

2019 -- S 0077 SUBSTITUTE A

=====
LC000627/SUB A
=====

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2019

—————
A N A C T

RELATING TO FOOD AND DRUGS -- THE UNIFORMED CONTROLLED SUBSTANCES
ACT

Introduced By: Senators Miller, DiPalma, Coyne, Conley, and Euer

Date Introduced: January 16, 2019

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 21-28-4.01 of the General Laws in Chapter 21-28 entitled "Uniform
2 Controlled Substances Act" is hereby amended to read as follows:

3 **21-28-4.01. Prohibited acts A -- Penalties.**

4 (a)(1) Except as authorized by this chapter, it shall be unlawful for any person to
5 manufacture, deliver, or possess with intent to manufacture or deliver a controlled substance.

6 (2) Any person who is not a drug-addicted person, as defined in § 21-28-1.02(20), who
7 violates this subsection with respect to a controlled substance classified in schedule I or II, except
8 the substance classified as marijuana, is guilty of a crime and, upon conviction, may be
9 imprisoned to a term up to life or fined not more than five hundred thousand dollars (\$500,000)
10 nor less than ten thousand dollars (\$10,000), or both.

11 (3) Where the deliverance as prohibited in this subsection shall be the proximate cause of
12 death to the person to whom the controlled substance is delivered, it shall not be a defense that
13 the person delivering the substance was, at the time of delivery, a drug-addicted person as defined
14 in § 21-28-1.02(20).

15 (4) Any person, except as provided for in subdivision (2) of this subsection, who violates
16 this subsection with respect to:

17 (i) A controlled substance, classified in schedule I or II, is guilty of a crime and, upon
18 conviction, may be imprisoned for not more than thirty (30) years, or fined not more than one

1 hundred thousand dollars (\$100,000) nor less than three thousand dollars (\$3,000), or both;

2 (ii) A controlled substance, classified in schedule III or IV, is guilty of a crime and, upon
3 conviction, may be imprisoned for not more than twenty (20) years, or fined not more than forty
4 thousand dollars (\$40,000), or both; provided, with respect to a controlled substance classified in
5 schedule III(d), upon conviction may be imprisoned for not more than five (5) years, or fined not
6 more than twenty thousand dollars (\$20,000), or both.

7 (iii) A controlled substance, classified in schedule V, is guilty of a crime and, upon
8 conviction, may be imprisoned for not more than one year, or fined not more than ten thousand
9 dollars (\$10,000), or both.

10 (b)(1) Except as authorized by this chapter, it is unlawful for any person to create,
11 deliver, or possess with intent to deliver, a counterfeit substance.

12 (2) Any person who violates this subsection with respect to:

13 (i) A counterfeit substance, classified in schedule I or II, is guilty of a crime and, upon
14 conviction, may be imprisoned for not more than thirty (30) years, or fined not more than one
15 hundred thousand dollars (\$100,000), or both;

16 (ii) A counterfeit substance, classified in schedule III or IV, is guilty of a crime and, upon
17 conviction, may be imprisoned for not more than twenty (20) years, or fined not more than forty
18 thousand dollars (\$40,000), or both; provided, with respect to a controlled substance classified in
19 schedule III(d), upon conviction may be imprisoned for not more than five (5) years, or fined not
20 more than twenty thousand dollars (\$20,000), or both.

21 (iii) A counterfeit substance, classified in schedule V, is guilty of a crime and, upon
22 conviction, may be imprisoned for not more than one year, or fined not more than ten thousand
23 dollars (\$10,000), or both.

24 (c)(1) It shall be unlawful for any person knowingly or intentionally to possess a
25 controlled substance, unless the substance was obtained directly from, or pursuant to, a valid
26 prescription or order of a practitioner while acting in the course of his or her professional
27 practice, or except as otherwise authorized by this chapter.

28 (2) Any person who violates this subsection with respect to:

29 (i) A controlled substance classified in schedules I, II and III, IV, and V, except the
30 substance classified as marijuana, is guilty of a crime and, upon conviction, may be imprisoned
31 for not more than three (3) years, or fined not less than five hundred dollars (\$500) nor more than
32 five thousand dollars (\$5,000), or both;

33 (ii) More than one ounce (1 oz.) of a controlled substance classified in schedule I as
34 marijuana is guilty of a misdemeanor, except for those persons subject to (a)(1), and, upon

1 conviction, may be imprisoned for not more than one year, or fined not less than two hundred
2 dollars (\$200) nor more than five hundred dollars (\$500), or both.

3 (iii) Notwithstanding any public, special, or general law to the contrary, the possession of
4 one ounce (1 oz.) or less of marijuana by a person who is eighteen (18) years of age or older, and
5 who is not exempted from penalties pursuant to chapter 28.6 of this title, shall constitute a civil
6 offense, rendering the offender liable to a civil penalty in the amount of one hundred fifty dollars
7 (\$150) and forfeiture of the marijuana, but not to any other form of criminal or civil punishment
8 or disqualification. Notwithstanding any public, special, or general law to the contrary, this civil
9 penalty of one hundred fifty dollars (\$150) and forfeiture of the marijuana shall apply if the
10 offense is the first (1st) or second (2nd) violation within the previous eighteen (18) months.

11 (iv) Notwithstanding any public, special, or general law to the contrary, possession of one
12 ounce (1 oz.) or less of marijuana by a person who is seventeen (17) years of age or older and
13 under the age of eighteen (18) years, and who is not exempted from penalties pursuant to chapter
14 28.6 of this title, shall constitute a civil offense, rendering the offender liable to a civil penalty in
15 the amount of one hundred fifty dollars (\$150) and forfeiture of the marijuana; provided the
16 minor offender completes ~~an approved,~~ a drug-awareness program [approved by the department of](#)
17 [behavioral healthcare, developmental disabilities and hospitals](#) and community service as
18 determined by the court. If the person seventeen (17) years of age or older and under the age of
19 eighteen (18) years fails to complete an approved, drug-awareness program and community
20 service within one year of the disposition, the penalty shall be a three hundred dollar (\$300) civil
21 fine and forfeiture of the marijuana, except that if no drug-awareness program or community
22 service is available, the penalty shall be a fine of one hundred fifty dollars (\$150) and forfeiture
23 of the marijuana. The parents or legal guardian of any offender seventeen (17) years of age or
24 older and under the age of eighteen (18) shall be notified of the offense and the availability of a
25 drug-awareness and community-service program. The drug-awareness program ~~must be approved~~
26 ~~by the court, but~~ shall, at a minimum, provide four (4) hours of instruction or group discussion
27 and ten (10) hours of community service. Notwithstanding any other public, special, or general
28 law to the contrary, this civil penalty shall apply if the offense is the first or second violation
29 within the previous eighteen (18) months.

30 (v) Notwithstanding any public, special, or general law to the contrary, a person not
31 exempted from penalties pursuant to chapter 28.6 of this title found in possession of one ounce (1
32 oz.) or less of marijuana is guilty of a misdemeanor and, upon conviction, may be imprisoned for
33 not more than thirty (30) days, or fined not less than two hundred dollars (\$200) nor more than
34 five hundred dollars (\$500), or both, if that person has been previously adjudicated on a violation

1 for possession of less than one ounce (1 oz.) of marijuana under (c)(2)(iii) or (c)(2)(iv) two (2)
2 times in the eighteen (18) months prior to the third (3rd) offense.

3 (vi) Any unpaid civil fine issued under (c)(2)(iii) or (c)(2)(iv) shall double to three
4 hundred dollars (\$300) if not paid within thirty (30) days of the disposition. The civil fine shall
5 double again to six hundred dollars (\$600) if it has not been paid within ninety (90) days.

6 (vii) No person may be arrested for a violation of (c)(2)(iii) or (c)(2)(iv) of this
7 subsection except as provided in this subparagraph. Any person in possession of an identification
8 card, license, or other form of identification issued by the state or any state, city, or town, or any
9 college or university, who fails to produce the same upon request of a police officer who informs
10 the person that he or she has been found in possession of what appears to the officer to be one
11 ounce (1 oz.) or less of marijuana, or any person without any such forms of identification who
12 fails or refuses to truthfully provide his or her name, address, and date of birth to a police officer
13 who has informed such person that the officer intends to provide such individual with a citation
14 for possession of one ounce (1 oz.) or less of marijuana, may be arrested.

15 (viii) No violation of (c)(2)(iii) or (c)(2)(iv) of this subsection shall be considered a
16 violation of parole or probation.

17 (ix) Any records collected by any state agency, tribunal, or the family court that include
18 personally identifiable information about violations of (c)(2)(iii) or (c)(2)(iv) shall not be open to
19 public inspection in accordance with § 8-8.2-21.

20 (3) Jurisdiction. Any and all violations of (c)(2)(iii) and (c)(2)(iv) shall be the exclusive
21 jurisdiction of the Rhode Island traffic tribunal. All money associated with the civil fine issued
22 under (c)(2)(iii) or (c)(2)(iv) shall be payable to the Rhode Island traffic tribunal. Fifty percent
23 (50%) of all fines collected by the Rhode Island traffic tribunal from civil penalties issued
24 pursuant to (c)(2)(iii) or (c)(2)(iv) shall be ~~expended on drug awareness and treatment programs~~
25 ~~for youth~~ deposited as general revenues to be allocated by the department of behavioral
26 healthcare, developmental disabilities and hospitals (BHDDH) and used to fund substance abuse
27 prevention programs and student assistance programs for youth pursuant to chapters 21.2 and
28 21.3 of title 16, and in accordance with the criteria set forth in §§ 16-21.2-4(a) and 16-21.3-2(a).

29 (4) Additionally, every person convicted or who pleads nolo contendere under (c)(2)(i) or
30 convicted or who pleads nolo contendere a second or subsequent time under (c)(2)(ii), who is not
31 sentenced to a term of imprisonment to serve for the offense, shall be required to:

32 (i) Perform up to one hundred (100) hours of community service;

33 (ii) Attend and complete a drug-counseling and education program, as prescribed, by the
34 director of the department of behavioral healthcare, developmental disabilities and hospitals and

1 pay the sum of four hundred dollars (\$400) to help defray the costs of this program which shall be
2 deposited as general revenues to be allocated by the department of behavioral healthcare,
3 developmental disabilities and hospitals (BHDDH) to fund substance abuse prevention programs
4 and student assistance programs for youth pursuant to chapters 21.2 and 21.3 of title 16 and in
5 accordance with the criteria set forth in §§ 16-21.2-4(a) and 16-21.3-2(a). Failure to attend may
6 result, after hearing by the court, in jail sentence up to one year;

7 (iii) The court shall not suspend any part or all of the imposition of the fee required by
8 this subsection, unless the court finds an inability to pay;

9 (iv) If the offense involves the use of any automobile to transport the substance or the
10 substance is found within an automobile, then a person convicted or who pleads nolo contendere
11 under (c)(2)(i) and (c)(2)(ii) shall be subject to a loss of license for a period of six (6) months for
12 a first offense and one year for each offense after.

13 (5) All fees assessed and collected pursuant to ~~(e)(3)(ii)~~ subsection (c)(4)(ii) of this
14 section shall be deposited as general revenues to be allocated by the department of behavioral
15 healthcare, developmental disabilities and hospitals (BHDDH) to fund substance abuse
16 prevention programs and student assistance programs for youth pursuant to chapters 21.2 and
17 21.3 of title 16 and in accordance with the criteria set forth in §§ 16-21.2-4(a) and 16-21.3-2(2)
18 and shall be collected from the person convicted or who pleads nolo contendere before any other
19 fines authorized by this chapter.

20 (d) It shall be unlawful for any person to manufacture, distribute, or possess with intent to
21 manufacture or distribute, an imitation controlled substance. Any person who violates this
22 subsection is guilty of a crime and, upon conviction, shall be subject to the same term of
23 imprisonment and/or fine as provided by this chapter for the manufacture or distribution of the
24 controlled substance that the particular imitation controlled substance forming the basis of the
25 prosecution was designed to resemble and/or represented to be; but in no case shall the
26 imprisonment be for more than five (5) years nor the fine for more than twenty thousand dollars
27 (\$20,000).

28 (e) It shall be unlawful for a practitioner to prescribe, order, distribute, supply, or sell an
29 anabolic steroid or human growth hormone for: (1) Enhancing performance in an exercise, sport,
30 or game, or (2) Hormonal manipulation intended to increase muscle mass, strength, or weight
31 without a medical necessity. Any person who violates this subsection is guilty of a misdemeanor
32 and, upon conviction, may be imprisoned for not more than six (6) months or a fine of not more
33 than one thousand dollars (\$1,000), or both.

34 (f) It is unlawful for any person to knowingly or intentionally possess, manufacture,

1 distribute, or possess with intent to manufacture or distribute, any extract, compound, salt
2 derivative, or mixture of salvia divinorum or datura stramonium or its extracts unless the person
3 is exempt pursuant to the provisions of § 21-28-3.30. Notwithstanding any laws to the contrary,
4 any person who violates this section is guilty of a misdemeanor and, upon conviction, may be
5 imprisoned for not more than one year, or fined not more than one thousand dollars (\$1,000), or
6 both. The provisions of this section shall not apply to licensed physicians, pharmacists, and
7 accredited hospitals and teaching facilities engaged in the research or study of salvia divinorum or
8 datura stramonium and shall not apply to any person participating in clinical trials involving the
9 use of salvia divinorum or datura stramonium.

10 SECTION 2. Sections 16-21.2-4 and 16-21.2-5 of the General Laws in Chapter 16-21.2
11 entitled "The Rhode Island Substance Abuse Prevention Act" is hereby amended to read as
12 follows:

13 **16-21.2-4. Substance abuse prevention program.**

14 (a) The department of behavioral healthcare, developmental disabilities and hospitals
15 shall be charged with the administration of this chapter and shall:

16 [\(i\) Identify funding distribution criteria;](#)

17 [\(ii\) Identify criteria for effective substance abuse prevention programs; and](#)

18 [\(iii\) Provide ~~provide~~ grants to assist in the planning, establishment, ~~and~~ operation \[and\]\(#\)](#)
19 [reporting](#) of substance abuse prevention programs. Grants under this section shall be made to
20 municipal governments or their designated agents according to the following guidelines:

21 (1) The maximum grant shall be one hundred twenty-five thousand dollars (\$125,000);
22 provided, however, in the event that available funding exceeds \$1.6 million in a fiscal year, those
23 surplus funds are to be divided proportionately among the cities and towns on a per capita basis
24 but in no event shall the city of Providence exceed a maximum grant cap of \$175,000.00.

25 (2) In order to obtain a grant, the municipality or its designated agent must in the first
26 year:

27 (i) Demonstrate the municipality's need for a comprehensive substance abuse program in
28 the areas of prevention and education.

29 (ii) Demonstrate that the municipality [to be provided a grant](#) has established by
30 appropriate legislative or executive action, a substance abuse prevention council which shall
31 assist in assessing the needs and resources of the community, developing a three (3) year plan of
32 action addressing the identified needs, the operation and implementation of the overall substance
33 abuse prevention program; coordinating existing services such as law enforcement, prevention,
34 treatment, and education; consisting of representatives of the municipal government,

1 representatives of the school system, parents, and human service providers.

2 (iii) Demonstrate the municipality's ability to develop a plan of implementation of a
3 comprehensive three (3) year substance abuse prevention program based on the specific needs of
4 the community to include high risk populations of adolescents, children of substance abusers, and
5 primary education school aged children.

6 (iv) Agree to conduct a survey/questionnaire of the student population designed to
7 establish the extent of the use and abuse of drugs and alcohol in students throughout the local
8 community's school population.

9 (v) Demonstrate that at least twenty percent (20%) of the cost of the proposed program
10 will be contributed either in cash or in-kind by public or private resources within the
11 municipality.

12 (3) Each municipality that receives a grant must demonstrate in an annual written report
13 submitted to the department of behavioral healthcare, developmental disabilities and hospitals
14 that the funding issued is expended on substance abuse prevention programs that reflect the
15 criteria pursuant to subsection (a) of this section.

16 (b) The department of behavioral healthcare, developmental disabilities and hospitals
17 shall adopt rules and regulations necessary and appropriate to carry out the purposes of this
18 section.

19 **16-21.2-5. Funding of substance abuse prevention program.**

20 (a)(1) Money to fund the Rhode Island Substance Abuse Prevention Act shall be
21 appropriated from state general revenues and shall be raised by assessing an additional penalty ~~of~~
22 not to exceed thirty dollars (\$30.00) for all speeding violations as set forth in ~~§ 31-43-5.1~~ § 31-
23 41.1-4.

24 (2) Money to fund the Rhode Island substance abuse prevention program shall also be
25 appropriated from state general revenues collected by any state or municipal court from civil
26 penalties issued pursuant to §§ 21-28-4.01(c)(2)(iii) and 21-28-4.01(c)(2)(iv) to the extent that the
27 revenues collected are not otherwise specifically appropriated and the available funds shall be
28 allocated in accordance with the distribution criteria identified by the department of behavioral
29 healthcare, developmental disabilities and hospitals set forth in § 16-21.2-4(a).

30 (3) The money shall be deposited as general revenues. The department of behavioral
31 healthcare, developmental disabilities and hospitals may utilize up to ten percent (10%) of the
32 sums appropriated for the purpose of administering the substance abuse prevention program.

33 (b) Grants made under this chapter shall not exceed money available in the substance
34 abuse prevention program.

1 SECTION 3. The title of Chapter 16-21.3 of the General Laws entitled "The Rhode
2 Island Student Assistance Junior High/Middle School Act" is hereby amended to read as follows:

3 ~~CHAPTER 16-21.3~~

4 ~~The Rhode Island Student Assistance Junior High/Middle School Act~~

5 CHAPTER 16-21.3

6 THE RHODE ISLAND STUDENT ASSISTANCE HIGH SCHOOL/JUNIOR HIGH/MIDDLE
7 SCHOOL ACT

8 SECTION 4. Sections 16-21.3-2 and 16-21.3-3 of the General Laws in Chapter 16-21.3
9 entitled "The Rhode Island Student Assistance Junior High/Middle School Act" are hereby
10 amended to read as follows:

11 ~~16-21.3-2. Junior high/middle school student assistance program.~~ **High school/junior**
12 **high/middle school student assistance program.**

13 (a) The department of behavioral healthcare, developmental disabilities and hospitals
14 shall be charged with the administration of this chapter and shall:

15 (1) Identify funding distribution criteria;

16 (2) Identify criteria for effective substance abuse prevention programs; and

17 (3) Contract ~~contract~~ with appropriate substance abuse prevention/intervention agencies
18 to provide student assistance services that incorporate the criteria in high school/junior
19 high/middle schools.

20 (b) Following the first complete year of operation, school systems receiving high
21 school/junior high/middle school student assistance services will be required to contribute twenty
22 percent (20%) of the costs of student assistance counselors to the service provider agency in order
23 to continue the services.

24 ~~16-21.3-3. Funding of junior high/middle school student assistance program.~~
25 **Funding of high school/junior high/middle school student assistance program.**

26 (a)(1) Money to fund this program shall be raised by assessing an additional substance
27 abuse prevention assessment ~~of~~ not to exceed thirty dollars (\$30.00) for all moving motor vehicle
28 violations handled by the traffic tribunal including, but not limited to, those violations set forth in
29 § 31-41.1-4, except for speeding. The money shall be deposited in a restricted purpose receipt
30 account separate from all other accounts within the department of behavioral healthcare,
31 developmental disabilities and hospitals. The restricted purpose receipt account shall be known as
32 the high school/junior high/middle school student assistance fund and the traffic tribunal shall
33 transfer money from the high school/junior high/middle school student assistance fund to the
34 department of behavioral healthcare, developmental disabilities and hospitals for the

1 administration of the Rhode Island Student Assistance [High School](#)/Junior High/Middle School
2 Act.

3 [\(2\) Money to fund the Rhode Island substance abuse prevention program shall also be](#)
4 [appropriated from state general revenues collected by any state or municipal court from civil](#)
5 [penalties issued pursuant to §§ 21-28-4.01\(c\)\(2\)\(iii\) and 21-28-4.01\(c\)\(2\)\(iv\) to the extent that the](#)
6 [revenues collected are not otherwise specifically appropriated and the available funds shall be](#)
7 [allocated in accordance with the distribution criteria identified by the department of behavioral](#)
8 [healthcare, developmental disabilities and hospitals set forth in § 16-21.2-4\(a\).](#)

9 (b) The department of behavioral healthcare, developmental disabilities and hospitals
10 may utilize up to ten percent (10%) of the sums collected from the additional penalty for the
11 purpose of administering the program.

12 SECTION 5. This act shall take effect on July 1, 2019

=====
LC000627/SUB A
=====

EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO FOOD AND DRUGS -- THE UNIFORMED CONTROLLED SUBSTANCES
ACT

1 This act would: (1) Place approval of drug awareness programs for minors up through
2 high school level charged with civil marijuana offenses in the discretion of the department of
3 behavioral healthcare, developmental disabilities and hospitals (BHDDH); (2) Redirect funds
4 from certain civil fines imposed to the general revenue fund to be expended by BHDDH to fund
5 substance abuse and student assistance programs for youth; (3) Mandate that BHDDH establish
6 funding criteria for distribution of funds and require that municipalities receiving funds file
7 annual reports verifying that the funds are being used for substance abuse prevention programs;
8 (4) Make high schools eligible for assistance programs; and (5) Changes the title of chapter 16-
9 21.3 to reflect high school participation in the programs.

10 This act would take effect on July 1, 2019

=====
LC000627/SUB A
=====