

2016 -- S 2544

=====  
LC004506  
=====

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2016

—————  
A N A C T

RELATING TO DELINQUENT AND DEPENDENT CHILDREN-FOOD AND DRUGS-  
UNIFORM CONTROLLED SUBSTANCES ACT

Introduced By: Senators McCaffrey, Felag, and Walaska

Date Introduced: February 25, 2016

Referred To: Senate Judiciary

(Attorney General)

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 14-1-3 of the General Laws in Chapter 14-1 entitled "Proceedings  
2 in Family Court" is hereby amended to read as follows:

3 **14-1-3. Definitions.** -- The following words and phrases when used in this chapter shall,  
4 unless the context otherwise requires, be construed as follows:

5 (1) "Adult" means a person eighteen (18) years of age or older, except that "adult"  
6 includes any person seventeen (17) years of age or older who is charged with a delinquent offense  
7 involving murder, first degree sexual assault, first degree child molestation, or assault with intent  
8 to commit murder, and that person shall not be subject to the jurisdiction of the family court as set  
9 forth in §§ 14-1-5 and 14-1-6 if after a hearing, the family court determines that probable cause  
10 exists to believe that the offense charged has been committed and that the person charged has  
11 committed the offense.

12 (2) "Appropriate person," as used in §§ 14-1-10 and 14-1-11, except in matters relating  
13 to adoptions and child marriages, means and includes:

14 (i) Any police official of this state, or of any city or town within this state;

15 (ii) Any duly qualified prosecuting officer of this state, or of any city or town within this  
16 state;

17 (iii) Any director of public welfare of any city or town within this state, or his or her duly  
18 authorized subordinate;

1 (iv) Any truant officer or other school official of any city or town within this state;

2 (v) Any duly authorized representative of any public or duly licensed private agency or  
3 institution established for purposes similar to those specified in § 8-10-2 or 14-1-2; or

4 (vi) Any maternal or paternal grandparent, who alleges that the surviving parent, in those  
5 cases in which one parent is deceased, is an unfit and improper person to have custody of any  
6 child or children.

7 (3) "Child" means a person under eighteen (18) years of age.

8 (4) "The court" means the family court of the state of Rhode Island.

9 (5) "Delinquent" when applied to a child means and includes any child who has  
10 committed any offense which, if committed by an adult, would constitute a felony, or who has on  
11 more than one occasion violated any of the other laws of the state or of the United States or any  
12 of the ordinances of cities and towns, other than ordinances relating to the operation of motor  
13 vehicles.

14 (6) "Dependent" means any child who requires the protection and assistance of the court  
15 when his or her physical or mental health or welfare is harmed or threatened with harm due to the  
16 inability of the parent or guardian, through no fault of the parent or guardian, to provide the child  
17 with a minimum degree of care or proper supervision because of:

18 (i) The death or illness of a parent; or

19 (ii) The special medical, educational, or social service needs of the child which the  
20 parent is unable to provide.

21 (7) "Justice" means a justice of the family court.

22 (8) "Neglect" means a child who requires the protection and assistance of the court when  
23 his or her physical or mental health or welfare is harmed or threatened with harm when the  
24 parents or guardian:

25 (i) Fails to supply the child with adequate food, clothing, shelter, or medical care, though  
26 financially able to do so or offered financial or other reasonable means to do so;

27 (ii) Fails to provide the child proper education as required by law; or

28 (iii) Abandons and/or deserts the child.

29 (9) "Wayward" when applied to a child means and includes any child:

30 (i) Who has deserted his or her home without good or sufficient cause;

31 (ii) Who habitually associates with dissolute, vicious, or immoral persons;

32 (iii) Who is leading an immoral or vicious life;

33 (iv) Who is habitually disobedient to the reasonable and lawful commands of his or her  
34 parent or parents, guardian, or other lawful custodian;

1 (v) Who, being required by chapter 19 of title 16 to attend school, willfully and  
2 habitually absents himself or herself from school or habitually violates the rules and regulations  
3 of the school when he or she attends; ~~or~~

4 (vi) Who has on any occasion violated any of the laws of the state or of the United States  
5 or any of the ordinances of cities and towns, other than ordinances relating to the operation of  
6 motor vehicles; ~~or~~

7 (vii) Any child under seventeen (17) years of age who is in possession of one ounce (1  
8 oz.) or less of marijuana, as defined in §21-28-1.02, and who is not exempted from the penalties  
9 pursuant to chapter 28.6 of title 21.

10 (10) The singular shall be construed to include the plural, the plural the singular, and the  
11 masculine the feminine, when consistent with the intent of this chapter.

12 (11) For the purposes of this chapter, "electronic surveillance and monitoring devices"  
13 means any "radio frequency identification device (RFID)" OR "global positioning device" that is  
14 either tethered to a person or is intended to be kept with a person and is used for the purposes of  
15 tracking the whereabouts of that person within the community.

16 SECTION 2. Chapter 14-5 of the General Laws entitled "Treatment of Juveniles for  
17 Chemical Dependency" is hereby amended by adding thereto the following section:

18 **14-5-8. Possession of one ounce (1 oz.) or less of marijuana. – Notwithstanding any**  
19 **public, special, or general law to the contrary, possession of one ounce (1 oz.) or less of**  
20 **marijuana, as defined in §21-28-1.02, by a child under seventeen (17) years of age and who is not**  
21 **exempted from penalties pursuant to chapter 28.6 of title 21, shall constitute a status offense**  
22 **pursuant to §14-1-3 (9)(vii) and forfeiture of the marijuana. The family court may order a**  
23 **substance abuse assessment and, if recommended, substance abuse treatment. The parents or legal**  
24 **guardian of any child under seventeen (17) years of age shall be notified of the offense.**

25 SECTION 3. Section 21-28-4.1 of the General Laws in Chapter 21-28 entitled "Uniform  
26 Controlled Substances Act" is hereby amended to read as follows:

27 **21-28-4.01. Prohibited acts A -- Penalties. --** (a) (1) Except as authorized by this  
28 chapter, it shall be unlawful for any person to manufacture, deliver, or possess with intent to  
29 manufacture or deliver a controlled substance.

30 (2) Any person who is not a drug-addicted person, as defined in § 21-28-1.02(18), who  
31 violates this subsection with respect to a controlled substance classified in schedule I or II, except  
32 the substance classified as marijuana, is guilty of a crime and upon conviction may be imprisoned  
33 to a term up to life or fined not more than five hundred thousand dollars (\$500,000) nor less than  
34 ten thousand dollars (\$10,000), or both.

1 (3) Where the deliverance as prohibited in this subsection shall be the proximate cause of  
2 death to the person to whom the controlled substance is delivered, it shall not be a defense that  
3 the person delivering the substance was at the time of delivery, a drug-addicted person as defined  
4 in § 21-28-1.02(18).

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

7 (i) A controlled substance, classified in schedule I or II, is guilty of a crime and upon  
8 conviction may be imprisoned for not more than thirty (30) years, or fined not more than one  
9 hundred thousand dollars (\$100,000) nor less than three thousand dollars (\$3,000), or both;

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

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

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

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

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

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

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

32 (c) (1) It shall be unlawful for any person knowingly or intentionally to possess a  
33 controlled substance, unless the substance was obtained directly from, or pursuant to, a valid  
34 prescription or order of a practitioner while acting in the course of his or her professional

1 practice, or except as otherwise authorized by this chapter.

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

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

7 (ii) More than one ounce (1 oz.) of a controlled substance classified in schedule I as  
8 marijuana is guilty of a misdemeanor except for those persons subject to (a)(1) of this section and  
9 upon conviction may be imprisoned for not more than one year, or fined not less than two  
10 hundred dollars (\$200) nor more than five hundred dollars (\$500), or both.

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

20 (iv) Notwithstanding any public, special, or general law to the contrary, possession of  
21 one ounce (1 oz.) or less of marijuana by a person who is seventeen (17) years of age or older and  
22 under the age of eighteen (18) years and who is not exempted from penalties pursuant to chapter  
23 28.6 of this title shall constitute a civil offense, rendering the offender liable to a civil penalty in  
24 the amount of one hundred fifty dollars (\$150) and forfeiture of the marijuana; provided the  
25 minor offender completes an approved, drug-awareness program and community service as  
26 determined by the court. If the person seventeen (17) years of age or older and under the age of  
27 eighteen (18) years fails to complete an approved, drug-awareness program and community  
28 service within one year of the disposition, the penalty shall be a three hundred dollar (\$300) civil  
29 fine and forfeiture of the marijuana, except that if no drug-awareness program or community  
30 service is available, the penalty shall be a fine of one hundred fifty dollars (\$150) and forfeiture  
31 of the marijuana. The parents or legal guardian of any offender seventeen (17) years of age or  
32 older and under the age of eighteen (18) shall be notified of the offense and the availability of a  
33 drug-awareness and community-service program. The drug-awareness program must be approved  
34 by the court, but shall, at a minimum, provide four (4) hours of instruction or group discussion

1 and ten (10) hours of community service. Notwithstanding any other public, special, or general  
2 law to the contrary, this civil penalty shall apply if the offense is the first or second violation  
3 within the previous eighteen (18) months.

4 (v) Notwithstanding any public, special, or general law to the contrary, a person not  
5 exempted from penalties pursuant to chapter 28.6 of this title found in possession of one ounce (1  
6 oz.) or less of marijuana is guilty of a misdemeanor and upon conviction may be imprisoned for  
7 not more than thirty (30) days, or fined not less than two hundred dollars (\$200) nor more than  
8 five hundred dollars (\$500), or both, if that person has been previously adjudicated on a violation  
9 for possession of less than one ounce (1 oz.) of marijuana under (c)(2)(iii) or (c)(2)(iv) of this  
10 subsection two (2) times in the eighteen (18) months prior to the third (3rd) offense.

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

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

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

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

29 (3) Jurisdiction. - Any and all violations of (c)(2)(iii) and (c)(2)(iv) of this subsection  
30 shall be the exclusive jurisdiction of the Rhode Island traffic tribunal. All money associated with  
31 the civil fine issued under (c)(2)(iii) or (c)(2)(iv) of this subsection shall be payable to the Rhode  
32 Island traffic tribunal. Fifty percent (50%) of all fines collected by the Rhode Island traffic  
33 tribunal from civil penalties issued pursuant to (c)(2)(iii) or (c)(2)(iv) of this subsection shall be  
34 expended on drug awareness and treatment programs for youth.

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

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

6 (ii) Attend and complete a drug counseling and education program as prescribed by the  
7 director of the Department of Behavioral Healthcare, Developmental Disabilities and Hospitals  
8 and pay the sum of four hundred dollars (\$400) to help defray the costs of this program which  
9 shall be deposited as general revenues. Failure to attend may result, after hearing by the court, in  
10 jail sentence up to one year;

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

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

17 (5) All fees assessed and collected pursuant to paragraph (3)(ii) of this subsection shall  
18 be deposited as general revenues and shall be collected from the person convicted or who pleads  
19 nolo contendere before any other fines authorized by this chapter.

20 (d) It shall be unlawful for any person to manufacture, distribute, or possess with intent  
21 to 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 4. This act shall take effect on September 1, 2016.

=====  
LC004506  
=====

EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF

A N A C T

RELATING TO DELINQUENT AND DEPENDENT CHILDREN-FOOD AND DRUGS-  
UNIFORM CONTROLLED SUBSTANCES ACT

\*\*\*

1           This act would transfer the jurisdiction of possession of one ounce (1 oz.) or less of  
2 marijuana by a person who is under the age of seventeen (17) years from the Rhode Island Traffic  
3 Tribunal to the Rhode Island Family Court. The act would also provide the Family Court with  
4 jurisdiction to order substance abuse assessments and treatment for persons 17 years of age or  
5 older and under the age of 18 years who commit this offense.

6           This act would take effect on September 1, 2016.

=====  
LC004506  
=====