

2016 -- S 2280

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2016

A N A C T

RELATING TO THE UNIFORMED CONTROLLED SUBSTANCES ACT

Introduced By: Senators Miller, Jabour, McCaffrey, Archambault, and DaPonte

Date Introduced: February 09, 2016

Referred To: Senate Finance

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

6 (2) Any person who is not a drug-addicted person, as defined in § 21-28-1.02(18), 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 imprisoned
9 to a term up to life or fined not more than five hundred thousand dollars (\$500,000) nor less than
10 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(18).

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

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

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

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

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

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

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

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

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

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

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

32 (ii) More than one ounce (1 oz.) of a controlled substance classified in schedule I as
33 marijuana is guilty of a misdemeanor except for those persons subject to (a)(1) of this section and
34 upon conviction may be imprisoned for not more than one year, or fined not less than two

1 hundred dollars (\$200) nor more than five hundred dollars (\$500), or both.

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

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

29 (v) Notwithstanding any public, special, or general law to the contrary, a person not
30 exempted from penalties pursuant to chapter 28.6 of this title found in possession of one ounce (1
31 oz.) or less of marijuana is guilty of a misdemeanor and upon conviction may be imprisoned for
32 not more than thirty (30) days, or fined not less than two hundred dollars (\$200) nor more than
33 five hundred dollars (\$500), or both, if that person has been previously adjudicated on a violation
34 for possession of less than one ounce (1 oz.) of marijuana under (c)(2)(iii) or (c)(2)(iv) of this

1 subsection two (2) times in the eighteen (18) months prior to the third (3rd) offense.

2 (vi) Any unpaid civil fine issued under (c)(2)(iii) or (c)(2)(iv) of this subsection shall
3 double to three hundred dollars (\$300) if not paid within thirty (30) days of the disposition. The
4 civil fine shall double again to six hundred dollars (\$600) if it has not been paid within ninety
5 (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 or tribunal that include personally
18 identifiable information about violations of (c)(2)(iii) or (c)(2)(iv) of this subsection shall not be
19 open to public inspection in accordance with § 8-8.2-21.

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

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

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

1 (ii) Attend and complete a drug counseling and education program as prescribed by the
2 director of the Department of Behavioral Healthcare, Developmental Disabilities and Hospitals
3 and pay the sum of four hundred dollars (\$400) to help defray the costs of this program which
4 shall be deposited as general revenues- as determined by the department of behavioral healthcare,
5 developmental disabilities and hospitals (BHDDH) to fund substance abuse prevention programs
6 and student assistance programs for youth pursuant to chapters 21.2 and 21.3 of title 16 and in
7 accordance with the criteria identified in §§16-21.2-4(a) and 16-21.3-2(a). Failure to attend may
8 result, after hearing by the court, in jail sentence up to one year;

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

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

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

22 (d) It shall be unlawful for any person to manufacture, distribute, or possess with intent
23 to manufacture or distribute, an imitation controlled substance. Any person who violates this
24 subsection is guilty of a crime and upon conviction shall be subject to the same term of
25 imprisonment and/or fine as provided by this chapter for the manufacture or distribution of the
26 controlled substance that the particular imitation controlled substance forming the basis of the
27 prosecution was designed to resemble and/or represented to be; but in no case shall the
28 imprisonment be for more than five (5) years nor the fine for more than twenty thousand dollars
29 (\$20,000).

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

1 than one thousand dollars (\$1,000), or both.

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

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

15 **16-21.2-4. Substance abuse prevention program.** -- (a) The department of behavioral
16 healthcare, developmental disabilities and hospitals shall be charged with the administration of
17 this chapter and shall:

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

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

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

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

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

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

31 (ii) Demonstrate that the municipality [to be served](#) has established by appropriate
32 legislative or executive action, a substance abuse prevention council which shall assist in
33 assessing the needs and resources of the community, developing a three (3) year plan of action
34 addressing the identified needs, the operation and implementation of the overall substance abuse

1 prevention program; coordinating existing services such as law enforcement, prevention,
2 treatment, and education; consisting of representatives of the municipal government,
3 representatives of the school system, parents, and human service providers.

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

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

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

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

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

21 **16-21.2-5. Funding of substance abuse prevention program.** -- (a)(1) Money to fund
22 the Rhode Island Substance Abuse Prevention Act shall be appropriated from state general
23 revenues and shall be raised by assessing an additional penalty of thirty dollars (\$30.00) for all
24 speeding violations as set forth in ~~§ 31-43-5.1~~ §31-41.1-4.

25 (2) Money to fund the Rhode Island substance abuse prevention program shall also be
26 appropriated from state general revenues collected by the Rhode Island traffic tribunal from civil
27 penalties issued pursuant to §§21-28-4.01(c)(2)(iii) and 21-28-4.01(c)(2)(iv) in accordance with
28 the distribution criteria identified by the department of behavioral healthcare, developmental
29 disabilities and hospitals identified 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. Sections 16-21.3-2 and 16-21.3-3 of the General Laws in Chapter 16-21.3
2 entitled "The Rhode Island Student Assistance Junior High/Middle School Act" are hereby
3 amended to read as follows:

4 ~~16-21.3-2. Junior high/middle school student assistance program. — High school/~~
5 ~~Junior high/middle school student assistance program.~~ -- (a) The department of behavioral
6 healthcare, developmental disabilities and hospitals shall be charged with the administration of
7 this chapter and shall:

8 [\(1\) Identify funding distribution criteria;](#)

9 [\(2\) Identify criteria for effective substance abuse prevention programs; and](#)

10 [\(3\) ~~contract~~ Contract](#) with appropriate substance abuse prevention/intervention agencies
11 to provide student assistance services [that incorporate such criteria](#) in [high school/junior](#)
12 [high/middle schools](#).

13 (b) Following the first complete year of operation, school systems receiving [high](#)
14 [school/junior high/middle school student assistance services](#) will be required to contribute twenty
15 percent (20%) of the costs of student assistance counselors to the service provider agency in order
16 to continue the services.

17 ~~16-21.3-3. Funding of junior high/middle school student assistance program. —~~

18 ~~Funding of high school/junior high/middle school student assistance program.~~ -- (a) [\(1\)](#)
19 Money to fund this program shall be raised by assessing an additional substance abuse prevention
20 assessment of thirty dollars (\$30.00) for all moving motor vehicle violations handled by the
21 traffic tribunal including, but not limited to, those violations set forth in § 31-41.1-4, except for
22 speeding. The money shall be deposited in a restricted purpose receipt account separate from all
23 other accounts within the department of behavioral healthcare, developmental disabilities and
24 hospitals. The restricted purpose receipt account shall be known as the [high school/junior](#)
25 [high/middle school student assistance fund](#) and the traffic tribunal shall transfer money from the
26 [junior high/middle school student assistance fund](#) to the department of behavioral healthcare,
27 developmental disabilities and hospitals for the administration of the Rhode Island Student
28 Assistance [High School/Junior High/Middle School Act](#).

29 [\(2\) Money to fund the Rhode Island substance abuse prevention program shall also be](#)
30 [appropriated from state general revenues collected by the Rhode Island traffic tribunal from civil](#)
31 [penalties issued pursuant to §§21-28-4.01\(c\)\(2\)\(iii\) and 21-28-4.01\(c\)\(2\)\(iv\) in accordance with](#)
32 [the distribution criteria identified by the department of behavioral healthcare, developmental](#)
33 [disabilities and hospitals identified in §16-21.2-4\(a\).](#)

34 (b) The department of behavioral healthcare, developmental disabilities and hospitals

1 may utilize up to ten percent (10%) of the sums collected from the additional penalty for the
2 purpose of administering the program.

3 SECTION 4. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO THE UNIFORMED CONTROLLED SUBSTANCES ACT

1 This act would: (1) place approval of drug awareness programs for minors up to the high
2 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 from
4 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 and (4) make high schools eligible for assistance programs.

9 This act would take effect upon passage.

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