

2011 -- H 5408

LC00945

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2011

A N A C T

RELATING TO FOOD AND DRUGS - UNIFORM CONTROLLED SUBSTANCE ACT

Introduced By: Representatives JP O`Neill, Petrarca, Blazejewski, Lally, and O`Grady

Date Introduced: February 16, 2011

Referred To: House Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 21-28-4.0.1 of the General Laws in Chapter 21-28 entitled  
2 "Uniform 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 chapter,  
4 it shall be unlawful for any person to manufacture, deliver, or possess with intent to manufacture  
5 or deliver a controlled substance.

6 (2) Any person who is not a drug addicted person, as defined in section 21-28-1.02(18),  
7 who violates this subsection with respect to a controlled substance classified in schedule I or II,  
8 except 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 section 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 five  
31 thousand dollars (\$5,000), or both;

32 (ii) A controlled substance classified in schedule I as marijuana is guilty of a  
33 misdemeanor and upon conviction may be imprisoned for not more than one year or fined not less  
34 than two hundred dollars (\$200) nor more than five hundred dollars (\$500), or both.

1 (3) 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 ~~no less than~~ 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 mental health, retardation and hospitals and pay the sum of four  
8 hundred dollars (\$400) to help defray the costs of this program which shall be deposited as  
9 general revenues. Failure to attend may result after hearing by the court in jail sentence up to one  
10 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 this.

17 (4) 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 which 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.

1 SECTION 2. This act shall take effect upon passage.

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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF  
A N A C T  
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1           This act would change the minimum amount of hours of community services from not  
2 less than one hundred (100) hours to up to one hundred (100) hours for persons convicted of  
3 certain drug offenses.

4           This act would take effect upon passage.

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