

2022 -- S 2198

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2022

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A N A C T

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

Introduced By: Senators Miller, Seveney, and DiPalma

Date Introduced: February 08, 2022

Referred To: Senate Health & Human Services

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 21-28-4.1 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. [As amended by P.L. 2021, ch. 286, § 2 and**
4 **P.L. 2021, ch. 287, § 2.]**

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

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

12 (3) Where the deliverance as prohibited in this subsection shall be the proximate cause of
13 death to the person to whom the controlled substance is delivered, it shall not be a defense that the
14 person delivering the substance was, at the time of delivery, a drug-addicted person as defined in §
15 21-28-1.02.

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

18 (i) A controlled substance, classified in schedule I or II, is guilty of a crime and, upon

1 conviction, may be imprisoned for not more than thirty (30) years, or fined not more than one
2 hundred thousand dollars (\$100,000) nor less than three thousand dollars (\$3,000), or both;

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

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

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

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

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

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

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

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

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

30 (i) Except as otherwise provided in §§ 21-28-4.01.1 and 21-28-4.01.2, ten grams (10 g.) or
31 less of a mixture or substance containing a detectable amount of a controlled substance classified
32 in schedules I, II, III, IV, and V, except [buprenorphine and](#) the substance classified as marijuana,
33 is guilty of a misdemeanor and, upon conviction, may be imprisoned for not more than two (2)
34 years, or fined not more than five hundred dollars (\$500) or both.

1 (ii) Except as otherwise provided in §§ 21-28-4.01.1 and 21-28-4.01.2, more than ten grams
2 (10 g.), but less than one ounce (1 oz.) of a mixture or substance containing a detectable amount of
3 a controlled substance classified in schedules I, II and III, IV, and V, except [buprenorphine and](#) the
4 substance classified as marijuana, is guilty of a felony and, upon conviction, may be imprisoned
5 for not more than three (3) years, or fined not more than five thousand dollars (\$5,000), or both.

6 (iii) More than one ounce (1 oz.) of a controlled substance classified in schedule I as
7 marijuana is guilty of a misdemeanor, except for those persons subject to (a)(1), and, upon
8 conviction, may be imprisoned for not more than one year, or fined not more than five hundred
9 dollars (\$500), or both.

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

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

1 apply if the offense is the first or second violation within the previous eighteen (18) months.

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

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

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

21 (ix) No violation of (c)(2)(iv) or (c)(2)(v) of this subsection shall be considered a violation
22 of parole or probation.

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

26 (3) Jurisdiction.

27 (i) Any and all adjudications of violations of (c)(2)(i) shall be within the original
28 jurisdiction of the Rhode Island superior court. The department of attorney general shall prosecute
29 any and all violations of (c)(2)(i).

30 (ii) Any and all violations of (c)(2)(iv) and (c)(2)(v) shall be the exclusive jurisdiction of
31 the Rhode Island traffic tribunal. All money associated with the civil fine issued under (c)(2)(iv) or
32 (c)(2)(v) shall be payable to the Rhode Island traffic tribunal. Fifty percent (50%) of all fines
33 collected by the Rhode Island traffic tribunal from civil penalties issued pursuant to (c)(2)(iv) or
34 (c)(2)(v) shall be ~~expended on drug awareness and treatment programs for youth~~ [deposited as](#)

1 [general revenues to be allocated by the department of behavioral healthcare, developmental](#)
2 [disabilities and hospitals \(BHDDH\) and used to fund substance abuse prevention programs and](#)
3 [student assistance programs for youth pursuant to chapters 21.2 and 21.3 of title 16, and in](#)
4 [accordance with the criteria set forth in §§ 16-21.2-4\(a\) and 16-21.3-2\(a\).](#)

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

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

9 (ii) Attend and complete a drug-counseling and education program, as prescribed, by the
10 director of the department of behavioral healthcare, developmental disabilities and hospitals and
11 pay the sum of four hundred dollars (\$400) to help defray the costs of this program which shall be
12 deposited as general revenues [to be allocated by the department of behavioral healthcare,](#)
13 [developmental disabilities and hospitals \(BHDDH\) and used to fund substance abuse prevention](#)
14 [programs and student assistance programs for youth pursuant to chapters 21.2 and 21.3 of title 16](#)
15 [and in accordance with the criteria set forth in §§ 16-21.2-4\(a\) and 16-21.3-2\(a\).](#) Failure to attend
16 may result, after hearing by the court, in jail sentence up to one year;

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

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

23 (5) All fees assessed and collected pursuant to ~~(e)(2)(iii)~~ [subsection \(c\)\(4\)\(ii\) of this section](#)
24 shall be deposited as general revenues [to be allocated by the department of behavioral healthcare,](#)
25 [developmental disabilities and hospitals \(BHDDH\) and used to fund substance abuse prevention](#)
26 [programs and student assistance programs for youth pursuant to chapters 21.2 and 21.3 of title 16](#)
27 [and in accordance with the criteria set forth in §§ 16-21.2-4\(a\) and 16-21.3-2\(a\)](#) shall be deposited
28 as general revenues and shall be collected from the person convicted or who pleads nolo contendere
29 before any other fines authorized by this chapter.

30 (d) It shall be unlawful for any person to manufacture, distribute, or possess with intent to
31 manufacture or distribute, an imitation controlled substance. Any person who violates this
32 subsection is guilty of a crime and, upon conviction, shall be subject to the same term of
33 imprisonment and/or fine as provided by this chapter for the manufacture or distribution of the
34 controlled substance that the particular imitation controlled substance forming the basis of the

1 prosecution was designed to resemble and/or represented to be; but in no case shall the
2 imprisonment be for more than five (5) years nor the fine for more than twenty thousand dollars
3 (\$20,000).

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

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

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

23 **16-21.2-4. Substance abuse prevention program.**

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

26 (1) Identify funding distribution criteria;

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

28 (3) ~~provide~~ Provide grants to assist in the planning, establishment, ~~and~~ operation and
29 reporting of substance abuse prevention programs. Grants under this section shall be made to
30 municipal governments or their designated agents according to the following guidelines:

31 ~~(4)~~(4) The maximum grant shall be one hundred twenty-five thousand dollars (\$125,000);
32 provided, however, in the event that available funding exceeds \$1.6 million in a fiscal year, those
33 surplus funds are to be divided proportionately among the cities and towns on a per capita basis but
34 in no event shall the city of Providence exceed a maximum grant cap of \$175,000.00.

1 ~~(5)~~(5) In order to obtain a grant, the municipality or its designated agent must in the first
2 year:

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

5 (ii) Demonstrate that the municipality to be provided a grant has established by appropriate
6 legislative or executive action, a substance abuse prevention council which shall assist in assessing
7 the needs and resources of the community, developing a three (3) year plan of action addressing
8 the identified needs, the operation and implementation of the overall substance abuse prevention
9 program; coordinating existing services such as law enforcement, prevention, treatment, and
10 education; consisting of representatives of the municipal government, representatives of the school
11 system, parents, and human service providers.

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

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

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

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

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

27 **16-21.2-5. Funding of substance abuse prevention program.**

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

32 (2) Money to fund the Rhode Island substance abuse prevention program shall also be
33 appropriated from state general revenues collected by any state or municipal court from civil
34 penalties issued pursuant to §§ 21-28-4.01(c)(2)(iv) and 21-28-4.01(c)(2)(v) to the extent that the

1 [revenues collected are not otherwise specifically appropriated and the available funds shall be](#)
2 [allocated in accordance with the distribution criteria identified by the department of behavioral](#)
3 [healthcare, developmental disabilities and hospitals set forth in § 16-21.2-4\(a\).](#)

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

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

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

11 ~~CHAPTER 16-21.3~~

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

13 [CHAPTER 16-21.3](#)

14 [THE RHODE ISLAND STUDENT ASSISTANCE HIGH SCHOOL/JUNIOR HIGH/MIDDLE](#)
15 [SCHOOL ACT](#)

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

19 ~~**16-21.3-2. Junior high/middle school student assistance program. High school/junior**~~
20 ~~**high/middle school student assistance program.**~~

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

23 [\(1\) Identify funding distribution criteria;](#)

24 [\(2\) Identify criteria for effective substance abuse prevention program; and](#)

25 (3) ~~contract~~ [Contract](#) with appropriate substance abuse prevention/intervention agencies to
26 provide student assistance services [that incorporate the criteria](#) in [high school](#)/junior high/middle
27 schools.

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

32 ~~**16-21.3-3. Funding of junior high/middle school student assistance program. Funding**~~
33 ~~**of high school/junior high/middle school student assistance program.**~~

34 (a)[\(1\)](#) Money to fund this program shall be raised by assessing an additional substance

1 abuse prevention assessment ~~of~~ not to exceed thirty dollars (\$30.00) for all moving motor vehicle
2 violations handled by the traffic tribunal including, but not limited to, those violations set forth in
3 § 31-41.1-4, except for speeding. The money shall be deposited in a restricted purpose receipt
4 account separate from all other accounts within the department of behavioral healthcare,
5 developmental disabilities and hospitals. The restricted purpose receipt account shall be known as
6 the high school/junior high/middle school student assistance fund and the traffic tribunal shall
7 transfer money from the high school/junior high/middle school student assistance fund to the
8 department of behavioral healthcare, developmental disabilities and hospitals for the administration
9 of the Rhode Island Student Assistance High School/Junior High/Middle School Act.

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

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

19 SECTION 5. This act shall take effect on July 1, 2022.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

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

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

10 This act would take effect on July 1, 2022.

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