II	fine not more than \$25,000 or imprisoned not more than 15 years or both	fine not more than \$25,000 or imprisoned not more than 22 years and 6 months or both
961.41(1m)(b)	Possession with intent to manufacture, distribute or delivery any other controlled substance included in schedule I, II or III, or a controlled substance analog of a controlled substance included in schedule I or II	fine not more than \$15,000 or imprisoned not more than 5 years or both	fine not more than \$15,000 or imprisoned not more than 7 years and 6 months or both
961.41(1m)(cm)1	Possession with intent to manufacture, distribute or delivery cocaine or cocaine base, five grams or less	fine not more than \$500,000 and may be imprisoned not more than 10 years	fine not more than \$500,000 and may be imprisoned not more than 15 years
961.41(1m)(cm)2	Possession with intent to manufacture, distribute or delivery cocaine or cocaine base, more than 5 grams but not more than 15 grams	fine not more than \$500,000 and imprisoned not less than one year nor more than 15 years	fine not more than \$500,000 and imprisoned not less than one year nor more than 22 years and 6 months
961.41(1m)(cm)3	Possession with intent to manufacture, distribute or delivery cocaine or cocaine base, more than 15 grams but not more than 40 grams	fine not more than \$500,000 and imprisoned not less than 3 years nor more than 20 years	fine not more than \$500,000 and imprisoned not less than 3 years nor more than 30 years
961.41(1m)(cm)4	Possession with intent to manufacture, distribute or delivery cocaine or cocaine base, more than 40 grams but not more than 100 grams	fine not more than \$500,000 and imprisoned not less than 5 years nor more than 30 years	fine not more than \$500,000 and imprisoned not less than 5 years nor more than 45 years
961.41(1m)(cm)5	Possession with intent to manufacture, distribute or delivery cocaine or cocaine base, more than 100 grams	fine not more than \$500,000 and imprisoned not less than 10 years nor more than 30 years	fine not more than \$500,000 and imprisoned not less than 10 years nor more than 45 years

Statute	Offense	Current Penalty	Proposed Penalty
961.41(1m)(d)1	Possession with intent to manufacture, distribute and deliver heroin, three grams or less	fine not less than \$1,000 nor more than \$100,000 and may be imprisoned not more than 15 years	fine not less than \$1,000 nor more than \$100,000 and may be imprisoned not more than 22 years and 6 months
961.41(1m)(d)2	Possession with intent to manufacture, distribute and deliver heroin, more than 3 grams but not more than 10 grams	fine not less than \$1,000 nor more than \$200,000 and imprisoned not less than 6 months nor more than 15 years	fine not less than \$1,000 nor more than \$200,000 and imprisoned not less than 6 months nor more than 22 years and 6 months
961.41(1m)(d)3	Possession with intent to manufacture, distribute and deliver heroin, more than 10 grams but not more than 50 grams	fine not less than \$1,000 nor more than \$500,000 and imprisoned not less than one year nor more than 15 years	fine not less than \$1,000 nor more than \$500,000 and imprisoned not less than one year nor more than 22 years and 6 months
961.41(1m)(d)4	Possession with intent to manufacture, distribute and deliver heroin, more than 50 grams but not more than 200 grams	fine not less than \$1,000 nor more than \$500,000 and imprisoned not less than 3 years nor more than 15 years	fine not less than \$1,000 nor more than \$500,000 and imprisoned not less than 3 years nor more than 22 years and 6 months
961.41(1m)(d)5	Possession with intent to manufacture, distribute and deliver heroin, more than 200 grams but not more than 400 grams	fine not less than \$1,000 nor more than \$500,000 and imprisoned not less than 5 years nor more than 15 years	fine not less than \$1,000 nor more than \$500,000 and imprisoned not less than 5 years nor more than 22 years and 6 months
961.41(1m)(d)6	Possession with intent to manufacture, distribute and deliver heroin, more than 400 grams	fine not less than \$1,000 nor more than \$1,000,000 and imprisoned not less than 10 years nor more than 30 years	fine not less than \$1,000 nor more than \$1,000,000 and imprisoned not less than 10 years nor more than 45 years

Statute	Offense	Current Penalty	Proposed Penalty
961.41(1m)(e)1	Possession with intent to manufacture, distribute and deliver phencyclidine, amphetamine, methamphetamine or methcathinone, three grams or less	fine not less than \$1,000 nor more than \$100,000 and may be imprisoned not more than 5 years	fine not less than \$1,000 nor more than \$100,000 and may be imprisoned not more than 7 years and 6 months
961.41(1m)(e)2	Possession with intent to manufacture, distribute and deliver phencyclidine, amphetamine, methamphetamine or methcathinone, more than 3 grams but not more than 10 grams	fine not less than \$1,000 nor more than \$200,000 and imprisoned not less than 6 months nor more than 5 years	fine not less than \$1,000 nor more than \$200,000 and imprisoned not less than 6 months nor more than 7 years and 6 months
961.41(1m)(e)3	Possession with intent to manufacture, distribute and deliver phencyclidine, amphetamine, methamphetamine or methcathinone, more than 10 grams but not more than 50 grams	fine not less than \$1,000 nor more than \$500,000 and imprisoned not less than one year nor more than 15 years	fine not less than \$1,000 nor more than \$500,000 and imprisoned not less than one year nor more than 22 years and 6 months
961.41(1m)(e)4	Possession with intent to manufacture, distribute and deliver phencyclidine, amphetamine, methamphetamine or methcathinone, more than 50 grams but not more than 200 grams	fine not less than \$1,000 nor more than \$500,000 and imprisoned not less than 3 years nor more than 15 years	fine not less than \$1,000 nor more than \$500,000 and imprisoned not less than 3 years nor more than 22 years and 6 months
961.41(1m)(e)5	Possession with intent to manufacture, distribute and deliver phencyclidine, amphetamine, methamphetamine or methcathinone, more than 200 grams but not more than 400 grams	fine not less than \$1,000 nor more than \$500,000 and imprisoned not less than 5 years nor more than 15 years	fine not less than \$1,000 nor more than \$500,000 and imprisoned not less than 5 years nor more than 22 years and 6 months

Statute	Offense	Current Penalty	Proposed Penalty
961.41(1m)(e)6	Possession with intent to manufacture, distribute and deliver phencyclidine, amphetamine, methamphetamine or methcathinone, more than 400 grams	fine not less than \$1,000 nor more than \$1,000,000 and imprisoned not less than 10 years nor more than 30 years	fine not less than \$1,000 nor more than \$1,000,000 and imprisoned not less than 10 years nor more than 45 years
961.41(1m)(f)1	Possession with intent to manufacture, distribute and deliver lysergic acid diethylamide, one gram or less	fine not less than \$1,000 nor more than \$100,000 and may be imprisoned not more than 5 years	fine not less than \$1,000 nor more than \$100,000 and may be imprisoned not more than 7 years and 6 months
961.41(1m)(f)2	Possession with intent to manufacture, distribute and deliver lysergic acid diethylamide, more than one gram but not more than 5 grams	fine not less than \$1,000 nor more than \$200,000 and imprisoned not less than 6 months nor more than 5 years	fine not less than \$1,000 nor more than \$200,000 and imprisoned not less than 6 months nor more than 7 years and 6 months
961.41(1m)(f)3	Possession with intent to manufacture, distribute and deliver lysergic acid diethylamide, more than 5 grams	fine not less than \$1,000 nor more than \$500,000 and imprisoned not less than one year nor more than 15 years	fine not less than \$1,000 nor more than \$500,000 and imprisoned not less than one year nor more than 22 years and 6 months
961.41(1m)(g)1	Possession with intent to manufacture, distribute and deliver psilocin or psilocylin, one hundred grams or less	fine not less than \$1,000 nor more than \$100,000 and may be imprisoned not more than 5 years	fine not less than \$1,000 nor more than \$100,000 and may be imprisoned not more than 7 years and 6 months
961.41(1m)(g)2	Possession with intent to manufacture, distribute and deliver psilocin or psilocylin, more than 100 grams but not more than 500 grams	fine not less than \$1,000 nor more than \$200,000 and imprisoned not less than 6 months nor more than 5 years	fine not less than \$1,000 nor more than \$200,000 and imprisoned not less than 6 months nor more than 7 years and 6 months

Statute	Offense	Current Penalty	Proposed Penalty
961.41(1m)(g)3	Possession with intent to manufacture, distribute and deliver psilocin or psilocylin, more than 500 grams	fine not less than \$1,000 nor more than \$500,000 and imprisoned not less than one year nor more than 15 years	fine not less than \$1,000 nor more than \$500,000 and imprisoned not less than one year nor more than 22 years and 6 months
961.41(1m)(h)1	Possession with intent to manufacture, distribute or deliver THC, five hundred grams or less, or 10 or fewer plants containing THC	fine not less than \$500 nor more than \$25,000 and may be imprisoned not more than 3 years	fine not less than \$500 nor more than \$25,000 and may be imprisoned not more than 4 years and 6 months
961.41(1m)(h)2	Possession with intent to manufacture, distribute or deliver THC, more than 500 grams but not more than 2,500 grams, or more than 10 plants containing THC but not more than 50 plants containing THC	fine not less than \$1,000 nor more than \$50,000 and imprisoned not less than 3 months nor more than 5 years	fine not less than \$1,000 nor more than \$50,000 and imprisoned not less than 3 months nor more than 7 years and 6 months
961.41(1m)(h)3	Possession with intent to manufacture, distribute or deliver THC, more than 2,500 grams or more than 50 plants containing THC	fine not less than \$1,000 nor more than \$100,000 and imprisoned not less than one year nor more than 10 years	fine not less than \$1,000 nor more than \$100,000 and imprisoned not less than one year nor more than 15 years
961.41(1m)(i)	Possession with intent to manufacture, distribute or deliver a substance included in schedule IV	may be fined not more than \$10,000 or imprisoned not more than 3 years or both	may be fined not more than \$10,000 or imprisoned not more than 4 years and 6 months or both
961.41(1m)(j)	Possession with intent to manufacture, distribute or deliver a substance included in schedule V	may be fined not more than \$5,000 or imprisoned not more than one year or both	may be fined not more than \$5,000 or imprisoned not more than 2 years or both
961.41(1n)(c)	Possession of any amount of piperidine	may be fined not more than \$250,000 or imprisoned not more than 10 years or both	may be fined not more than \$250,000 or imprisoned not more than 15 years or both

Statute	Offense	Current Penalty	Proposed Penalty
961.41(2)(a)	Manufacture, distribution or delivery or intent to manufacture, distribute or deliver a counterfeit substance included in schedule I or II which is a narcotic drug	may be fined not more than \$25,000 or imprisoned not more than 15 years or both	may be fined not more than \$25,000 or imprisoned not more than 22 years and 6 months or both
961.41(2)(b)	Manufacture, distribution or delivery or intent to manufacture, distribute or deliver any other counterfeit substance included in schedule I, II or III	may be fined not more than \$15,000 or imprisoned not more than 5 years or both	may be fined not more than \$15,000 or imprisoned not more than 7 years and 6 months or both
961.41(2)(c)	Manufacture, distribution or delivery or intent to manufacture, distribute or deliver a counterfeit substance included in schedule IV	may be fined not more than \$10,000 or imprisoned not more than 3 years or both	may be fined not more than \$10,000 or imprisoned not more than 4 years and 6 months or both
961.41(2)(d)	Manufacture, distribution or delivery or intent to manufacture, distribute or deliver a counterfeit substance included in schedule V	may be fined not more than \$5,000 or imprisoned not more than one year or both	may be fined not more than \$5,000 or imprisoned not more than 2 years or both
961.41(3g)(a)1	Possession of a narcotic included in schedule I or II	upon a first conviction, not more than \$5,000 or imprisoned not more than one year or both. Second or subsequent offense, fine not more than \$10,000 or imprisoned not more than 2 years or both	upon a first conviction, not more than \$5,000 or imprisoned not more than two years or both. Second or subsequent offense, fine not more than \$10,000 or imprisoned not more than 3 years or both
961.41(3g)(a)2	Possession or attempted possession of heroin	may be fined not more than \$5,000 or imprisoned not more than one year or both	may be fined not more than \$5,000 or imprisoned not more than 2 years or both
961.41 (3g) (f)	Possession or attempted possession of GHB, ketamine or flunitrazepam	May be fined not more than \$5,000 or imprisoned for not more than 2 years or both	May be fined not more than \$5,000 or imprisoned for not more than 3 years or both
961.41(4)(am)3	Distribution or delivery of imitation controlled substance	may be fined not more than \$5,000 or imprisoned not more than one year or both	may be fined not more than \$5,000 or imprisoned not more than 2 years or both

Statute	Offense	Current Penalty	Proposed Penalty
961.42(2)	Keeping of a drug house	may be fined not more than \$25,000 or imprisoned not more than one year or both	may be fined not more than \$25,000 or imprisoned not more than 2 years or both
961.43(2)	Acquire or obtain a controlled substance by misrepresentation, fraud, forgery, deception or subterfuge	may be fined not more than \$30,000 or imprisoned not more than 4 years or both	may be fined not more than \$30,000 or imprisoned not more than 6 years or both
961.455(1)	Use of a person who is 17 years of age or under for the purpose of the manufacture, distribution or delivery of a controlled substance	may be fined not more than \$50,000 or imprisoned not more than 10 years or both	may be fined not more than \$50,000 or imprisoned not more than 15 years or both

APPENDIX B

***OTHER OFFENSES UNDER THE CONTROLLED
SUBSTANCES ACT [CH. 961, STATS.]***

**Other Offenses Under the Controlled
Substances Act [Ch. 961, Stats.]**

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

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

(2) In emergency situations, as defined by rule of the pharmacy examining board, schedule II drugs may be dispensed upon oral or electronic prescription of a practitioner, reduced promptly to writing and filed by the pharmacy. Prescriptions shall be retained in conformity with rules of the pharmacy examining board promulgated under s. 961.31. No prescription for a schedule II substance may be refilled.

(3) Except when dispensed directly by a practitioner, other than a pharmacy, to an ultimate user, a controlled substance included in schedule III or IV, which is a prescription drug, shall not be dispensed without a written, oral or electronic prescription of a practitioner. The prescription shall not be filled or refilled except as designated on the prescription and in any case not more than 6 months after the date thereof, nor may it be refilled more than 5 times, unless renewed by the practitioner.

(4) A substance included in schedule V may be distributed or dispensed only for a medical purpose, including medical treatment or authorized research.

(4g) A practitioner may dispense or deliver a controlled substance to or for an individual or animal only for medical treatment or authorized research in the ordinary course of that practitioner’s profession.

(4r) A pharmacist is immune from any civil or criminal liability and from discipline under s. 450.10 for any act taken by the pharmacist in reliance on a reasonable belief that an order purporting to be a prescription was issued by a practitioner in the usual course of professional treatment or in authorized research.

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

961.42 Prohibited acts B—penalties. (1) It is unlawful for any person knowingly to keep or maintain any store, shop, warehouse, dwelling, building, vehicle, boat, aircraft or other structure or place, which is resorted to by persons using controlled substances in violation of this chapter for the purpose of using these substances, or which is used for manufacturing, keeping or delivering them in violation of this chapter.

(2) Any person who violates this section may be fined not more than \$25,000 or imprisoned not more than one year or both.

961.43 Prohibited acts C—penalties. (1) It is unlawful for any person:

(a) To acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception or subterfuge;

(b) Without authorization, to make, distribute or possess any punch, die, plate, stone or other thing designed to print, imprint or reproduce the trademark, trade name or other identifying mark, imprint or device of another or any likeness of any of the foregoing upon any drug or container or labeling thereof so as:

1. To make a counterfeit substance; or

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

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

961.435 Specific penalty. Any person who violates s. 961.38 (5) may be fined not more than \$500 or imprisoned not more than 30 days or both.