

1971 Senate Bill 574

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CHAPTER 219, Laws of 1971

AN ACT to repeal 165.10 and 450.18; to renumber and amend 15.197 (3r) and 15.56; to amend 30.68 (1), 30.76 (4), 51.09 (1), 57.06 (4) (a), 114.09 (1), 118.01 (2), 119.22 (1), 139.34 (1) (c) 4, 139.37 (1) (c) 4, 165.83 (2) (a) 2, 343.06 (4) (intro.), 343.31 (1) (b), 346.63 (1) (a) and (b), 346.64 (1), 350.08, 350.10 (3), 450.02 (7) (intro.), 450.04 (5), 939.22 (42), 968.13 (1) and 968.28; to repeal and recreate chapter 161, 346.63 (3) and 350.01 (7); and to create 14.24, 15.191 (3), 115.35, 140.81 and 450.07 of the statutes, relating to the uniform controlled substances act and changes incidental to its incorporation into Wisconsin law.

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

SECTION 1. 14.24 of the statutes is created to read:

**14.24 COUNCIL ON DRUG ABUSE.** (1) The council on drug abuse shall be the primary state authority to apply for and to receive funds from the U.S. government, gifts, donations and bequests, for the purpose of combating drug abuses, and to distribute such funds to state and local agencies for approved programs.

(2) The council shall:

(a) Consider all questions and matters relating to abuse prevention.

(b) Coordinate and review efforts by state agencies to prevent and control drug abuse and make recommendations to such agencies.

(c) In each report under s. 15.09 (7), review state activities in the area of drug abuse prevention and control and make recommendations for further legislation.

(3) The council may:

(a) Determine the effectiveness of existing state drug abuse prevention and control programs and recommend new or improved programming.

(b) Make public reports to educate and inform the people as to the dangers and problems of drug abuse, together with recommended measures to combat drug abuse.

(c) Define responsibility among state agencies for various drug abuse prevention and control programs and direct cooperation between state agencies.

(4) The council on drug abuse shall cooperate with agencies of the federal government and receive and use federal funds for the purposes of this section.

SECTION 2. 15.191 (3) of the statutes is created to read:

15.191 (3) CONTROLLED SUBSTANCES BOARD. The controlled substances board shall have the program responsibilities specified for the board in ch. 161.

SECTION 3. 15.197 (3r) of the statutes is renumbered 15.195 (2) and amended to read:

15.195 (2) CONTROLLED SUBSTANCES BOARD. There is created in the department of health and social services a ~~dangerous substance control council~~ controlled substances board consisting of the attorney general ~~and secretaries~~ the secretary of health and social services and the secretary of agriculture, or their designees; the chairman of the pharmacy examining board or his designee; ~~and~~ and one psychiatrist and one pharmacologist, ~~the latter 2 to be~~ appointed by ~~the governor to serve for~~ 3-year terms.

SECTION 4. 15.56 of the statutes is renumbered 14.017 (2) and amended to read:

14.017 (2) INTERAGENCY COUNCIL ON DRUG ABUSE. There is created ~~a drug abuse control commission in the executive office~~ a council on drug abuse consisting of the governor ~~or his designee~~, the attorney general ~~or his designee~~, the state superintendent of public instruction ~~or his designee~~, the secretary of health and social services ~~or his designee~~, ~~a representative of the dangerous substance control council~~, and the chairman of the pharmacy examining board ~~or his designee~~, their designees; a representative of the controlled substances board; and 2 members of each house of the legislature, representing the major party and the next most numerous party in each house, chosen as are members of standing committees. Section 15.09 applies to the council.

SECTION 5. 30.68 (1) of the statutes, as affected by chapter 40, laws of 1971, is amended to read:

30.68 (1) INTOXICATED OPERATION. No person shall operate a boat upon the waters of this state while under the influence of an intoxicant or a narcotic drug ~~or while under the influence of any dangerous drug~~ controlled substance as defined in s. 161.30 ~~(1) (a) 161.01 (4).~~

SECTION 6. 30.76 (4) of the statutes is amended to read:

30.76 (4) RELEASE FROM CUSTODY. If the alleged violator is in custody he shall be released after he has made the deposit as specified in this section, except that if the charge is operating a boat while under the influence of an intoxicant or ~~narcotic or dangerous drug~~ controlled substance, he shall not be released until in the opinion of the officer having his custody, he is in fit condition to care for his own safety or is accompanied by a person who is able to care for his safety and prevent further violations of the law.

SECTION 7. 51.09 (1) of the statutes is amended to read:

51.09 (1) HEARING. (a) If it appears to any court of record, by an application of 3 reputable adult residents of the county, that a resident of the county or person temporarily residing therein is an inebriate or addicted to the use of ~~narcotic drugs or barbiturates~~ a controlled substance under ch. 161 and in need of confinement or treatment, the court shall fix a time and place for hearing the application, on reasonable personal notice to the person in question, requiring him to appear at the hearing, and shall summarily hear the evidence. The court may cause notice to be given to such other persons as it deems advisable. The court may, by attachment for the person, require the sheriff or other police officer to take the alleged inebriate or drug addict into custody, detain him pending the hearing (but not to exceed 3 days) and bring him before

the court at the hearing. The court may require notice to be given to known relatives of the person.

(b) At such hearing if the court finds that such person is an inebriate or a ~~drug addict~~ addicted to the use of a controlled substance under ch. 161, and requires confinement or treatment, or that it is necessary for the protection of himself or the public or his relatives that he be committed, he may be committed to the county hospital or to the county reforestation camp or to the rehabilitation facilities established pursuant to s. 59.07 (76) or to Winnebago or Mendota state hospital or in counties having a population of 500,000 or more, to the rehabilitative facilities of the house of correction of such county. At the hearing the court shall determine the person's legal settlement, and the county of such settlement shall be liable over for his maintenance and treatment. The provisions against detaining patients in jails shall not apply to inebriates or ~~drug addicts~~ persons addicted to controlled substances, except in case of acute illness.

SECTION 8. 57.06 (4) (a) of the statutes is amended to read:

57.06 (4) (a) Any person convicted in the misdemeanor and traffic branches of the county court and any person convicted in the criminal branches of the circuit court in counties having a population of 500,000 or more and sentenced to 2 years or less in the house of correction and any person committed to said house of correction for treatment and rehabilitation for alcoholism or ~~narcotic~~ for addiction to a controlled substance under ch. 161, who during the period of confinement or treatment appears to have been rehabilitated or cured to the extent, in the opinion of the superintendent of said house of correction or the person in charge of treatment and rehabilitation of a prisoner at said institution, that the prisoner may be released, said prisoner may be released upon conditional parole.

SECTION 9. 114.09 (1) of the statutes is amended to read:

114.09 (1) No person shall operate an aircraft in the air, or on the ground or water while under the influence of intoxicating liquor ~~or narcotics or other drugs~~ controlled substances under ch. 161, nor operate an aircraft in the air, or on the ground or water in a careless or reckless manner so as to endanger the life or property of another. In determining whether the operation was careless or reckless the court shall consider the standards for safe operation of aircraft prescribed by federal statutes or regulations governing aeronautics. The court shall make a written report of all convictions (including bail or appearance money forfeitures) obtained under this section to the federal civil aeronautics administration.

SECTION 10. 115.35 of the statutes is created to read:

**115.35 HEALTH PROBLEMS EDUCATION PROGRAM.** (1) A critical health problems education program is established in the department. The program shall be a systematic and integrated program designed to provide appropriate learning experiences based on scientific knowledge of the human organism as it functions within its environment and designed to favorably influence the health, understanding, attitudes and practices of the individual child which will enable him to adapt to changing health problems of our society. The program shall be designed to educate youth with regard to critical health problems and shall include, but not be limited to, the following topics as the basis for comprehensive education curricula in all elementary and secondary schools: controlled substances, as defined in s. 161.01 (4); alcohol; tobacco; mental health; and related health and safety topics.

CHAPTER 219

612

(2) In carrying out this section, the state superintendent may, without limitation because of enumeration:

(a) Establish guidelines to help school districts develop comprehensive health education programs.

(b) Establish special inservice programs to provide professional preparation in health education for teachers throughout the state.

(c) Provide leadership institutions of higher education to develop and extend curricula in health education for professional preparation in both inservice and preservice programs.

(d) Develop cooperative programs between school districts and institutions of higher education whereby the appropriate health personnel of such institutions would be available to guide the continuing professional preparation of teachers and the development of curricula for local programs.

(e) Assist in the development of plans and procedures for the evaluation of health education curricula.

(3) The department may appoint a council consisting of representatives from universities and colleges, law enforcement, the various fields of education, the voluntary health agencies, the department of health and social services, the professional health associations and other groups or agencies it deems appropriate to advise it on the implementation of this section, including teachers, administrators and local school boards.

(4) The department shall cooperate with agencies of the federal government and receive and use federal funds for the purposes of this section.

(5) In each report under s. 15.04 (4), the state superintendent shall include information:

(a) As to the scope and nature of programs undertaken under this section.

(b) As to the degree and nature of cooperation being maintained with other state and local agencies.

(c) As to his recommendations to improve such programs and cooperation.

SECTION 11. 118.01 (2) of the statutes is amended to read:

118.01 (2) PHYSIOLOGY AND HYGIENE. Physiology and hygiene, sanitation, the effects of ~~stimulants and narcotics~~ controlled substances under ch. 161 upon the human system, symptoms of disease and the proper care of the body shall be taught in either the 6th, 7th or 8th grade, but no pupil shall be required to take such instruction if his parents file with the teacher a written objection thereto. Instruction in physiology and hygiene shall be offered in every high school.

SECTION 12. 119.22 (1) of the statutes is amended to read:

119.22 (1) ELEMENTARY SCHOOLS. Courses in reading, writing, spelling, English, grammar and composition, geography, arithmetic, elements of agriculture and conservation of natural resources, history and civil government of the United States and of Wisconsin, physical education, sanitation, physiology and hygiene, the effects of ~~stimulants and narcotics~~ controlled substances under ch. 161 upon the human system, symptoms of disease, proper care of the body and

such other subjects as the board determines shall be included in the course of study in elementary schools. If his parent files with the teacher written objection thereto, no pupil is required to take instruction in physiology and hygiene, in the effects of stimulants and narcotics and in symptoms of disease.

SECTION 13. 139.34 (1) (c) 4 of the statutes is amended to read:

139.34 (1) (c) 4. Is a ~~narcotic or drug addict~~ addicted to the use of a controlled substance under ch. 161;

SECTION 14. 139.37 (1) (c) 4 of the statutes is amended to read:

139.37 (1) (c) 4. Is a ~~narcotic or drug addict~~ addicted to the use of a controlled substance under ch. 161;

SECTION 15. 140.81 of the statutes is created to read:

**140.81 DRUG DEPENDENCE PROGRAM.** (1) In this section:

(a) "Drug dependence" means a condition arising from the periodic or continuous use of a drug which may result in psychic or physical dependence which would affect or potentially affect the public health, safety or welfare.

(b) "Drug abuse" means the use of a drug in such a manner as to endanger the public health, safety or welfare.

(c) "Drug" means a controlled substance, as defined in s. 161.01 (4).

(2) A drug dependence and drug abuse program is established in the department. The secretary may develop and carry out programs concerned with education about and prevention of drug dependence and drug abuse, and programs concerned with treatment and rehabilitation of drug dependent persons and persons who abuse drugs. The secretary shall appoint a drug dependence program coordinator to handle liaison with other departments and agencies, including the council on drug abuse. These programs may include, but shall not be limited to:

(a) Education regarding use of drugs and the prevention of drug dependence and drug abuse.

(b) Diagnosis, treatment and rehabilitation of patients who are drug dependent persons or persons who abuse drugs.

(c) Development of standards and provision of consultation for local drug dependence and drug abuse programs.

(d) Evaluation of programs conducted pursuant to the authority of this subsection as to their effectiveness and relationship to the public health, safety and welfare and the development of improved techniques for the prevention and treatment of drug dependence and drug abuse.

(e) Promotion and establishment of cooperative relationship with public and private agencies which have a responsibility for the prevention and treatment of drug dependence and drug abuse.

(3) The secretary may appoint a council to meet on the call of the secretary and to advise him on broad policies and goals for the drug dependence and drug abuse program.

(4) The department may accept, receive, administer and expend any money, material or other gifts or grants of any description for purposes related to those set forth in this section. Moneys and grants received under this section shall be deposited with the state treasurer and shall be credited to the department of health and social services and expended by the department or the council on drug abuse for the purposes specified.

SECTION 16. Chapter 161 of the statutes, as affected by chapters 40, 42, 71 and 164, laws of 1971, is repealed and recreated to read:

CHAPTER 161.  
UNIFORM CONTROLLED SUBSTANCES ACT.

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

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

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

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

SUBCHAPTER I.  
DEFINITIONS.

**161.01 DEFINITIONS.** As used in this act:

(1) "Administer" means the direct application of a controlled substance, whether by injection, inhalation, ingestion or any other means, to the body of a patient or research subject by:

(a) A practitioner (or, in his presence, by his authorized agent); or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(14) "Marijuana" means all parts of the plant *Cannabis Sativa* L., whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt,

derivative, mixture or preparation of the plant, its seeds or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil or cake or the sterilized seed of the plant which is incapable of germination.

(15) "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

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

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

(c) Opium poppy and poppy straw.

(16) "Opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. It does not include, unless specifically designated as controlled under s. 161.11, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). It does include its racemic and levorotatory forms.

(17) "Opium poppy" means the plant of the species *Papaver Somniferum* L., except its seeds.

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

(19) "Practitioner" means:

(a) A physician, dentist, veterinarian, podiatrist, scientific investigator or other person licensed, registered or otherwise permitted to distribute, dispense, conduct research with respect to or administer a controlled substance in the course of professional practice or research in this state.

(b) A pharmacy, hospital or other institution licensed, registered or otherwise permitted to distribute, dispense, conduct research with respect to or administer a controlled substance in the course of professional practice or research in this state.

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

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

#### SUBCHAPTER II. STANDARDS AND SCHEDULES.

**161.11 AUTHORITY TO CONTROL.** (1) The controlled substances board shall administer this subchapter and may add substances to or delete or reschedule all substances enumerated in the schedules in ss. 161.14, 161.16, 161.18, 161.20 and 161.22 pursuant to the rule-making procedures of ch. 227. In making a determination regarding a substance, the board shall consider the following:



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

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

(3) If the controlled substances board designates a substance as an immediate precursor, substances which are precursors of the controlled precursor shall not be subject to control solely because they are precursors of the controlled precursor.

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

(5) Authority to control under this section does not extend to intoxicating liquors, as defined in s. 139.01 (4), to fermented malt beverages as defined in s. 66.054 (1) (j), or to tobacco.

(6) The controlled substances board shall exclude any nonnarcotic substance from a schedule if such substance may, under the federal food, drug and cosmetic act and the laws of this state, be lawfully sold over the counter without a prescription.

(7) The provisions of sub. (6) notwithstanding, when it appears to the satisfaction of the board that any drug or substance not prescribed under this chapter is dangerous to or is being so used as to endanger the public health and welfare, the department of justice in the name of the state may seek a temporary restraining order or temporary injunction under ch. 268 and may either ban or regulate the use, sale and possession of such drug or substance. Such order or injunction shall continue until the adjournment of the legislature convened next following issuance of the order or injunction. In making administrative determinations as to substances and

drugs deemed to be dangerous under this chapter, the board shall consider:

- (a) Actual or relative potential for abuse.
- (b) Scientific evidence of pharmacological effect, if known.
- (c) State of current scientific knowledge regarding the substance.
- (d) History and current pattern of abuse.
- (e) Scope, duration, and significance of abuse.
- (f) Hazard, if any, to the public health.
- (g) Psychic or physiological dependence liability.
- (h) Controls required based on United States obligations under international treaties, conventions, or protocols.
- (j) Whether the substance is an immediate precursor of a substance already controlled under this chapter.

**161.115 NATIVE AMERICAN CHURCH EXEMPTION.** This chapter does not apply to the nondrug use of peyote and mescaline in the bona fide religious ceremonies of the Native American Church.

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

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

- (1) Has high potential for abuse; and
- (2) Has no accepted medical use in treatment in the United States or lacks accepted safety for use in treatment under medical supervision.

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

(2) Any of the following opiates, including their isomers, esters, ethers, salts and salts of isomers, esters and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers and salts is possible within the specified chemical designation:

- (a) Acetylmethadol;
- (am) Allylprodine;
- (b) Alphacetylmethadol;
- (bm) Alphameprodine;
- (c) Alphamethadol;
- (cm) Benzethidine;
- (d) Betacetylmethadol;
- (dm) Betameprodine;

- (e) Betamethadol;
- (em) Betaprodine;
- (f) Clonitazene;
- (fm) Dextromoramide;
- (g) Dextrorphan;
- (gm) Diampromide;
- (h) Diethylthiambutene;
- (hm) Dimenoxadol;
- (j) Dimepheptanol;
- (jm) Dimethylthiambutene;
- (k) Dioxaphetyl butyrate;
- (km) Dipipanone;
- (m) Ethylmethylthiambutene;
- (mm) Etonitazene;
- (n) Etoxidine;
- (nm) Furethidine;
- (p) Hydroxypethidine;
- (pm) Ketobemidone;
- (q) Levomoramide;
- (qm) Levophenacilmorphan;
- (r) Morpheridine;
- (rm) Noracymethadol;
- (s) Norlevorphanol;
- (sm) Normethadone;
- (t) Norpipanone;
- (tm) Phenadoxone;
- (u) Phenampromide;
- (um) Phenomorphan;
- (v) Phenoperidine;
- (vm) Piritramide;
- (w) Proheptazine;
- (wm) Properidine;
- (x) Racemoramide;

(y) Trimeperidine.

(3) Any of the following opium derivatives, their salts, isomers and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers and salts of isomers is possible within the specific chemical designation:

- (a) Acetorphine;
- (b) Acetyldihydrocodeine;
- (c) Benzylmorphine;
- (d) Codeine methylbromide;
- (e) Codine-N-Oxide;
- (f) Cyprenorphine;
- (g) Desomorphine;
- (h) Dihydromorphine;
- (j) Etorphine;
- (k) Heroin;
- (m) Hydromorphinol;
- (n) Methyldesorphine;
- (p) Methyldihydromorphine;
- (q) Morphine methylbromide;
- (r) Morphine methylsulfonate;
- (s) Morphine-N-Oxide;
- (t) Myrophine;
- (u) Nicocodeine;
- (v) Nicomorphine;
- (w) Normorphine;
- (x) Phoclodine;
- (y) Thebacon.

(4) Any material, compound, mixture or preparation which contains any quantity of the following hallucinogenic substances, their salts, isomers and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers and salts of isomers is possible within the specific chemical designation:

- (a) 3,4-methylenedioxy amphetamine;
- (b) 5-methoxy-3,4-methylenedioxy amphetamine;
- (c) 3,4,5-trimethoxy amphetamine;
- (d) Bufotenine;
- (e) Diethyltryptamine;

- (f) Dimethyltryptamine;
- (g) 4-methyl-2, 5-dimethoxyamphetamine;
- (h) Ibogaine;
- (j) Lysergic acid diethylamide;
- (k) Marijuana;
- (m) Mescaline;
- (n) Peyote;
- (p) N-ethyl-3-piperidyl benzilate;
- (q) N-methyl-3-piperidyl benzilate;
- (r) Psilocybin;
- (s) Psilocyn;
- (t) Tetrahydrocannabinols.

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

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

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

(2) Any of the following substances, except those narcotic drugs listed in other schedules, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by combination of extraction and chemical synthesis:

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

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

(c) Opium poppy and poppy straw.

(3) Any of the following opiates, including their isomers, esters, ethers, salts and salts of isomers, whenever the existence of these isomers, esters, ethers and salts is possible within the specific chemical designation:

- (a) Alphaprodine;
- (b) Anileridine;
- (c) Bezitramide;
- (d) Dihydrocodeine;

CHAPTER 219

622

- (e) Diphenoxylate;
- (f) Fentanyl;
- (g) Isomethadone;
- (h) Levomethorphan;
- (j) Levorphanol;
- (k) Metazocine;
- (m) Methadone;
- (n) Methadone-Intermediate, 4-cyano-2-dimethylamino-4,4-diphenyl butane;
- (p) Moramide-Intermediate, 2-methyl-3-morpholino-1,1-diphenyl-propane-carboxylic acid;
- (q) Pethidine;
- (r) Pethidine-Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine;
- (s) Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate;
- (t) Pethidine-Intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid;
- (u) Phenazocine;
- (v) Piminodine;
- (w) Racemethorphan;
- (x) Racemorphan.

(4) Coca leaves and any salt, compound, derivative or preparation of coca leaves, and any salt, compound, derivative or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions which do not contain cocaine or ecgonine.

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

- (a) Amphetamine, its salts, optical isomers, and salts of its optical isomers;
- (b) Methamphetamine, its salts, isomers, and salts of its isomers;
- (c) Phenmetrazine and its salts;
- (d) Methylphenidate.

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

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

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

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

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

(2) Any compound, mixture or preparation in dosage unit form containing any stimulant substances, which compounds, mixtures or preparations were listed on August 25, 1971, as excepted compounds under federal regulations, and any other drug of the quantitative composition shown in that list for those drugs or which is the same except that it contains a lesser quantity of controlled substances.

(3) Unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system:

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

(b) Chlorhexadol;

(c) Glutethimide;

(d) Lysergic acid;

(e) Lysergic acid amide;

(f) Methyprylon;

(g) Phencyclidine;

(h) Sulfondiethylmethane;

(j) Sulfonethylmethane;

(k) Sulfonmethane.

(4) Nalorphine.

(5) Any material, compound, mixture or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof:

(a) Not more than 1.8 grams of codeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;

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

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

(d) Not more than 300 milligrams of dihydrocodeinone, or any of its salts, per 100 milliliters or not more than 15 milligrams per

dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

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

(f) Not more than 300 milligrams of ethylmorphine, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more ingredients in recognized therapeutic amounts;

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

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

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

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

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

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

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

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

(2) Any material, compound, mixture or preparation which contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system:

- (a) Barbital;
- (b) Chloral betaine;
- (c) Chloral hydrate;
- (d) Ethchlorvynol;
- (e) Ethinamate;
- (f) Methohexital;
- (g) Meprobamate;



- (h) Methylphenobarbital;
- (j) Paraldehyde;
- (k) Petrichloral;
- (m) Phenobarbital.

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

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

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

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

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

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

(2) Any compound, mixture or preparation containing limited quantities of any of the following narcotic drugs, which also contains one or more nonnarcotic, active medicinal ingredients in sufficient proportion to confer upon the compound, mixture or preparation, valuable medicinal qualities other than those possessed by the narcotic drug alone:

(a) Not more than 200 milligrams of codeine, or any of its salts, per 100 milliliters or per 100 grams;

(b) Not more than 100 milligrams of dihydrocodeine, or any of its salts, per 100 milliliters or per 100 grams;

(c) Not more than 100 milligrams of ethylmorphine, or any of its salts, per 100 milliliters or per 100 grams;

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

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

**161.23 DISPENSING OF SCHEDULE V SUBSTANCES.** The dispensing of schedule V substances is subject to the following conditions:

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

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

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

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

(5) That no person may purchase more than 4 ounces of such a substance within a 48-hour period without the authorization of a physician, dentist or veterinarian nor may more than 4 ounces be in the possession of any person other than a physician, dentist, veterinarian or pharmacist at any time without the authorization of a physician, dentist or veterinarian.

**161.24 REPUBLISHING OF SCHEDULES.** The controlled substances board shall revise and republish the schedules semiannually for 2 years from the effective date of this chapter (1971), and thereafter annually.

**SUBCHAPTER III.  
REGULATION OF MANUFACTURE, DISTRIBUTION  
AND DISPENSING OF CONTROLLED SUBSTANCES.**

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

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

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

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

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

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

**161.335 RESEARCH AUTHORIZATIONS.** (1) The controlled substances board may authorize the issuance for 6-month periods of registrations for the possession and distribution of controlled substances by persons engaged in research. Upon such an authorization, the controlled substances board shall issue the registration. Persons who obtain this authorization are exempt from state prosecution for possession and distribution of controlled substances to the extent of the authorization.

(2) The controlled substances board may authorize persons engaged in research on the use and effects of controlled substances to withhold the names and other identifying characteristics of individuals who are the subjects of the research. Persons who obtain this authorization are not compelled in any civil, criminal, admin-

istrative, legislative or other proceeding to identify the individuals who are the subjects of research for which the authorization was obtained.

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

(2) In emergency situations, as defined by rule of the pharmacy examining board, schedule II drugs may be dispensed upon oral prescription of a practitioner, reduced promptly to writing and filed by the pharmacy. Prescriptions shall be retained in conformity with the requirements of s. 161.36. No prescription for a schedule II substance may be refilled.

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

(4) A controlled substance included in schedule V shall not be distributed or dispensed other than for a medical purpose.

#### SUBCHAPTER IV. OFFENSES AND PENALTIES.

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

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

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

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

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

(1m) Except as authorized by this chapter, it is unlawful for any person to possess, with intent to manufacture or deliver, a controlled substance. Intent under this subsection may be demonstrated by, without limitation because of enumeration, evidence of the quantity and monetary value of the substances possessed, the possession of manufacturing implements or paraphernalia, and the activities or statements of the person in possession of the controlled substance prior to and after the alleged violation.

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

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

CHAPTER 219

628

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

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

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

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

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

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

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

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

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

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

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

**161.42 PROHIBITED ACTS B - PENALTIES.** (1) It is unlawful for any person knowingly to keep or maintain any store, shop, warehouse, dwelling, building, vehicle, boat, aircraft or other

structure or place, which is resorted to by persons using controlled substances in violation of this chapter for the purpose of using these substances, or which is used for manufacturing, keeping or delivering them in violation of this chapter.

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

**161.43 PROHIBITED ACTS C - PENALTIES.** (1) It is unlawful for any person:

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

(b) To make, distribute or possess any punch, die, plate, stone or other thing designed to print, imprint or reproduce the trademark, trade name or other identifying mark, imprint or device of another or any likeness of any of the foregoing upon any drug or container or labeling thereof so as to render the drug a counterfeit 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.

**161.44 PENALTIES UNDER OTHER LAWS.** Any penalty imposed for violation of this chapter is in addition to, and not in lieu of, any civil or administrative penalty or sanction otherwise authorized by law.

**161.45 BAR TO PROSECUTION.** If a violation of this chapter is a violation of a federal law or the law of another state, a conviction or acquittal under federal law or the law of another state for the same act is a bar to prosecution in this state.

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

**161.47 CONDITIONAL DISCHARGE FOR POSSESSION AS FIRST OFFENSE.** (1) Whenever any person who has not previously been convicted of any offense under this chapter, or of any offense under any statute of the United States or of any state relating to narcotic drugs, marijuana or stimulant, depressant or hallucinogenic drugs, pleads guilty to or is found guilty of possession of a controlled substance under s. 161.41 (3), the court, without entering a judgment of guilt and with the consent of the accused, may defer further proceedings and place him on probation upon terms and conditions. Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as otherwise provided. Upon fulfillment of the terms and conditions, the court shall discharge the person and dismiss the proceedings against him. Discharge and dismissal under this section shall be without adjudication of guilt and is not a conviction for purposes of disqualifications or disabilities imposed by law upon conviction of a crime, including the additional penalties imposed for second or subsequent convictions under s. 161.48. There may be only one discharge and dismissal under this section with respect to any person.

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

**161.475 TREATMENT OPTION.** Whenever any person pleads guilty to or is found guilty of possession of a controlled substance under 161.41 (3), the court may, upon request of such person and with the consent of a treatment facility with special inpatient or outpatient programs for the treatment of drug dependent persons, allow the person to enter such treatment programs voluntarily for purposes of treatment and rehabilitation. Treatment shall be for the period the treatment facility feels is necessary and required, but shall not exceed the maximum sentence allowable unless the person consents to such continued treatment. At the end of such necessary and required treatment, with the consent of the court, the person may be released from sentence. If treatment efforts are ineffective or the person ceases to cooperate with treatment rehabilitation efforts, the person may be remanded to the court for completion of sentencing.

**161.48 SECOND OR SUBSEQUENT OFFENSES.** (1) Any person convicted of a second or subsequent offense under this chapter may be fined an amount up to twice that otherwise authorized or imprisoned for a term up to twice the term otherwise authorized or both.

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

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

#### SUBCHAPTER V. ENFORCEMENT AND ADMINISTRATIVE PROVISIONS.

**161.51 POWERS OF ENFORCEMENT PERSONNEL.** (1) Any officer or employe of the pharmacy examining board designated by the examining board may:

(a) Execute and serve search warrants, arrest warrants, administrative inspection warrants, subpoenas and summonses issued under the authority of this state;

(b) Make arrests without warrant for any offense under this chapter committed in his presence, or if he has reasonable grounds to believe that the person to be arrested has committed or is committing a violation of this chapter which may constitute a felony; and

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

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

**161.52 ADMINISTRATIVE INSPECTIONS AND WARRANTS.** (1) Issuance and execution of administrative inspection warrants shall be as follows:

(a) A judge of a court of record, upon proper oath or affirmation showing probable cause, may issue warrants for the purpose of

conducting administrative inspections authorized by this chapter or rules hereunder, and seizures of property appropriate to the inspections. For purposes of the issuance of administrative inspection warrants, probable cause exists upon showing a valid public interest in the effective enforcement of this chapter or rules hereunder, sufficient to justify administrative inspection of the area, premises, building or conveyance in the circumstances specified in the application for the warrant.

(b) A warrant shall issue only upon an affidavit of a designated officer or employe of the pharmacy examining board or the division of criminal investigation in the department of justice having knowledge of the facts alleged, sworn to before the judge and establishing the grounds for issuing the warrant. If the judge is satisfied that grounds for the application exist or that there is probable cause to believe they exist, he shall issue a warrant identifying the area, premises, building or conveyance to be inspected, the purpose of the inspection, and, if appropriate, the type of property to be inspected, if any. The warrant shall:

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

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

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

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

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

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

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

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

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

1. Inspect and copy records relating to controlled substances;

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

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

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

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

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

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

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

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

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

**161.53 VIOLATIONS CONSTITUTING PUBLIC NUISANCE.** Violations of this chapter constitute public nuisances under ch. 280, irrespective of any criminal prosecutions which may be or are commenced based on the same acts.

**161.54 COOPERATIVE ARRANGEMENTS AND CONFIDENTIALITY.** The department of justice shall cooperate with federal, state and local agencies in discharging its responsibilities concerning traffic in controlled substances and in suppressing the abuse of controlled substances. To this end, it may:



- (1) Arrange for the exchange of information among governmental officials concerning the use and abuse of controlled substances;
- (2) Coordinate and cooperate in training programs concerning controlled substance law enforcement at local and state levels;
- (3) Cooperate with the bureau by establishing a centralized unit to accept, catalog, file and collect statistics, including records of drug dependent persons and other controlled substance law offenders within the state, and make the information available for federal, state and local law enforcement purposes. It shall not furnish the name or identity of a patient or research subject whose identity could not be obtained under sub. (3); and
- (4) Conduct programs of eradication aimed at destroying wild or illicit growth of plant species from which controlled substances may be extracted.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) The officer or employe has probable cause to believe that the property was used or is intended to be used in violation of this chapter.

(3) In the event of seizure pursuant to sub. (2), proceedings under sub. (4) shall be instituted promptly.

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

(a) Place the property under seal;

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

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

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

(a) Retain it for official use;

(b) Sell that which is not required to be destroyed by law and which is not harmful to the public. The proceeds shall be used for payment of all proper expenses of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising and court costs;

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

(d) Forward it to the bureau for disposition.

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

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

(8) The failure, upon demand by any officer or employe designated in s. 161.51 (1) or (2), of the person in occupancy or in control of land or premises upon which the species of plants are growing or being stored, to produce an appropriate registration, or

proof that he is the holder thereof, constitutes authority for the seizure and forfeiture of the plants.

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

(2) COMMENCEMENT. (a) The district attorney of the county within which the property was seized shall commence the forfeiture action within 15 days after the seizure of the property. The action shall be commenced by serving a summons, complaint and affidavit of the person who seized the property upon the person from whom the property was seized and upon any person known to have a security interest in the property. Service shall be made in accordance with ch. 262.

(b) Upon service of a verified answer, the action shall be set for hearing within 60 days of the service of the answer.

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

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

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

(3) No liability is imposed by this chapter upon any authorized state, county or municipal officer or employe engaged in the lawful performance of his duties.

#### SUBCHAPTER VI. MISCELLANEOUS.

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

**161.62 SHORT TITLE.** This chapter may be cited as the "Uniform Controlled Substances Act".

SECTION 17. 165.10 of the statutes is repealed.

SECTION 18. 165.83 (2) (a) 2 of the statutes is amended to read:

165.83 (2) (a) 2. For an offense which is a misdemeanor or a violation of an ordinance involving burglary tools, commercial gambling, dealing in gambling devices, contributing to the delinquency of a child, dealing in stolen property, ~~dangerous drugs, marijuana, narcotics~~ controlled substances under ch. 161, firearms, dangerous weapons, explosives, pandering, prostitution, sex offenses where children are victims, or worthless checks.

CHAPTER 219

636

SECTION 19. 343.06 (4) (intro.) of the statutes, as affected by chapter 40, laws of 1971, is amended to read:

343.06 (4) (intro.) To any person who is an habitual drunkard or who is addicted to the use of ~~narcotic drugs or to the use of dangerous drugs~~ controlled substances as defined in s. 161.30 ~~(1)~~ ~~(a)~~ 161.01 (4), unless one of the following conditions is fulfilled and then only in the discretion of the administrator.

SECTION 20. 343.31 (1) (b) of the statutes is amended to read:

343.31 (1) (b) Upon the 2nd or any subsequent conviction for operation of a motor vehicle while under the influence of an intoxicating liquor or a ~~narcotic or dangerous drug~~ controlled substance.

SECTION 21. 346.63 (1) (a) and (b) of the statutes are amended to read:

346.63 (1) (a) A person who is under the influence of an intoxicant or ~~under the influence of a dangerous or narcotic drug~~ controlled substance;

(b) A person who is an habitual user of ~~dangerous or narcotic drugs~~ controlled substances;

SECTION 22. 346.63 (3) of the statutes, as affected by chapter 40, laws of 1971, is repealed and recreated to read:

346.63 (3) In this section, "controlled substance" has the meaning designated in s. 161.01 (4).

SECTION 23. 346.64 (1) of the statutes is amended to read:

346.64 (1) No person who owns or has direct control of any vehicle operated upon a highway for the conveyance of passengers for hire shall employ as an operator of such vehicle and retain in his employment any person who is addicted to the excessive use of intoxicating liquor or to the use of a ~~narcotic or dangerous drug~~ controlled substance under ch. 161. In addition to being subject to fine or imprisonment as prescribed by law, such person shall forfeit \$5 for each day such operator is retained in his employ.

SECTION 24. 350.01 (7) of the statutes is repealed and recreated to read:

350.01 (7) "Controlled substance" has the meaning designated in s. 161.01 (4).

SECTION 25. 350.08 of the statutes is amended to read:

**350.08 OWNER PERMITTING OPERATION.** No owner or other person having charge or control of a snowmobile shall knowingly authorize or permit any person to operate such snowmobile who is incapable, by reason of age, physical or mental disability, or is under the influence of intoxicating liquor, fermented malt beverages, ~~narcotics~~ or ~~other drugs~~ controlled substances.

SECTION 26. 350.10 (3) of the statutes is amended to read:

350.10 (3) While under the influence of intoxicating liquor, fermented malt beverages, ~~narcotics~~ or ~~other drugs~~ controlled substances.

SECTION 27. 450.02 (7) (intro.) of the statutes is amended to read:

450.02 (7) (intro.) The examining board, upon notice and hearing, may suspend or revoke the registration of one guilty of felony or gross immorality, or who is addicted to alcoholic liquors or ~~nar-  
cotic drugs, or addicted to the use of barbiturates~~ controlled sub-  
stances to an extent affecting his fitness as a pharmacist, or who is otherwise unfit to practice as a pharmacist, or whose registra-  
tion was secured by fraud or mistake or the giving of misinformation in any of the applications submitted to the examining board or who has been guilty of a violation of this chapter or ch. 161 or of violations of any of the rules ~~or regulations~~ of the examining board, or who has been guilty of acts of unprofessional conduct as herein defined. No such revocation shall become effective until 20 days after notice of the decision of the examining board has been served upon the person accused. Decisions of the examining board under this section shall be subject to review as provided in ch. 227 and in case the provisions thereof are invoked by the accused within such 20-day period, such order of revocation shall become effective only at such time as may be ordered by the court. Unprofessional conduct means:

SECTION 28. 450.04 (5) of the statutes, as affected by chapter 40, laws of 1971, is amended to read:

450.04 (5) No person shall engage in the sale or distribution at wholesale of ~~any of the drugs~~ a prescription drug, as defined in s. ~~161.30~~ 450.07 (1) (a) 1., to any of the classes of persons enumerated in s. ~~161.30~~ 450.07 (8) without first obtaining a license for such purpose from the examining board. The annual fee is \$10. Licenses expire on May 31. Such license or renewals thereof shall be issued in the discretion of the examining board to responsible applicants of good reputation.

SECTION 29. 450.07 of the statutes is created to read:

**450.07 PRESCRIPTION DRUGS.** (1) In this section, unless the context requires otherwise:

(a) "Prescription drug" means any of the following:

1. Any drug or drug-containing preparation which is subject to 21 USC 353 (b).

2. Any controlled substance, as defined in s. 161.01 (4), listed in schedules II to V in ch. 161, whether by statute or administrative action, except substances which by federal law may be dispensed without the prescription of a physician. Controlled substances are included within this definition for purposes of subs. (3), (4), (8) and (11) only and for violations thereof punishable under sub. (12).

3. Paregoric.

(b) "Delivery" has the meaning designated in s. 161.01 (6).

(c) "Patient" means the individual for whom prescription drugs are prescribed or to whom prescription drugs are administered.

(d) "Practitioner" means a person licensed by law to prescribe and administer prescription drugs.

(e) "Pharmacist" means a person duly registered with the examining board as a compounder, dispenser and supplier of drugs.

(f) "Prescription" means a written order (or an oral order later reduced to writing) by a practitioner for a prescription drug for a particular patient, which specifies the date of its issue, the name and address of such practitioner, the name and address of the

patient, the name and quantity of the prescription drug prescribed, directions for use of the drug and in case of a written order the signature of the practitioner.

(g) "Manufacturer" means persons other than pharmacists who manufacture prescription drugs, and includes persons who prepare such drugs in dosage forms by mixing, compounding, encapsulating, entableting, or other process.

(h) "Wholesaler" means persons engaged in the business of distributing prescription drugs to persons included in any of the classes named in sub. (8).

(j) "Warehouseman" means persons who store prescription drugs for others and who have no control over the disposition of such drugs except for the purpose of such storage.

(2) No person except a practitioner shall deliver any prescription drug except upon the prescription of a practitioner. An oral prescription, by telephone or otherwise, shall be promptly reduced to writing and filed by the pharmacist.

(3) No person, except a registered pharmacist or a practitioner, shall prepare, compound, dispense or prepare for delivery for a patient any prescription drug.

(4) No prescription drug shall be delivered unless there is affixed to the immediate container a label disclosing:

(a) The name and address of the owner of the establishment from which such drug was delivered.

(b) The date on which the prescription for such drug was filled.

(c) The number of such prescription as filed in the prescription file of the pharmacist who filled such prescription.

(d) The name of the practitioner who prescribed such drug.

(e) The name and address of the patient.

(f) Directions for use of the drug as contained in the prescription.

(5) No prescription for a prescription drug shall be refilled except as designated on such prescription, and unless accurate record of such refilling is entered on such prescription showing the date and amount thereof. No oral or written prescription shall be refilled unless the requirements of sub. (2) have been met first and unless either written or oral authority has been given by the prescriber.

(6) In the event of any sale in bankruptcy, at public auction or any other sale except in the normal course of business, the seller shall give written notice of such sale to the examining board at least one week prior to the date of sale and a complete and accurate report must be made in writing to the examining board by the seller within 10 days after such sale, showing the name and address of the parties to whom any prescription drugs have been sold together with an itemized inventory thereof. This does not apply to the bona fide sale of a pharmacy as a business, if the parties first notify the examining board of such impending sale.

(7) It is unlawful for any person to have any prescription drug in his possession unless such drug was obtained in compliance with this section.

(8) Subsections (2), (3), (4) and (7) do not apply to the wholesale delivery of prescription drugs to persons included in any of the classes named in this subsection; nor to the agents or employes of such persons for use in the usual course of their business or practice or in the performance of their official duties, as the case may be; nor to the possession of prescription drugs by such persons or their agents or employes for such use:

(a) Pharmacists.

(b) Practitioners.

(c) Persons who procure prescription drugs for the purpose of lawful research, teaching or testing and not for resale.

(d) Hospitals and other institutions which procure prescription drugs for lawful administration by practitioners.

(e) Officers or employes of the federal government.

(f) Manufacturers and wholesalers.

(9) (a) No person shall obtain or attempt to obtain a prescription drug, or procure or attempt to procure the administration of a prescription drug by fraud, deceit, wilful misrepresentation or subterfuge; or by the forgery or alteration of a prescription or of any written order; or by the wilful concealment of a material fact; or by the use of a false name or the giving of a false address.

(b) Information communicated to a physician in an effort unlawfully to procure a prescription drug, or unlawfully to procure the administration of any such drug, shall not be deemed a privileged communication.

(c) No person shall wilfully make a false statement in any prescription, order, report or record required by this section.

(d) No person shall, for the purpose of obtaining a prescription drug, falsely assume the title of, or represent himself to be, a licensed drug manufacturer, a licensed drug wholesaler, pharmacist, physician, dentist, veterinarian or other authorized practitioner.

(e) No person shall make or utter any false or forged prescription or false or forged written order.

(f) No person shall wilfully affix any false or forged label to a package or receptacle containing prescription drugs.

(11) The pharmacy examining board may promulgate necessary rules for the administration of this section. The department of justice and the pharmacy examining board each may promulgate necessary rules for the enforcement of this section. In addition to all law enforcement officers and agencies, the department and the examining board shall be responsible for the enforcement of this section.

(12) (a) Any person who violates this section, except as provided in par. (b), may be fined not more than \$500 or imprisoned not more than 6 months or both.

(b) Any person who delivers a prescription drug in violation of this section may be fined not more than \$5,000 or imprisoned not more than one year in county jail or both.

(13) In any complaint, information or indictment, and in any action or proceeding brought for the enforcement of this section, it shall not be necessary to negative any exception, excuse, proviso or exemption, contained in this section and the burden of proof of any such exception, excuse, proviso or exemption, shall be upon the defendant.

SECTION 30. 450.18 of the statutes is repealed.

SECTION 31. 939.22 (42) of the statutes is amended to read:

939.22 (42) "Under the influence of an intoxicant" means that the actor's ability to operate a vehicle or handle a firearm is materially impaired because of his consumption of an alcoholic beverage, ~~a narcotic drug~~ or ~~other intoxicating~~ controlled substance under ch. 161.

SECTION 32. 968.13 (1) of the statutes is amended to read:

968.13 (1) Contraband, which includes without limitation because of enumeration lottery tickets, gambling machines or other gambling devices, lewd, obscene or indecent written matter, pictures, sound recordings or motion picture films, forged money or written instruments and the tools, dies, machines or materials for making them, and ~~narcotic drugs~~ controlled substances, as defined in s. 161.01 (4), and the implements for smoking or injecting them.

SECTION 33. 968.28 of the statutes is amended to read:

**968.28 APPLICATION FOR COURT ORDER TO INTERCEPT COMMUNICATIONS.** The attorney general together with the district attorney of any county may approve a request of an investigative or law enforcement officer to apply to the circuit court in the county where the interception is to take place for an order authorizing or approving the interception of wire or oral communications. In counties having more than one branch of the circuit court the application shall be made only to the lowest numbered branch having criminal jurisdiction. The judge of such court may under s. 968.30 grant an order authorizing or approving the interception of wire or oral communications by investigative or law enforcement officers having responsibility for the investigation of the offense for which the application is made. The authorization shall be permitted only when such interception may provide or has provided evidence of the commission of the offense of murder, kidnapping, commercial gambling, bribery, extortion and dealing in ~~narcotics or dangerous drugs~~ controlled substances or any conspiracy to commit any of the foregoing offenses.

SECTION 34. **CROSS REFERENCE CHANGE.** Whenever the reference to section "161.19" appears in section 15.401 (10) of the statutes, the reference "ch. 161" is substituted.

SECTION 35. **PROGRAM RESPONSIBILITY CITATIONS.** In the list of program responsibility citations specified for the department of health and social services under section 15.191 (intro.) of the statutes, the references to sections "161.03, 161.14 and 161.19" are deleted.

SECTION 36. **PENDING PROCEEDINGS.** (1) Prosecution for any violation of law occurring prior to the effective date of this act is not affected or abated by this act. If the offense being prosecuted is similar to one set out in subchapter IV of chapter 161, as established by this act, the penalties under that subchapter apply if they are less than those under prior law.



(2) Civil seizures or forfeitures and injunctive proceedings commenced prior to the effective date of this act are not affected by this act.

(3) All administrative proceedings pending under prior laws which are superseded by this act shall be continued and brought to a final determination in accord with the laws and rules in effect prior to the effective date of the act. Any substance controlled under prior law, which is not listed within schedules I to V, is automatically controlled without further proceedings and shall be listed in the appropriate schedule.

(4) This act applies to violations of law, seizures and forfeiture, injunctive proceedings, administrative proceedings and investigations which occur on and after its effective date.

SECTION 37. CONTINUATION OF RULES. Any orders and rules promulgated under any law affected by this act and in effect on the effective date of this act and not in conflict with it continue in effect until modified, superseded or repealed.

SECTION 38. EFFECTIVE DATE. SECTIONS 1 to 35, 36 (2), (3) and (4) and 37 shall take effect on the first day of the seventh month beginning after the date of publication of this act.

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