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## WISCONSIN LEGISLATIVE COUNCIL LEGAL MEMORANDUM

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### Drug Laws In Wisconsin: Offenses and Penalties Under Ch. 961, Stats. [the Uniform Controlled Substances Act]

#### INTRODUCTION

This Legal Memorandum sets forth the major offenses, and penalties for those offenses, under the Uniform Controlled Substances Act [ch. 961, Stats.]. The memorandum describes:

- Offenses and penalties relating to manufacture, distribution, delivery, possession with intent to deliver and possession of controlled substances.
- Asset seizure and forfeiture provisions applicable to controlled substances offenses.
- Offenses and penalties relating to the possession, sale or use of drug paraphernalia.

The specific penalty provisions for these various drug-related offenses are summarized in Tables 1 to 6, attached to this Legal Memorandum.

#### 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.

#### CLASSIFICATION OF SUBSTANCES

Subchapter II of chapter 961 classifies all controlled substances into five different categories, or “schedules,” according to: (1) each substance’s potential for abuse; (2) the existence of any accepted medical use for the substance in treatment; and (3) 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). 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 (“rohypnol”), 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.

**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.]

**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.]

**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.]

**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.]

**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.]

**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:

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

2. 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. [s. 961.01 (4m), Stats.]

### **GENERAL PROHIBITIONS; EXCEPTIONS**

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

1. 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;
2. A common or contract carrier or warehousekeeper, or employee thereof, whose possession of any controlled substance is in the course of business or employment;
3. A medical practitioner;
4. A person to whom controlled substances have been prescribed;
5. A person authorized to use controlled substances in research, instruction and other specialties; or
6. A person who is otherwise authorized to possess such substances under federal law. [s. 961.32, Stats.]

### **PENALTIES FOR THE MANUFACTURE, DISTRIBUTION, DELIVERY OR POSSESSION OF CONTROLLED SUBSTANCES**

#### **DETERMINING AMOUNT OF CONTROLLED SUBSTANCE FOR PURPOSE OF APPLYING APPROPRIATE PENALTY**

For the purpose of determining the appropriate penalty for offenses involving certain specified controlled substances, described below, the amount includes the weight of the controlled substance **together with** any compound, mixture, diluent, plant material, 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.]

#### **HEROIN, PCP, AMPHETAMINE, METHAMPHETAMINE AND METHCATHINONE OFFENSES**

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. The penalty ranges, based on the number of grams involved, are set forth in Table 3, in the Appendix.

#### **OTHER CONTROLLED SUBSTANCES OFFENSES, INCLUDING MARIJUANA AND LSD**

Table 4 in the Appendix, sets forth the penalty structure for manufacture, distribution, delivery or possession of controlled substances not covered by Tables 2 and 3, including those penalties applicable to THC, the chemical found in marijuana, and LSD.

**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. 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 is guilty of a Class F felony. 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, even if the mistaken belief was reasonable.

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.]

**DISTRIBUTION TO A CHILD**

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

**POSSESSION AND DISPOSAL OF WASTE FROM  
MANUFACTURE OF METHAMPHETAMINE**

No person may do any of the following:

1. Knowingly possess “methamphetamine manufacturing waste,” as defined in s. 961.437 (1) (c), Stats.
2. Intentionally dispose of methamphetamine manufacturing waste.

A person who violates either of these provisions is subject to the following penalties:

1. For a first offense, the person is guilty of a Class H felony.
2. For a second or subsequent offense, the person is guilty of a Class F felony.

This prohibition does not apply to a person who possesses or disposes of methamphetamine manufacturing waste under **all** of the following circumstances:

1. The person is storing, treating or disposing of the methamphetamine manufacturing waste in compliance with chs. 287, 289, 291 and 292, Stats., or the person has notified a law enforcement agency of the existence of the methamphetamine manufacturing waste.
2. The methamphetamine manufacturing waste had previously been possessed or disposed of by another person in violation of these prohibitions. [s. 961.437, Stats.]

**SUSPENSION OF MOTOR VEHICLE OPERATING  
PRIVILEGE**

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 the person’s motor vehicle operating privilege, for not less than **six months** nor more than **five years**. 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.

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.]

**DRUG ABUSE PROGRAM IMPROVEMENT SURCHARGE**

1987 Wisconsin Act 339 created a surcharge equal to 50% of the amount of any fine and penalty assessment 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. [s. 961.41 (5), Stats.]

**ASSET FORFEITURE UNDER CH. 961, STATS.**

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 employee and are subject to forfeiture. The items which are subject to seizure and forfeiture include:

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

5. All books, records and research products which are used or intended for use in violation of ch. 961, Stats.
6. 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.]

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:

1. The seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative warrant.
2. The property has been the subject of a prior judgment in a criminal injunction or forfeiture proceeding under ch. 961, Stats.
3. The officer or employee has probable cause to believe that the property is dangerous to health or safety.
4. The officer or employee 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.

There are specific provisions relating to: (1) proceedings which must be followed to allow persons having claims to the seized property to assert those claims; and (2) what the seizing agency may or must do with the various types of property seized.

In an action to cause forfeiture of property under ch. 961, Stats., the court may render judgment either: (1) **in rem** (i.e., against the property); (2) against a party personally; or (3) 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, 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.]

### **DRUG PARAPHERNALIA: OFFENSES AND PENALTIES**

#### **POSSESSION, SALE OR USE OF DRUG PARAPHERNALIA**

##### **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.

“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 in the Appendix.

In addition to the penalties summarized in Table 5, drug paraphernalia are subject to **seizure and forfeiture** under the provisions of current law that provide for the forfeiture of illegally used controlled substances.

**Limited Municipal Authority to Enact Drug Paraphernalia Ordinances**

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.]

**OTHER DRUG OFFENSES AND THEIR PENALTIES IN CH. 961, STATS.**

Table 5 attached to this Legal Memorandum sets forth the statutory text of other offenses under the Controlled Substances Act, which includes the penalties for commission of those offenses.

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This Memorandum includes relevant laws enacted through 2003 Wisconsin Act 49 and replaces Legal Memorandum 2000-11 of the same title.

This memorandum was prepared on October 27, 2003, by **Don Salm, Senior Staff Attorney**, Legislative Council Staff.





**TABLE 1**

**PENALTY CLASSIFICATIONS AND PENALTIES APPLICABLE TO VARIOUS  
DRUG VIOLATIONS CITED IN THIS LEGAL MEMORANDUM**  
*[as set forth in ss. 939.50 and 939.51, Stats., in the Criminal Code]*

**939.50 Classification of felonies. (3)** Penalties for felonies are as follows:

- (a) For a **Class A felony**, life imprisonment.
- (b) For a Class B felony, imprisonment not to exceed 60 years.
- (c) For a Class C felony, a fine not to exceed \$100,000 or imprisonment not to exceed 40 years, or both.
- (d) For a Class D felony, a fine not to exceed \$100,000 or imprisonment not to exceed 25 years, or both.
- (e) For a Class E felony, a fine not to exceed \$50,000 or imprisonment not to exceed 15 years, or both.
- (f) For a Class F felony, a fine not to exceed \$25,000 or imprisonment not to exceed 12 years and 6 months, or both.
- (g) For a Class G felony, a fine not to exceed \$25,000 or imprisonment not to exceed 10 years, or both.
- (h) For a Class H felony, a fine not to exceed \$10,000 or imprisonment not to exceed 6 years, or both.
- (i) For a Class I felony, a fine not to exceed \$10,000 or imprisonment not to exceed 3 years and 6 months, or both.

**939.51 Classification of misdemeanors. (3)** (a) For a **Class A misdemeanor**, a fine not to exceed \$10,000 or imprisonment not to exceed 9 months, or both.

**TABLE 2**

**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.]**

<b><i>OFFENSE</i></b>	<b><i>AMOUNT</i></b>	<b><i>PENALTY (FINE/PERIOD OF IMPRISONMENT)*</i></b>
1. Manufacture, distribution or delivery of cocaine or cocaine base	1 gram or less	Class G felony
	More than 1 gram to 5 grams	Class F felony
	More than 5 grams to 15 grams	Class E felony
	More than 15 grams to 40 grams	Class D felony
	More than 40 grams	Class C felony
2. Possession of cocaine or cocaine base with intent to manufacture, distribute or deliver	1 gram or less	Class G felony
	More than 1 gram to 5 grams	Class F felony
	More than 5 grams to 15 grams	Class E felony
	More than 15 grams to 40 grams	Class D felony
	More than 40 grams	Class C felony
3. Possession or attempted possession of cocaine or cocaine base	—	<u>First conviction: Must</u> be fined not more than \$5,000 and <u>may</u> be imprisoned not more than one year in county jail. <u>Second or subsequent offense:</u> Class I felony.

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\* See Table 1 for specific penalties attached to these penalty classes.

**TABLE 3**

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

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

<b>OFFENSE</b>	<b>AMOUNT</b>	<b>PENALTY (FINE/PERIOD OF IMPRISONMENT)*</b>
1. Manufacture, distribution or delivery of heroin	3 grams or less	Class F felony
	More than 3 grams to 10 grams	Class E felony
	More than 10 grams to 50 grams	Class D felony
	More than 50 grams	Class C felony
2. Manufacture, distribution or delivery of PCP, amphetamine, methamphetamine or methcathinone	3 grams or less	Class F felony
	More than 3 grams to 10 grams	Class E felony
	More than 10 grams to 50 grams	Class D felony
	More than 50 grams	Class C felony
3. Possession of heroin with intent to manufacture, distribute or deliver	3 grams or less	Class F felony
	More than 3 grams to 10 grams	Class E felony
	More than 10 grams to 50 grams	Class D felony
	More than 50 grams	Class C felony
4. Possession of PCP, amphetamine, methamphetamine or methcathinone with intent to manufacture, distribute or deliver	3 grams or less	Class F felony
	More than 3 grams to 10 grams	Class E felony
	More than 10 grams to 50 grams	Class D felony
	More than 50 grams	Class C felony
5. Possession or attempted possession of heroin	--	Class I felony [under s. 961.41 (3g) (am), Stats.]
6. Possession or attempted possession of PCP, amphetamine, or methcathinone	--	<u>First conviction</u> : <b>May</b> be fined up to \$5,000 or imprisoned up to 1 year, or both. <u>Second or subsequent offense</u> : Class I felony.
7. Possession or attempted possession of methamphetamine	--	Class I felony

\* See Table 1 for specific penalties attached to these penalty classes.

**TABLE 4**

**PENALTIES FOR ILLEGAL MANUFACTURE, DISTRIBUTION OR DELIVERY OF,  
POSSESSION WITH INTENT TO DELIVER, OR POSSESSION OF CONTROLLED  
SUBSTANCES NOT COVERED BY TABLES 2 AND 3**

*[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.]*

<b>OFFENSE</b>	<b>AMOUNT</b>	<b>PENALTY (FINE/PERIOD OF IMPRISONMENT)*</b>
<b>A. MANUFACTURING, DISTRIBUTING OR DELIVERING A CONTROLLED SUBSTANCE</b>		
1. Other Schedule I or II narcotics	--	Class E felony
2. LSD	One gram or less	Class G felony
	More than 1 gram to 5 grams	Class F felony
	More than 5 grams	Class E felony
3. Psilocin or Psilocybin	100 grams or less	Class G felony
	More than 100 grams to 500 grams	Class F felony
	More than 500 grams	Class E felony
4. THC (chemical in marijuana)*	200 grams or less, or 4 or fewer plants containing THC or less	Class I felony
	More than 200 grams to 1,000 grams, or more than 4 plants containing THC to 20 plants containing THC	Class H felony
	More than 1,000 grams to 2,500 grams, or more than 20 plants containing THC to 50 plants containing THC	Class G felony
	More than 2,500 grams to 10,000 grams, or more than 50 plants containing THC to 200 plants containing THC	Class F felony
	More than 10,000 grams or more than 200 plants containing THC	Class E felony

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\* See Table 1 for specific penalties attached to these penalty classes.

\*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>
5. Other Schedule I or II non-narcotics, Schedule III controlled substances, or a controlled substance analog of any other controlled substance in Schedule I or II	--	Class H felony
6. Schedule IV (generally)	--	Class H felony
7. Flunitrazepam	3 grams or less	Class F felony
	3 grams to 10 grams	Class E felony
	More than 10 grams to 50 grams	Class D felony
	More than 50 grams	Class C felony
8. Schedule V	--	Class I felony
9. Manufacture, distribution or delivery or intent to manufacture, distribute or deliver a <b>counterfeit</b> substance included in schedule I or II which is a narcotic drug	--	Class E felony
10. Manufacture, distribution or delivery or intent to manufacture, distribute or deliver any other <b>counterfeit</b> substance included in schedule I, II, III or IV (except flunitrazepam)	--	Class H felony (counterfeit flunitrazepam subject to same penalties as flunitrazepam)
11. Manufacture, distribution or delivery or intent to manufacture, distribute or deliver a <b>counterfeit</b> substance included in schedule V	--	Class I felony
<b>B. POSSESSION OF A CONTROLLED SUBSTANCE WITH INTENT TO MANUFACTURE, DISTRIBUTE OR DELIVER</b>		
1. Other Schedule I or II narcotics	--	Class E felony
2. LSD	One gram or less	Class G felony
	Over one gram and up to 5 grams	Class F felony
	Over 5 grams	Class E felony
3. Psilocin or Psilocybin	100 grams or less	Class G felony
	Over 100 grams and up to 500 grams	Class F felony
	Over 500 grams	Class E felony
4. THC (chemical in marijuana)*	200 grams or less, or 4 plants containing THC or less	Class I felony
	Over 200 grams and up to 1,000 grams, or more than 4 plants containing THC to 20 plants containing THC	Class H felony
	Over 1,000 grams to 2,500 grams, or more than 20 plants containing THC to 50 plants containing THC	Class G felony

<i>OFFENSE</i>	<i>AMOUNT</i>	<i>PENALTY (FINE/PERIOD OF IMPRISONMENT)*</i>
	Over 2,500 grams to 10,000 grams, or more than 50 plants containing THC to 200 plants containing THC	Class F felony
	More than 10,000 grams, or more than 200 plants containing THC	Class E felony
5. Other Schedule I, II or III non-narcotics or a controlled substance analog of any other controlled substance included in schedule I or II	--	Class H felony
6. Flunitrazepam	3 grams or less	Class F felony
	Over 3 grams to 10 grams	Class E felony
	Over 10 grams to 50 grams	Class D felony
	More than 50 grams	Class C felony
7. Schedule IV (generally)	--	Class H felony
8. Schedule V	--	Class I felony
<b>C. UNLAWFUL POSSESSION OR ATTEMPTED POSSESSION OF CONTROLLED SUBSTANCES</b>		
1. Piperidine	--	Class F felony
2. Schedule I or II narcotics	--	Class I felony
3. LSD, PCP, Amphetamine, Methamphetamine, Methcathinone Psilocin or Psilocybin	--	<u>First conviction:</u> <b>May</b> be fined up to \$5,000 ( <b>may</b> be imprisoned up to 1 year in county jail) (or both). <u>Second or subsequent offense:</u> Class I felony.
4. THC (chemical in marijuana)	--	<u>First conviction:</u> <b>May</b> be fined up to \$1,000 (may be imprisoned up to 6 months) (or both). <u>Second or subsequent offense:</u> Class I felony.
5. Gamma-hydroxybutyric acid, Gamma-butyrolactane, Ketamine or Flunitrazepam	--	Class H felony
6. Other scheduled non-narcotics	--	<b>May</b> be fined up to \$500 (may be imprisoned up to 30 days) (or both). [s. 939.61, Stats.]
<b>D. CONSPIRACY TO MANUFACTURE, DISTRIBUTE, DELIVER OR POSSESS WITH INTENT TO MANUFACTURE, DISTRIBUTE OR DELIVER CONTROLLED SUBSTANCES [s. 961.41 (1X), STATS.]</b>		
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 5**

**PENALTIES FOR OTHER SELECTED OFFENSES IN CH. 961**

<b>OFFENSE</b>	<b>PENALTY*</b>
<b>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.]</b>	
Distribution or delivery of any controlled substance or controlled substance analog under s. 961.41 (1), Stats.	Applicable maximum term of imprisonment may be increased by 5 years.
<b>B. DISTRIBUTION OR DELIVERY OF A CONTROLLED SUBSTANCE WITHIN 1,000 FEET OF CERTAIN PREMISES OR ON OR NEAR CERTAIN PREMISES * [S. 961.49, STATS.]</b>	
Distribution or delivery of, or possession with intent to deliver or distribute, any of the following: 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 may be increased by 5 years.
<b>C. POSSESSION OR ATTEMPTED POSSESSION OF A CONTROLLED SUBSTANCE WITHIN 1,000 FEET OF CERTAIN PREMISES [SS. 938.34 (14f) AND 961.495, STATS.]</b>	
Any Schedule I or II controlled substance or ketamine or flunitrazepam.	Additional penalty of 100 hours of community service work <b>must</b> 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.
<b>D. DISTRIBUTION OR DELIVERY OF AN IMITATION CONTROLLED SUBSTANCE</b>	
Distribution or delivery of an imitation controlled substance. [s. 961.41 (4), Stats.]	Class I felony.
<b>E. OTHER DRUG OFFENSES</b>	
Keeping of a drug house. [s. 961.42, Stats.]	Class I felony.
Acquiring or obtaining a controlled substance by misrepresentation, fraud, forgery, deception or subterfuge. [s. 961.43 (1), Stats.]	Class H felony.

\* See Table 1 for specific penalties attached to these penalty classes.

\*The premises listed in the relevant statutes are: (1) while the person is on the premises of a scattered site public housing project; (2) while the person is in or on or otherwise within 1,000 feet of any of the following: (a) private or public school premises; (b) a school bus; (c) a state, county, city, village or town park; (d) a swimming pool open to members of the public; (e) a youth center or community center; (f) a jail or correctional facility; or (g) a multi-unit public housing project; (3) while in or on the premises of an approved treatment facility for alcohol or other drug abuse treatment; or (4) while within 1,000 feet of a facility under item (3) if the person knows or should have known it was such a facility.





**TABLE 6**

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

*[s. 961.571, Stats., et. ff.]*

<b><i>OFFENSE</i></b>	<b><i>PENALTY*</i></b>
Use of drug paraphernalia or possession with primary intent to use illegally (in general)	(1) Fine of not more than \$500 or imprisoned for not more than 30 days, or both  (2) If methamphetamine, Class H felony
Manufacture or delivery of drug paraphernalia knowing it will be primarily used illegally	(1) Fine of not more than \$1,000 or imprisoned for not more than 90 days, or both  (2) If methamphetamine, Class H felony
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	(1) Fine of not more than \$10,000 or imprisoned for not more than 9 months, or both  (2) If methamphetamine, Class G felony
Advertising drug paraphernalia	Fine of not more than \$500 or imprisoned for not more than 30 days, or both

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\* See Table 1 for specific penalties attached to these penalty classes.