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Issue Brief

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DRUG TRAFFIC CONTROL: FEDERAL EFFORTS

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BY

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Congressional Research Service



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ISSUE DEFINITION

Suppression of illicit trafficking is only one aspect of the general Federal effort to prevent the abuse of narcotics and other dangerous drugs, but in political significance it is undoubtedly paramount. Various approaches to the problem have been suggested and tried since the first explicitly anti-opium law was enacted in 1887. Most recently, in passing the Comprehensive Crime Control Act of 1984 (P.L. 98-473, Title II), the 98th Congress brought to a finish the work of many years on a variety of significant proposals for the control of crime and illicit drug traffic.

BACKGROUND AND POLICY ANALYSIS

How to prevent the non-medical use of dependence-producing drugs has been a public policy issue in the United States for well over half a century, but in the past 20 years or so interest in the question has sharpened. During this period, an apparently marked increase in heroin use in many inner cities accompanied a widely-reported spread of the abuse of many other drugs.

On the Federal level, both the Executive Branch and Congress have reacted to public concern with new initiatives -- legislative and administrative -- in addition to the expansion of existing programs. Many approaches have been taken: in the areas of treatment, education, primary prevention, and research, as well as so-called "law enforcement" or "supply reduction".

Budget totals provide a measure of the level of the Federal commitment to combat drug abuse: spending for all activities for this purpose rose from \$82 million in FY69 to approximately \$1.7 billion in FY85; drug abuse law enforcement spending went from \$36 million to \$1.4 billion during the same period. Whether these levels are adequate continues to be a central policy issue.

Major legislation in the 99th Congress, relating to drug traffic control, concerns such matters as: (1) additional ways of curbing the "laundering" of monetary instruments derived from illicit drug trafficking; (2) regulation of so-called "designer drugs"; (3) problems posed to drug law enforcement by the Exclusionary Rule; (4) ways of securing maximum cooperation by foreign countries in the control of drug production and trafficking, especially through the International Narcotics Control program under the Foreign Assistance Act; and (5) the role of the Armed Services in the interdiction of illicit drugs.

How best to gain the cooperation of other nations in the drug control effort has been a major continuing concern of both Congress and the Executive Branch. In addition to diplomatic maneuvers and the operation of DEA agents overseas, the United States presently provides direct monetary assistance to a number of countries for narcotics control purposes. This "International Narcotics Control Program" was established by a 1971 amendment to the Foreign Assistance Act.

The International Narcotics Control program has been associated with a number of controversial issues, including those concerned with (1) the level of influence of Drug Enforcement Administration personnel in shaping the efforts assisted; (2) direct participation of U.S. law enforcement officials

in foreign drug law enforcement activities; (3) use of U.S.-supplied equipment and of U.S.-trained personnel for purposes other than drug traffic control, particularly in support of non-democratic governments, and (4) use of allegedly harmful herbicides in eradication programs. A related issue is the general question of the diplomatic "linkage" of U.S. concerns over the drug problem to all forms of U.S. assistance to, or other accommodation of, drug source countries.

The 98th Congress saw the culmination of many years of work on a number of general anti-crime measures as well as on several that are specifically aimed at the drug problem. The principal enactment was an omnibus crime control "package," consisting of twenty three titles (or "chapters") dealing with a broad range of matters pertaining to criminal justice and procedure. Based on an amended Administration bill that passed the Senate in February 1984 (S. 1762), the final version -- which was attached to a continuing appropriations bill (H.J.Res. 648; P.L. 98-473) -- contained many amendments and additions reflecting positions developed in the House.

LEGISLATION

[Does not include appropriation and routine appropriation authorization bills unless there are significant provisions relating to other than funding levels.]

P.L. 99-83, (S. 960)

International Security and Development Cooperation Act of 1985. For the International Narcotics Control program, authorizes appropriations of \$57.5 million for each of FY86 and FY87. Makes economic and military assistance to Bolivia contingent on the licensing of coca growers and the limitation of production to pre-established legal needs, allowing 50% of the scheduled payments for FY86 to be made after compliance -- with the remaining 50% to be provided when the President certifies to Congress that Bolivia has met the eradication targets for 1985 that were specified in a 1983 agreement with the U.S. For continuation of aid in FY87, Bolivia must have developed a plan to eradicate illicit production. Conditions approximately \$90 million of the total amount of FY86 assistance scheduled for Peru on a showing of "substantial progress" by Peru in developing a plan to eliminate unlicensed coca production. To receive full assistance in FY87, Peru must have put the plan into operation. Terminates the ban on participation by U.S. officers or employees in police arrest actions or interrogations in foreign countries where such participation has been agreed upon by the Secretary of State and the government of the country in question. Requires countries receiving assistance for narcotics control to provide at least 25% of the cost of any program or project funded therewith. Authorizes provision of defense armaments for foreign aircraft being used to combat drugs. Requires a study to determine the feasibility of establishing a Latin American regional narcotics control organization. Requires a number of additional reports to Congress on matters pertaining to drug control. S. 960 reported Apr. 19 (S.Rept. 99-34). Passed Senate May 15. Passed House with H.R. 1555 incorporated (which in turn incorporated most provisions of H.R. 1768) as amendment July 11. Both House and Senate agreed to conference report (H.Rept. 99-237) July 30. Signed by the President Aug. 8, 1985. H.R. 1555 reported Apr. 15, 1985 (H.Rept. 99-39). Passed House, amended, and incorporated into S. 960 as an amendment, July 11, 1985.

P.L. 99-88, (H.R. 2577)

Supplemental Appropriations for FY85. Provides about \$100 million for additional positions for the Drug Enforcement Administration, the Customs Service, and other drug law enforcement agencies. A Senate floor amendment directs the Secretary of Defense to submit a report to Congress on the role of the Department in the drug interdiction and law enforcement activities of the Federal Government. A separate report by the President, on the overall Federal effort, would also be required. H.R. 2577 passed House June 12, 1985. Passed Senate, amended, June 20. House agreed to conference report (H.Rept. 99-236) July 31. Senate agreed to conference report, Aug. 1. Signed by the President Aug. 15, 1985.

P.L. 99-93, (H.R. 2068)

State Department authorizations, FY86 and FY87. Contains a provision establishing an International Narcotics Control Commission to monitor drug control treaties. Senate agreed to conference report (H.Rept. 99-240) July 31, 1985. House agreed to conference report Aug. 1. Signed by the President Aug. 16, 1985.

P.L. 99-145, (S. 1160)

Department of Defense Authorizations, FY86. Senate floor amendments include an amended version of S. 531, clarifying military support for civilian drug interdiction, including authorization of the establishment and operation of one or more reserve forces airborne surveillance and detection units. Another floor amendment requires the Attorney General to conduct regular programs on military cooperation with civilian law enforcement officials. House bill, as reported, contains essential provisions of H.R. 1307 (see below). House floor amendments (1) adopt the provisions of H.R. 2553 (see below), authorizing direct military participation in drug interdiction operations taking place outside the U.S., and (2) provide for a study on the use of the E-2 aircraft for drug interdiction purposes. Conference retained authorization for special airborne surveillance and detection units but left to the Secretary of Defense the assignment of the direction of such units and permitted existing active units to be utilized while also allowing for possibility of using reserves. Conference rejected House provision allowing direct military participation in drug interdiction operations but provided for the mandatory assignment of Coast Guard personnel to each naval vessel at sea in a drug interdiction area and authorized 500 additional Coast Guard personnel for this purpose. S. 1160 passed Senate June 5, 1985. Passed House, amended, June 27. Senate disagreed to House amendments July 11. Conference report (H.Rept. 99-235) agreed to by Senate July 30. Conference report agreed to by House Oct. 29. Signed by the President Nov. 8, 1985. H.R. 1872 reported by Armed Services Committee May 10, 1985 (H.Rept. 99-81). Passed House, amended, and incorporated into S. 1160, June 27.

P.L. 99-190, (H.J.Res. 465)

Further Continuing Appropriations, FY86. Contains provisions to (1) earmark \$300 million for the enhancement of drug interdiction efforts by the Department of Defense, of which \$35 million is further earmarked for the commencement of the configuration of an AC-130H-30 pressurized drug surveillance aircraft and the establishment of an "appropriate" command and control element for the drug interdiction mission within the Air Force, and (2) require that 50% of the funds (excluding International Narcotics Control funds) for Jamaica and Peru be withheld from obligation unless the President determines and reports to Congress that these Governments are "sufficiently responsive to the United States Government concerns on drug control and that the added expenditures of the funds for that country are in the national interests of the United States." House and Senate agreed to conference

report (H.Rept. 99-450) Dec. 19, 1985. Signed by the President Dec. 19, 1985.

H.R. 440 (Sam B. Hall, Jr.)

Amends the Federal Tort Claims Act to make the United States liable for the constitutional torts of Federal employees arising out of the discharge of official duties. Provides a remedy for constitutional torts committed by Federal employees in the course of carrying out official duties; makes such remedy exclusive of any other civil action based on the same conduct. Introduced Jan. 3, 1985; referred to Committee on the Judiciary. (Related bills: S. 492, H.R. 570)

H.R. 526 (Rangel et al.)/S. 15 (Moynihan et al.)

State and Local Narcotics Control Assistance Act of 1984. Establishes a program of formula grants to States for the purpose of increasing the level of State and local enforcement of State laws relating to production, illegal possession, and transfer of controlled substances -- to be administered by the Attorney General. Establishes a program of formula grants to States for the purpose of increasing the ability of States to provide drug abuse prevention, treatment, and rehabilitation -- to be administered by the Secretary of Health and Human Services. Authorizes total appropriations of \$750 million annually for FY86 through FY90, of which \$625 million would be allocated to the law enforcement program. H.R. 526 introduced Jan. 7, 1985; referred jointly to Committees on the Judiciary, and Energy and Commerce. S. 15 introduced Jan. 3, 1985; referred to Committee on Labor and Human Resources.

H.R. 1597 (Waxman et al.)/S. 70 (Inouye)

Compassional Pain Relief Act. Establishes a temporary program under which the narcotic drug heroin would be made available, through approved pharmacies, for the relief of pain from cancer. H.R. 1597 introduced Mar. 19, 1985; referred to Committee on Energy and Commerce. S. 70 introduced Jan. 3, 1985; referred to Committee on Labor and Human Resources.

H.R. 2132 (Shaw, Hughes et al.)

Revises the definition of the term "customs waters" for purposes of Coast Guard enforcement of Controlled Substances import laws. Introduced Apr. 18, 1985; referred jointly to Committees on the Judiciary, and Merchant Marine and Fisheries.

H.R. 2786 (St. Germain, McCollum et al.)/S. 1335 (Thurmond, D'Amato, Roth, Denton, and Hawkins)

Money Laundering Control Act of 1985. Makes it a Federal criminal offense, and also a civil offense, to initiate or assist in the "laundering" of funds -- through or by a financial institution -- that have been derived from unlawful activity, or to do so in the furtherance of such activity; authorizes criminal penalties of imprisonment for up to 20 years and/or a fine of up to \$250,000 or twice the value of the amount involved in the laundering; authorizes a civil penalty of a fine of up to \$10,000 or the value of the funds involved in the transaction. Amends Right to Financial Privacy Act to permit financial institutions to disclose evidence of money laundering to Government authorities. Amends the Currency and Foreign Transactions Reporting Act to broaden the authority of the Secretary of the Treasury to obtain information for the purpose of ensuring compliance with the Act and to permit him to make available to other Federal agencies, and to State and local agencies, information filed in certain reports required by the Act. Authorizes wiretaps to investigate offenses involving prohibited transactions in monetary instruments. Makes it a Federal offense knowingly

to receive the proceeds of any felony violation of Federal law, or the import into the U.S. of the proceeds of any felony violation of foreign narcotics laws. Provides for the civil forfeiture of all funds involved in a laundering violation and also any property that represents the proceeds of such funds; also provides for mandatory criminal forfeiture of money or property involved, or the proceeds, or substitute assets where there has been a conviction of an individual for a laundering offense. H.R. 2786 introduced June 18, 1985; referred jointly to Committees on Banking, Finance and Urban Affairs, and the Judiciary. S. 1335 introduced June 20, 1985; referred to Committee on the Judiciary. (Related bills: H.R. 1367, H.R. 1474, S. 572, S. 1385)

H.R. 3404 (Rangel and Gilman)

Narcotics Control Trade Act. Requires the President to make determinations with respect to the cooperation by drug-source countries in preventing narcotics and other dangerous drugs from "significantly affecting" the U.S. and to report to Congress the name of any country failing to provide such cooperation. Provides that any country so named would be ineligible for most-favored-nation treatment in trade with the U.S. Introduced Sept. 20, 1985; referred to Committee on Ways and Means.

H.R. 3936 (Smith of Florida, Fascell, and Hyde)

Amends the Controlled Substances Act to establish new penalties for the use of children in the distribution of controlled substances and for the manufacturing with intent to distribute, the possession with intent to distribute, or the distribution of designer drugs, and for other purposes. Introduced Dec. 12, 1985; referred jointly to Committees on Energy and Commerce, and the Judiciary.

H.J.Res. 631 (Rodino, Rangel, Hughes et al.)

Provides for a White House Conference on Narcotics Abuse and Control. Introduced May 8, 1986; referred jointly to Committees on Judiciary, Foreign Affairs, and Energy and Commerce.

S. 237 (Thurmond et al.)

Narrows the application, in Federal criminal proceedings, of the Fourth Amendment "exclusionary rule" requiring suppression of improperly seized evidence, by allowing admission where the officers making the seizure were proceeding upon a "reasonable, good faith belief" that they were acting properly. Introduced Jan. 22, 1985; referred to Committee on the Judiciary. (Related bill: S. 29)

S. 515 (D'Amato et al.)

Directs the President to conduct a comprehensive review of U.S. policy toward Bulgaria, specifically with respect to that country's involvement in international drug trafficking, gun-running, and terrorism. Introduced Feb. 26, 1985; referred to Committee on Foreign Relations.

S. 630 (Hawkins)/H.R. 2013 (Rangel and Gilman)

Provides for the payment of rewards to individuals providing information leading to the arrest and conviction of persons guilty of killing or kidnapping a Federal drug law enforcement agent. Introduced Mar. 7, 1985; referred to Committee on the Judiciary. Called up for committee discharge in Senate March 20. Passed Senate March 20. Referred to House Judiciary Committee March 25. H.R. 2013 introduced Apr. 4, 1985; referred to Committee on the Judiciary. (Related bill: H.R. 2768)

S. 713 (Wilson)

Prohibits the interstate mail order and catalog sale, and shipment, of specified paraphernalia associated with the non-therapeutic use of drugs. Introduced Mar. 20, 1985; referred to Committee on the Judiciary.

S. 746 (Chiles)

Requires the National Drug Enforcement Policy Board to provide a comprehensive assessment of the "designer drug" problem and make recommendations to Congress for necessary legislation. Introduced Mar. 26, 1985; referred to Committee on the Judiciary.

S. 772 (D'Amato and Hawkins)

Requires the Secretary of Health and Human Services to prepare a report on the health effects of cocaine use. Introduced Mar. 28, 1985; referred to Committee on Labor and Human Resources.

S. 790 (Hawkins et al.)

Provides for the termination of all U.S. economic and military assistance for Bolivia unless the Bolivian Government eradicates 10% of the country's coca production. Introduced Mar. 28, 1985; referred to Committee on Foreign Relations. Included by floor amendment in S. 960 (International Security and Development Cooperation Act of 1985), which passed the Senate May 15, 1985.

S. 850 (Thurmond and Grassley)

Creates a Federal criminal offense for operating or directing the operation of a common carrier while intoxicated or under the influence of drugs. Introduced Apr. 3, 1985; referred to Committee on the Judiciary. Reported Nov. 14 (no written report). Passed Senate Nov. 21. In House, referred to Committee on the Judiciary Dec. 2, 1985.

S. 1437 (Thurmond et al.)/H.R. 2977 (Lungren, Fish et al.)

Designer Drug Enforcement Act of 1985. Amends the Controlled Substances Act to establish new penalties for the manufacture or distribution of a "designer drug" (up to 15 years or up to \$250,000, or both) -- "designer drug" being defined as a substance, other than a controlled substance, that has a chemical structure "substantially similar" to that of a controlled substance in Schedules I or II. S. 1437 introduced July 16, 1985; referred to Committee on the Judiciary. Reported, amended, Nov. 21 (S.Rept. 99-196). Passed Senate, amended, Dec. 18. In House, referred jointly to Committees on Energy and Commerce, and the Judiciary Dec. 18, 1985. H.R. 2977 introduced July 11, 1985; referred to Committees on Energy and Commerce, and the Judiciary. (Related bill: S. 1417)

S. 1583 (D'Amato, Hawkins and Abdnor)

Comprehensive Drug Law Enforcement, Prevention, and Treatment Act. Directs the Justice and Customs Forfeiture Funds to be used entirely for drug law enforcement, prevention, and treatment purposes. Introduced Aug. 1, 1985; referred to Committee on the Judiciary.

S. 1694 (DeConcini, Chiles, and Hawkins)/H.R. 3479 (English)

Anti-Smuggling Act of 1985. Amends the Tariff Act of 1930 to require immediate reporting to Customs of the arrival of any vessel, vehicle or aircraft from abroad (instead of allowing 24 hours, as at present). Imposes civil and criminal penalties and civil forfeiture for airdropping drugs from an aircraft to a waiting vessel on the high seas or within customs waters. Provides statutory authority for the operation of U.S. customs facilities in foreign countries and the extension of U.S. customs laws to foreign locations with the consent of the country concerned. Introduced Sept. 24,

1985; referred to Committee on Finance. H.R. 3479 introduced Oct. 2, 1985; referred jointly to Committees on Ways and Means, and Public Works and Transportation.

S. 1746 (Chiles)

Directs Attorney General to study and recommend methods to control the diversion of legitimate precursor and essential chemicals to the production of illicit drugs. Introduced Oct. 8, 1985; referred to Committee on the Judiciary.

S. 1984 (D'Amato and Dole)

Armed Drug Trafficking Act. Amends the Gun Control Act to add drug trafficking to the category of predicate offenses subject to imposition of a mandatory penalty enhancement where use or carriage of a firearm is involved. Introduced Dec. 4, 1985; referred to Committee on the Judiciary.

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CHRONOLOGY OF EVENTS

03/03/86 -- The President's Commission on Organized Crime released the first part of its final report. Entitled: "America's

Habit: Drug Abuse, Drug Trafficking and Organized Crime," the report included a recommendation that all Federal employees be tested for use of illicit drugs.

- 10/12/84 -- President signed H.J.Res. 648 into law (P.L. 98-473). Title II is the Comprehensive Crime Control Act of 1984, with a number of its major provisions aimed principally at the illicit traffic in narcotics and other dangerous drugs.
- 10/10/84 -- House and Senate agreed to a conference report on H.J.Res. 648, reflecting a number of compromises on an omnibus crime control title and including a number of additional House-passed proposals.
- 03/23/83 -- The White House announced the creation of a new drug interdiction group headed by Vice-President George Bush. To be known as the National Narcotics Border Interdiction System (NNBIS), it will coordinate the work of Federal agencies with responsibilities for interdiction of sea-borne, air-borne and across-border importation of narcotics and other dangerous drugs -- principally the Customs Service, the Coast Guard, and the armed services.
- 10/14/82 -- President Reagan announced a major new drive against illicit drug trafficking. The Organized Crime Drug Enforcement program involves creation of 12 regional multi-agency task forces for the investigation and prosecution of drug trafficking offenses.
- 01/28/82 -- President Reagan announced the establishment of a special task force to combat illicit drug traffic in South Florida. Composed of officials from a number of Federal agencies, to work with State and local authorities, the task force was placed under the direction of Vice President Bush.
- 01/21/82 -- The Attorney General announced that the FBI had been given concurrent jurisdiction with the Drug Enforcement Agency (DEA) over the investigation of violations of Federal dangerous drug laws. The DEA Administrator will report to the Attorney General through the FBI Director.
- 12/01/81 -- The President signed P.L. 97-86, which contains a provision authorizing certain kinds of cooperation by the Armed Services with civilian law enforcement authorities for specific purposes, including drug law enforcement.
- 08/19/81 -- The final report of the Attorney General's Task Force on Violent Crime was released. The report emphasizes the seriousness of illicit drug traffic and the importance of a clear and consistent enforcement policy. Recommendations included support of the use of herbicides for drug crop eradication, support for the use of military resources for drug interdiction, and calls for changes in law and practice with respect to bail, sentencing, and exclusion of evidence.

- 07/29/76 -- House voted to establish the Select Committee on Narcotics Abuse and Control, charged with conducting a general investigation of Federal drug abuse control efforts and with making recommendations for appropriate action to the standing committees with relevant jurisdiction.
- 07/01/73 -- The Bureau of Narcotics and Dangerous Drugs and several other agencies were merged into the Drug Enforcement Administration, by Reorganization Plan No. 2 of 1973. The new agency absorbed a number of Customs Bureau officials.
- 02/07/72 -- President signed the Foreign Assistance Act of 1971 (P.L. 92-226), which contained a provision establishing a program of assistance designed to encourage international narcotics control.
- 10/27/70 -- President signed the Comprehensive Drug Abuse Prevention and Control Act of 1970, an omnibus bill containing the Controlled Substances Act, which consolidated and revised all Federal laws for the control of narcotics and other dangerous drugs.
- 04/08/68 -- The Federal Bureau of Narcotics (Treasury Department) and the Bureau of Drug Abuse Control (HEW) were merged into a new agency in the Justice Department, the Bureau of Narcotics and Dangerous Drugs.

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91-513): summary and legislative history [by] Harry Hogan.
[Washington] April 9, 1980. 76 p.
CRS Report 80-74 EPW

U.S. Office of the Attorney General. Annual report of
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Washington [Department of Justice] 1984. 132 p.

U.S. National Narcotics Intelligence Consumers Committee.
Narcotics intelligence estimate. The supply of drugs to
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destructiveness of prohibition. Wisconsin law review,
v. 1983, no. 6: 1305-1426.

DOMESTIC POLICY COUNCIL WORKING GROUP ON DRUG ABUSE POLICY

LEGISLATIVE REVIEW TASK FORCE

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Civil Division
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Office of Management and Budget

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Special Assistant to the Secretary
Department of Education

Karen Wilson

Budget Examiner
Commerce/Justice Branch
Office of Management and Budget

Bruce Wood

Associate Deputy Under Secretary
Department of Labor

THE WHITE HOUSE

WASHINGTON

August 11, 1986

COPY

NOTE TO DAN BENSING

FROM: SHARYN LUMPKINS

SUBJ: Legislative Review Task Force

The material which was handed out at the 1:30
pm
meeting is in the white folder.

I am also enclosing some additional material
which you may find useful.

Please call me at 456-2761 if you have any
questions.

LEGISLATIVE REVIEW GROUP

Chairman: Richard Willard
Assistant Attorney General
Criminal Division, Department of Justice
633-3301

Objectives: (based on memo from AG dtd 8/5/86)

- o Review all legislative proposals before Congress and bring recommendations to the DPC for Administration positions with respect to policy, budget, and cost effectiveness of proposal.
- o To review all proposed legislation developed within the Administration and bring recommendations to the DPC.
- o To track funding legislation moving through the Congress.

Initiatives/Proposals Underway:

- o See attachment

Congressional Activity

Congressional activity in recent weeks has been brisk on this issue, listed below are some of the major legislative initiatives currently on the Hill.

1. The Drug Dependent Offenders Amendment of 1986. (H.R.5076) Federal offenders placed on probation or parole who have drug dependency problems may be required to undergo drug testing, counseling, and other treatment programs as a condition of probation or parole.
2. The Designer Drug Enforcement Act. (H.R.5246, S.1437) Makes designer drugs illegal and subjects traffickers of controlled substance analogs to the stiffest drug penalties.
3. Career Criminal Amendments. (H.R.4885) Expands the Armed Career Criminal Act to include violent crimes and drug crimes.
4. The Money Laundering Control Act. (H.R.5217, S.2683) Creates a new crime of money laundering; improves investigatory tools and reduces restrictions on law enforcement in the banking area.
5. Providing for a White House Conference on Drug Abuse and Control. (H.J.Res.631) The resolution calls for the President to convene a White House Conference on Drug Abuse and Control by April 1987.
6. Technical Amendments to Comprehensive Crime Control Act. (H.R.2774) Eliminates technical problems with and clarifies many new provisions of the Comprehensive Crime Control Act of 1984.
7. Judiciary and Judicial Procedure Amendment (H.R.1193) A bill to amend the United States Code, to provide amounts from the Department of Justice assets forfeiture fund for drug abuse prevention, treatment, and rehabilitation programs.
8. Readiness Enhancement of Air Force Reserve Special Operation Act. (H.R.1307) A bill to authorize the appropriation of funds for the operation and maintenance of a Special Operations Wing of the Air Force Reserve.

9. Controlled Substances Importation, Increased Enforcement by Coast Guard Act. (H.R.2132) A bill to amend Public Law 96-350 to further define the Customs waters for the purposes of certain drug offenses.
10. Crimes and Criminal Procedure. (H.R.2774) A bill to amend Title 18 of the U.S.C. and other laws to make minor technical amendments of provisions enacted by the Comprehensive Crime Control Act of 1984.
11. Anti-Smuggling Act. (H.R.3479) A bill to amend the Tariff Act of 1930 to increase measures to combat smuggling by vessels, vehicles, and aircraft, and for other purposes.
12. Omnibus Diplomat. (H.R.4151) A bill to provide enhanced diplomatic security and combat international terrorism and for other purposes.
13. Readiness Enhancement of Air Force Reserve Special Operations Act. (S.531) A bill to authorize the appropriation of funds for the operation and maintenance of Special Operations Wing of the Air Force Reserve. To authorize the appropriation of funds for the operation and maintenance of the D of the Department of Defense Task Force on Drug Enforcement, and to require certain reports.
14. Drug Money Seizure. (S.571) A bill to amend Subchapter II of Chapter 53, of Title 31, United States Code, relating to currency reports.
15. Mail Order Drug Paraphernalia Act. (S.713) A bill to prohibit the interstate sale and transportation of drug paraphernalia.
16. Comprehensive Crime Control. (S.1236) A bill to prohibit the interstate sale and transportation of drug paraphernalia.
17. Controlled Substance Analogs Enforcement Act of 1985. (S.1437) A bill to amend the Controlled Substances Act to create new penalties for the manufacture with intent to distribute, the possession or the distribution of controlled substance analogs, and for other purposes.
18. Anti-Smuggling Act of 1985. (S.1694) A bill to amend the Tariff Act of 1930 to increase measures to combat smuggling by vessels, vehicles, and aircraft, and for other purposes.

19. Action Drug Prevention Program. (S.668) A bill to provide funding for the ACTION drug prevention program in HHS out of proceeds received by the Customs forfeiture fund and the Justice assets forfeiture fund.
20. State and Local Narcotics Control Assistance Act of 1985. (S.15) A bill to authorize HHS to make grants to States for drug abuse prevention, and other purposes, and to authorize the Attorney General to make grants to increase State and local enforcement of laws against drug abuse.
21. Student Chemical Abuse Prevention Act of 1985. (S.1820) A bill to provide assistance to State and local educational agencies for the development of and expansion of demonstration chemical substance prevention programs.
22. Department of the Treasury Appropriations. (H.R.5267) A bill to authorize additional appropriations for fiscal year 1987 for the United States Customs Service for drug enforcement capabilities.
23. Reorganization of Executive Branch Drug Trafficking and Abuse Functions. (H.R.5266) Requires the President to submit legislation for the reorganization of the Executive Branch in order to more effectively combat drug trafficking and drug abuse.
24. Department of Defense Narcotics Enforcement Assistance Act of 1986. (H.R.5270) A bill to authorize additional appropriations to the Department of Defense for armed forces assistance to civilian drug enforcement agencies.
25. Coast Guard Drug Interdiction Enhancement Act of 1986. (H.R.5268) A bill to authorize additional appropriations and personnel for the Coast Guard for drug interdiction.

Proposed Administration Legislative Initiatives

Through the Domestic Policy Council various Departments and Agencies have developed draft legislation that would support the President's Drug initiative.

Department of Justice

The National Drug Abuse Prevention Act of 1986. Establishment of a drug abuse prevention program which provides for a drug-free workplace and allows testing to identify and hold accountable users of illegal drugs in educational institutions, the private workforce and the Federal Government. This is not a budget item.

Department of Education

The Zero Tolerance Act. State set-asides for drug prevention activities at the state level. State discretionary grants to local school districts requiring each district to submit to the state agency a plan to achieve "Drug-Free Schools." Federal discretionary grants for development and dissemination of program models and materials on alcohol and drug prevention in schools. The estimated cost of this program is \$100 million.

Office of Personnel Management

Propose legislative changes to make current illegal drug use an absolute disqualifier for entry into Federal employment and a basis for termination, regardless of a claimed "handicapping" condition or effect on job performance. States, local governments, and government contractors would be encouraged to develop drug free workplaces.

Department of Health and Human Services

Restructuring the existing Title III of the Narcotics Addict Rehabilitation Act (NARA) to include all controlled substance abusers and to streamline the cumbersome regulatory and reporting requirements of the original Law.

Drafting a model statute to provide states with the basis for broader treatment authority for controlled substance abusers in their jurisdiction.

These are proposed legislative actions that would allow execution of those policies approved by the President and the Domestic Policy Council. They would cover activities beyond the limits the President has set; e.g., hiring in sensitive positions and any mandatory testing for sensitive positions. That is why this proposed legislation will need a reviewing body. (It is proposed that the Domestic Policy Council Working Group on Drug Policy be this body.)

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To Rae S.L.
Date 8/12 Time 1:30
WHILE YOU WERE OUT
M John Merket
of 608-266-3756
Phone 608-266-3756
Area Code Number Extension

TELEPHONED	PLEASE CALL	<input checked="" type="checkbox"/>
CALLED TO SEE YOU	WILL CALL AGAIN	<input type="checkbox"/>
WANTS TO SEE YOU	URGENT	<input type="checkbox"/>

RETURNED YOUR CALL	<input type="checkbox"/>
--------------------	--------------------------

Message Wisc on air
last week →
Federal express

Operator [Signature]

EFFICIENCY® LINE NO. 4725 AN AMPAD PRODUCT

- all 4 newspapers endorsed
- 3 TV stations in Milwaukee
- Chicago
- not capital punishment
- Florida strictly for heroin
- Concept in Wisconsin
- Murder - for ^{death} drug -

JOHN L. MERKT

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P.O. Box 8953
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Telephone: (608) 266-3756

Hotline:
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Wisconsin Legislature
Assembly Chamber

58th Assembly District

Jackson, Germantown, Towns of
West Bend, Polk & Cedarburg,
Village of Thiensville,
City of Mequon

COMMITTEE MEMBER:

Ways & Means
Commerce & Consumer Affairs
Joint Committee on Tax
Exemptions

August 4, 1986

For your information

5 AUG 1986

3748

Mr. Ed Meese
% Mr. John Richardson
Department of Justice
10th and Constitutional Ave. N.W.
Washington, D.C. 20530

File

Dear Mr. Meese:

By now you should have received a letter from our former Governor Lee Sherman Dreyfus, asking you to seriously consider the "Len Bias Bill" which I have discussed and sent information about to various individuals in the Administration, as well as your Department.

I sincerely hope that you will consider, if not endorsing, allowing the Administration and/or your department to mention Wisconsin's proposed legislation as one of the many new weapons law enforcement, both state and federal, should be considering adding to the arsenal in our weaponry against our terrible drug problem.

The information included in this packet I hope will adequately explain the concept of this proposal, namely, if the drug you give/sell results directly in death, you may be easily prosecutable for murder.

I feel this is a good "middle ground" proposal which adequately supplements the drug testing proposals we are all rather familiar with, and yet does not get into the "swamp" of Capital Punishment, such as Mayor Koch is calling for, and truly, as the President recently said, deeply divides our citizenry.

I feel my proposal (bi-partisan as you will see) has four main strong points:

- 1) Justice is served; if someone dies, the "killer" should be charged with murder;
- 2) People tempted to use cocaine for the first time just might not do so if we can constantly keep the cloud of death hanging over this capricious drug;
- 3) People undoubtedly will be less inclined to give to a friend, pass out the drug at parties, or get involved in small scale peddling if they know the penalty could be murder;
- 4) The bill allows murder charges to be filed against anyone supplying the drug as far up the distribution ladder as responsibility can be traced. We can indeed go after Mr. Big.

Mr. Ed Meese

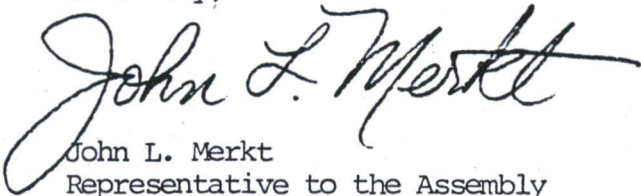
Page 2

August 4, 1986

But my proposal is chiefly designed to make cocaine synonymous with two other words . . . murder and death. If we can truly hammer away that the three go together, perhaps we can begin to turn the tide in this war against drug terrorists.

I absolutely am convinced this proposal, that can be a model legislation in Wisconsin, could be proven successful and be emulated throughout our nation. It is conceivable that a form of it could be used by the federal government itself. Please consider it, and feel free to contact me at any time. I know that the President wishes his administration to be remembered most for successfully combating Organized Crime. I believe this would be an extremely useful tool.

Sincerely,

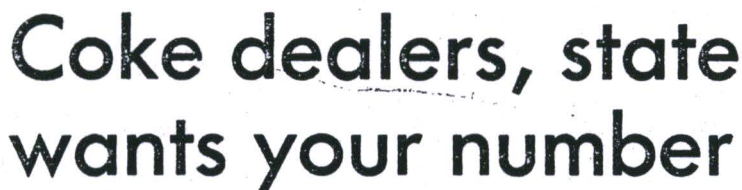


John L. Merkt
Representative to the Assembly
58th District

JLM:vls

Enclosures: Editorials
Milwaukee Journal
Milwaukee Sentinel
Wisconsin State Journal

Our old statutes
Our new proposal
Press Releases



Coke dealers, state wants your number

Two state legislators, Republi-

If drug dealers know they are facing the possibility of a lengthy prison sentence every time they sell a gram of cocaine, the chilling effects on this despicable market could be significant.

Paying for drug deaths

The recent cocaine-related deaths of two prominent athletes have certainly shocked the sports world.

But they happen not only to the Len Biases or Don Rogerses of the world. They happen to people who might as well have no names at all. They die, and the world goes on much as it did.

No one mourns. The death is that inconsequential.

Recently, figures show there were 21 cocaine-related deaths in Wisconsin between 1980 and the first half of 1985. How many people knew that? And how many really care?

In contrast, only five deaths were attributable to heroin during that period, said State Rep. David T. Prosser Jr. (R-Appleton).

Meantime, people who follow statistics report that there were 32 hospital admissions related to cocaine abuse in Wisconsin in

1985. The figure could be even higher, but it represents the total of only 3 of the more than 135 emergency rooms in the state.

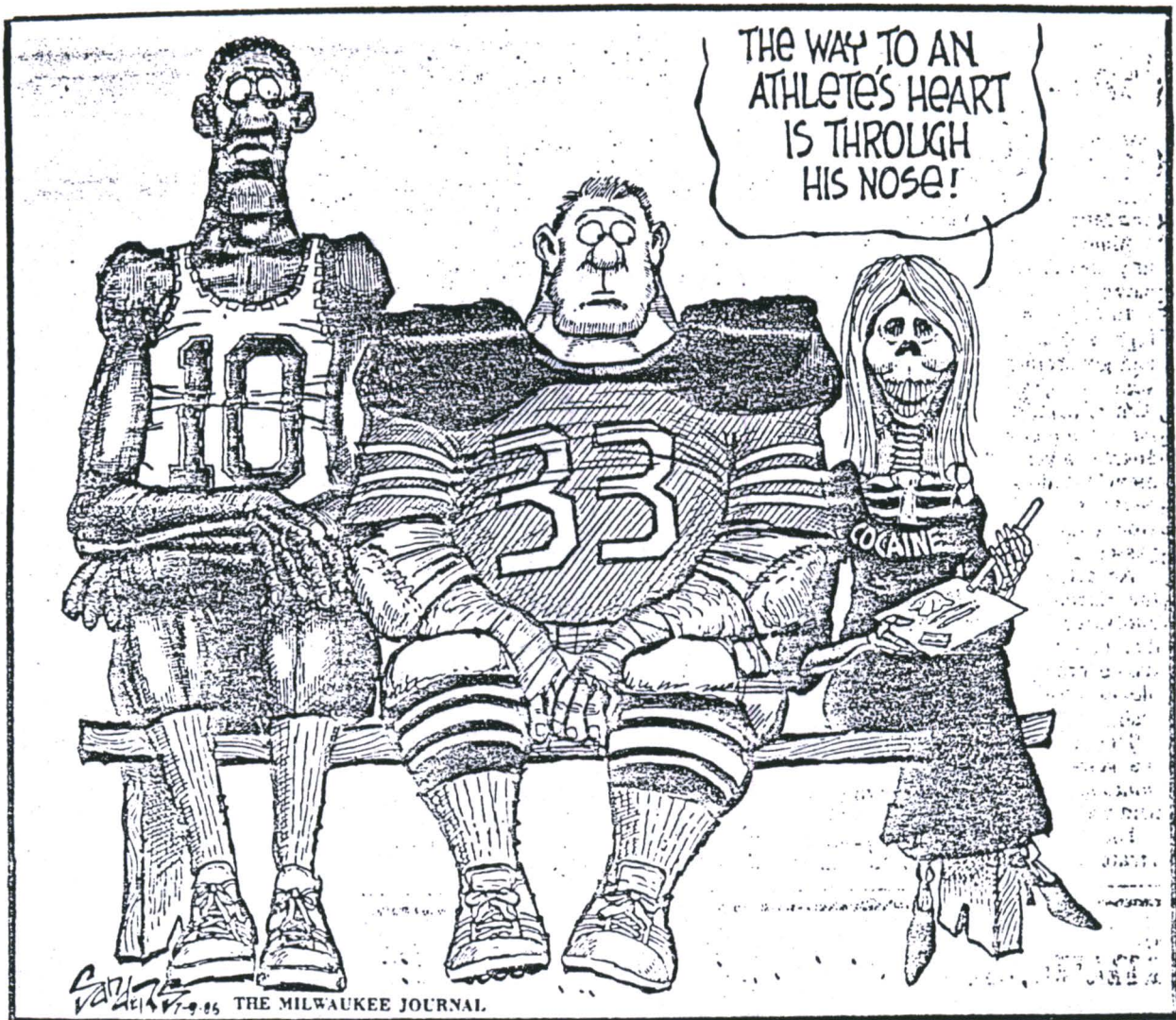
The State Legislature recently acted by increasing penalties for those convicted of selling or possessing cocaine. But what of when death occurs? Should there be a special penalty? Do state statutes adequately cover such a possibility?

State Reps. John Merkt (R-Mequon) and John Medinger (D-La Crosse), chairman of the Council on Alcohol and Drug Abuse, are looking for some answers and plan to present them to the council in August.

One possibility is penalizing, under an expanded second-degree murder statute, anyone convicted of providing cocaine to a person who subsequently dies from its use.

It is a question worth probing — for all the victims of drug abuse and those who feed on it.

Milwaukee Sentinel 7/9/86



Lethal drug dispensers truly are killers

If the cocaine deaths of young athletes Len Bias and Don Rogers do nothing else, perhaps they will make a few would-be drug dabblers think twice before flirting with an equal-opportunity destroyer.

But there's another message that ought to flow from these tragedies: Anyone who supplies another person with an illegal drug that results in the death of the user deserves to be treated like a killer. Not an intentional killer, perhaps, but a killer in the broadest sense.

The laws in many states, however, aren't written that way. Wisconsin's rather vague statute on second-degree murder, for example, requires evidence of "a depraved mind" for a finding of guilt. The state's manslaughter statute is primarily designed to cover killings committed in the heat of passion, in self-defense or in defense of another person.

State Rep. John Merkt (R-Mequon) thinks such laws need to be revised to include contributors to drug deaths. Working with fellow lawmakers and others, Merkt is looking specifically at the possibility of broadening the definition of second-degree murder to include deaths from cocaine and other illegal drugs. "Somehow, we've got to get cocaine associated in people's minds with death and even murder," Merkt emphasizes.

We agree. That approach seems all the more appropriate in light of recent cocaine trends: The street form of the drug is becoming increasingly cheap and increasingly pure (read: deadly). Thus, it's likely that coke use and fatalities will rise.

Of course, it will take more than tougher laws to dispel the mystique of cocaine. Also necessary are expanded drug education efforts, mandatory drug testing for athletes, and a concerted federal commitment to cracking down on foreign countries that export cocaine. States can do their part, however, by throwing the book at the people who supply those fatal highs.

changes his mind and no longer desires that the crime be committed and notifies the other parties concerned of his withdrawal within a reasonable time before the commission of the crime so as to allow the others also to withdraw.

It is desirable but not mandatory that an information refer to this section where the district attorney knows in advance that a conviction can only be based on participation and the court can instruct and the defendant can be convicted on the basis of the section in the absence of a showing of adverse effect on the defendant. *Bethards v. State*, 45 W (2d) 606, 173 NW (2d) 634.

It is not error that an information charging a crime does not also charge defendant with being a party to a crime. *Nicholas v. State*, 49 W (2d) 683, 183 NW (2d) 11.

Under sub. (2) (c) a conspirator is one who is concerned with a crime prior to its actual commission. *State v. Haugen*, 52 W (2d) 791, 191 NW (2d) 12.

An information charging defendant with being a party to a crime need not set forth the particular subsection relied upon. A defendant can be convicted of 1st degree murder under this statute even though he claims that he only intended to rob and an accomplice did the shooting. *State v. Cydzik*, 60 W (2d) 683, 211 NW (2d) 421.

The state need not elect as to which of the elements of the charge it is relying on. *Hardison v. State*, 61 W (2d) 262, 212 NW (2d) 103.

See note to 940.01, citing *Clark v. State*, 62 W (2d) 194.

Evidence establishing that defendant's car was used in robbery getaway was sufficient to convict defendant of armed robbery, party to a crime, where defendant admitted sole possession of car on night of robbery. *Taylor v. State*, 74 W (2d) 255, 246 NW (2d) 518.

Conduct undertaken to intentionally aid another in commission of a crime and which yields such assistance constitutes aiding and abetting the crime and whatever it entails as a natural consequence. *State v. Astor*, 75 W (2d) 411, 249 NW (2d) 529.

Defendants may be found guilty under (2) if, between them, they perform all necessary elements of crime with awareness of what the others are doing; each defendant need not be present at scene of crime. *Roehl v. State*, 77 W (2d) 398, 253 NW (2d) 210.

Aiding-and-abetting theory and conspiracy theory discussed. *State v. Charbonneau*, 82 W (2d) 644, 264 NW (2d) 227.

Withdrawal under (2) (c) must be timely. *Zelenka v. State*, 83 W (2d) 601, 266 NW (2d) 279 (1978).

This section applies to all crimes except where legislative intent clearly indicates otherwise. *State v. Tronca*, 84 W (2d) 68, 267 NW (2d) 216 (1978).

Proof of a "stake in the venture" is not needed to convict under (2) (b). *Krueger v. State*, 84 W (2d) 272, 267 NW (2d) 692 (1978).

Multiple conspiracies discussed. *Bergeron v. State*, 85 W (2d) 595, 271 NW (2d) 386 (1978).

Jury need not unanimously agree whether defendant (1) directly committed crime, (2) aided and abetted its commission, or (3) conspired with another to commit it. *Holland v. State*, 91 W (2d) 134, 280 NW (2d) 288 (1979).

See note to 946.62, citing *Vogel v. State*, 96 W (2d) 372, 291 NW (2d) 850 (1980).

Aider and abettor who withdraws from conspiracy does not remove self from aiding and abetting. *May v. State*, 97 W (2d) 175, 293 NW (2d) 478 (1980).

Party to crime is guilty of that crime whether or not party intended that crime or had intent of its perpetrator. *State v. Stanton*, 106 W (2d) 172, 316 NW (2d) 134 (Ct. App. 1982).

See note to 161.41, citing *State v. Hecht*, 116 W (2d) 605, 342 NW (2d) 221 (1984).

Unanimity requirement was satisfied when jury unanimously found that accused participated in crime. *Lampkins v. Gagnon*, 110 F (2d) 374 (1983).

This section does not shift burden of proof. Prosecution need not specify which paragraph of (2) under which it intends to proceed. *Madden v. Israel*, 438 F Supp. 1234 (1979).

Liability for coconspirator's crimes in the Wisconsin party to a crime statute. 66 MLR 344 (1983).

Application of Gipson's unanimous verdict rationale to the Wisconsin party to a crime statute. 1979 WLR 297.

Wisconsin's party to a crime statute. The mens rea element under the aiding and abetting subsection, and the aid-

ing and abetting-choate conspiracy distinction. 1984 WLR 769.

939.10 Common-law crimes abolished; common-law rules preserved. Common-law crimes are abolished. The common-law rules of criminal law not in conflict with chs. 939 to 948 are preserved.

History: 1979 c. 89.

939.12 Crime defined. A crime is conduct which is prohibited by state law and punishable by fine or imprisonment or both. Conduct punishable only by a forfeiture is not a crime.

939.14 Criminal conduct or contributory negligence of victim no defense. It is no defense to a prosecution for a crime that the victim also was guilty of a crime or was contributorily negligent.

Jury instruction that defrauded party had no duty to investigate fraudulent representations was correct. *Lambert v. State*, 73 W (2d) 590, 243 NW (2d) 524.

939.20 Provisions which apply only to chapters 939 to 948. Sections 939.22 and 939.23 apply only to crimes defined in chs. 939 to 948. Other sections in ch. 939 apply to crimes defined in other chapters of the statutes as well as to those defined in chs. 939 to 948.

History: 1979 c. 89.

939.22 Words and phrases defined. In chs. 939 to 948, the following words and phrases have the designated meanings unless the context of a specific section manifestly requires a different construction:

(2) "Airgun" means a weapon which expels a missile by the expansion of compressed air or other gas.

(4) "Bodily harm" means physical pain or injury, illness, or any impairment of physical condition.

(6) "Crime" has the meaning designated in s. 939.12.

(8) "Criminal intent" has the meaning designated in s. 939.23.

(10) "Dangerous weapon" means any firearm, whether loaded or unloaded; any device designed as a weapon and capable of producing death or great bodily harm; any electric weapon, as defined in s. 941.295 (4); or any other device or instrumentality which, in the manner it is used or intended to be used, is calculated or likely to produce death or great bodily harm.

(11) "Drug" has the meaning specified in s. 450.06.

(12) "Felony" has the meaning designated in s. 939.60.

CHAPTER 939

CRIMES — GENERAL PROVISIONS

PRELIMINARY PROVISIONS.	
939.01	Name and interpretation.
939.03	Jurisdiction of state over crime.
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PRELIMINARY PROVISIONS.

939.01 Name and interpretation. Chapters 939 to 948 may be referred to as the criminal code but shall not be interpreted as a unit. Crimes committed prior to July 1, 1956, are not affected by chs. 939 to 948.

History: 1979 c. 89.

939.03 Jurisdiction of state over crime. (1) A person is subject to prosecution and punishment under the law of this state if:

(a) He commits a crime, any of the constituent elements of which takes place in this state; or

(b) While out of this state, he aids and abets, conspires with, or advises, incites, commands, or solicits another to commit a crime in this state; or

(c) While out of this state, he does an act with intent that it cause in this state a consequence set forth in a section defining a crime; or

(d) While out of this state, he steals and subsequently brings any of the stolen property into this state.

(2) In this section "state" includes area within the boundaries of the state, and area over which the state exercises concurrent jurisdiction under article IX, section 1, of the constitution.

History: 1983 a. 192.

Jurisdiction over crime committed by Menominee while on the Menominee Indian Reservation discussed. State ex rel. Pratskowitz v. Montour, 72 W (2d) 277, 240 NW (2d) 186.

Treaties between federal government and Menominee tribe do not deprive state of criminal subject matter jurisdiction over crime committed by a Menominee outside the reservation. Sturdevant v. State, 76 W (2d) 247, 251 NW (2d) 50.

See note to Art. I, sec. 8, citing State ex rel. Skinkis v. Treffert, 90 W (2d) 528, 280 NW (2d) 316 (Ct. App. 1979).

Fisherman who violated Minnesota and Wisconsin fishing laws while standing on Minnesota bank of Mississippi was subject to Wisconsin prosecution. State v. Nelson, 92 W (2d) 855, 285 NW (2d) 924 (Ct. App. 1979).

See note to 346.65, citing County of Walworth v. Rohner, 108 W (2d) 713, 324 NW (2d) 682 (1982).

939.05 Parties to crime. (1) Whoever is concerned in the commission of a crime is a principal and may be charged with and convicted of the commission of the crime although he did not directly commit it and although the person who directly committed it has not been convicted or has been convicted of some other degree of the crime or of some other crime based on the same act.

(2) A person is concerned in the commission of the crime if he:

(a) Directly commits the crime; or

(b) Intentionally aids and abets the commission of it; or

(c) Is a party to a conspiracy with another to commit it or advises, hires, counsels or otherwise procures another to commit it. Such a party is also concerned in the commission of any other crime which is committed in pursuance of the intended crime and which under the circumstances is a natural and probable consequence of the intended crime. This paragraph does not apply to a person who voluntarily

940.02 Second-degree murder. Whoever causes the death of another human being under either of the following circumstances is guilty of a Class B felony:

(1) By conduct imminently dangerous to another and evincing a depraved mind, regardless of human life; or

(2) As a natural and probable consequence of the commission of or attempt to commit a felony.

History: 1977 c. 173.

As to 2nd degree murder the reference is to conduct evincing a certain state of mind, not that the state of mind actually exists. *Ameen v. State*, 51 W (2d) 175, 186 NW (2d) 206.

See note to 940.01, citing *State v. Wells*, 51 W (2d) 477, 187 NW (2d) 328.

Trial court refusal to give defendant's requested definition of the depraved mind necessary for second-degree murder as defined by the supreme court in *State v. Weso*, 60 W (2d) 404, did not constitute an abuse of discretion where *Weso* neither changed the law with respect to this element of the crime nor held that the standard instruction thereon was either unclear or inadequate. *Hughes v. State*, 68 W (2d) 159, 227 NW (2d) 911.

Beating and kicking smaller, unconscious victim constitutes conduct imminently dangerous and evincing a depraved mind. *Wangerin v. State*, 73 W (2d) 427, 243 NW (2d) 448.

Where victim, known by defendant to be violent, attacked defendant with a knife and defendant shot victim 5 times, allegedly by accident, trial court did not err in instructing jury on lesser charge of second-degree murder on grounds that defendant did not intend victim's death. *McAllister v. State*, 74 W (2d) 246, 246 NW (2d) 511.

Sexual molestation of nine year old girl resulting in fatal traumatic shock constituted conduct presenting an apparent and conscious danger of producing death. *Turner v. State*, 76 W (2d) 1, 250 NW (2d) 706.

Where defendant was drag racing along street while intoxicated but apparently swerved in attempt to avoid hitting victim, the proof was insufficient in respect to conduct imminently dangerous to another. *Wagner v. State*, 76 W (2d) 30, 250 NW (2d) 331.

See note to 940.05, citing *State v. Klimas*, 94 W (2d) 288, 288 NW (2d) 157 (Ct. App. 1979).

Essential difference between 1st and 2nd degree murder is intent to kill. Provocation will not reduce 1st degree murder to 2nd degree murder. *State v. Lee*, 108 W (2d) 1, 321 NW (2d) 108 (1982).

See note to Art. I, sec. 8, citing *State v. Gordon*, 111 W (2d) 133, 330 NW (2d) 564 (1983).

Where defendant is found guilty of homicide occurring during commission of a felony he may be sentenced for both offenses although separate verdicts were not submitted. *Patelski v. Cady*, 313 F Supp. 1268.

940.04 Abortion. (1) Any person, other than the mother, who intentionally destroys the life of an unborn child may be fined not more than \$5,000 or imprisoned not more than 3 years or both.

(2) Any person, other than the mother, who does either of the following may be imprisoned not more than 15 years:

(a) Intentionally destroys the life of an unborn quick child; or

(b) Causes the death of the mother by an act done with intent to destroy the life of an unborn child. It is unnecessary to prove that the fetus was alive when the act so causing the mother's death was committed.

(3) Any pregnant woman who intentionally destroys the life of her unborn child or who

consents to such destruction by another may be fined not more than \$200 or imprisoned not more than 6 months or both.

(4) Any pregnant woman who intentionally destroys the life of her unborn quick child or who consents to such destruction by another may be imprisoned not more than 2 years.

(5) This section does not apply to a therapeutic abortion which:

(a) Is performed by a physician; and

(b) Is necessary, or is advised by 2 other physicians as necessary, to save the life of the mother; and

(c) Unless an emergency prevents, is performed in a licensed maternity hospital.

(6) In this section "unborn child" means a human being from the time of conception until it is born alive.

Aborting child against father's wishes does not constitute intentional infliction of emotional distress. *Przybyla v. Przybyla*, 87 W (2d) 441, 275 NW (2d) 112 (Ct. App. 1978).

This section cited as similar to Texas statute which was held to violate the due process clause of the 14th amendment, which protects against state action the right to privacy, including a woman's qualified right to terminate her pregnancy. *Roe v. Wade*, 410 US 113.

State may prohibit first trimester abortions by nonphysicians. *Connecticut v. Menillo*, 423 US 9.

Viability of unborn child discussed. *Colausti v. Franklin*, 439 US 379 (1979).

Any law requiring parental consent for minor to obtain abortion must ensure that parent does not have absolute, and possibly arbitrary, veto. *Bellotti v. Baird*, 443 US 622 (1979).

See note to art. I, sec. 1, citing *Harris v. McRae*, 448 US 297 (1980).

See note to art. I, sec. 1, citing *Babitz v. McCann*, 310 F Supp. 293.

Where U.S. supreme court decisions clearly made Wisconsin antiabortion statute unenforceable, issue in physician's action for injunctive relief against enforcement became mooted, and it no longer presented case or controversy over which court could have jurisdiction. *Larkin v. McCann*, 368 F Supp. 1352.

State regulation of abortion. 1970 WLR 933.

940.05 Manslaughter. Whoever causes the death of another human being under any of the following circumstances is guilty of a Class C felony:

(1) Without intent to kill and while in the heat of passion; or

(2) Unnecessarily, in the exercise of his privilege of self-defense or defense of others or the privilege to prevent or terminate the commission of a felony; or

(3) Because such person is coerced by threats made by someone other than his coconspirator and which cause him reasonably to believe that his act is the only means of preventing imminent death to himself or another; or

(4) Because the pressure of natural physical forces causes such person reasonably to believe that his act is the only means of preventing imminent public disaster or imminent death to himself or another.

History: 1977 c. 173.

Uniform instruction No. 1140 as to self-defense approved *Mitchell v. State*, 47 W (2d) 695, 177 NW (2d) 833.

Failure to negate the intentional nature of the killing or establish adequate provocation requires the refusal of a manslaughter instruction. *State v. Lucynski*, 48 W (2d) 232, 179 NW (2d) 889.

Where there was no evidence which would constitute either first or second degree murder a finding that defendant acted in the heat of passion will not sustain a conviction of manslaughter. *Boissonneault v. State*, 50 W (2d) 662, 184 NW (2d) 846.

A defendant is not entitled to submission of a manslaughter (self-defense) verdict when he testified that he did not intend to do the act which resulted in death. *Day v. State*, 55 W (2d) 756, 201 NW (2d) 42.

An instruction as to self-defense and one in regard to manslaughter are not mutually exclusive. Self-defense may be either a complete defense or a mitigation of murder. *Ross v. State*, 61 W (2d) 160, 211 NW (2d) 827.

Driveway incident took place 5 days prior to the shooting. Such anger would not constitute adequate provocation under (1). *Marks v. State*, 63 W (2d) 769, 218 NW (2d) 328.

Court declines to abandon the established objective test applied in manslaughter-heat of passion cases. *Hayzes v. State*, 64 W (2d) 189, 218 NW (2d) 717.

Instruction under (2) is proper only if, under some reasonable view, the evidence is sufficient to establish guilt of causing the death of another in the exercise of self-defense. *Bedford v. State*, 65 W (2d) 357, 222 NW (2d) 658.

Where defendant testified to being beaten continually by 2 officers after dropping gun and repeatedly asking officers to stop, trial court erred in refusing to instruct jury on possible "imperfect self-defense" of defendant in grabbing police revolver used in the beating and shooting both officers. *State v. Mendoza*, 80 W (2d) 122, 258 NW (2d) 260.

State of mind which distinguishes manslaughter from second-degree murder must necessarily be heat of passion required by (1), not depravity of mind evinced by conduct constituting second-degree murder. *State v. Klimas*, 94 W (2d) 288, 288 NW (2d) 157 (Ct. App. 1979).

Heat of passion has both objective (provocation) and subjective (state of mind) facets. *State v. Williford*, 103 W (2d) 98, 307 NW (2d) 277 (1981).

Conviction was supported by evidence that accused fired 3 shots at waist level through closed bedroom door. *State v. Kelley*, 107 W (2d) 540, 319 NW (2d) 869 (1982).

If defendant introduces sufficient evidence to raise heat of passion issue, state has burden to disprove it beyond reasonable doubt. *State v. Lee*, 108 W (2d) 1, 321 NW (2d) 108 (1982).

Language in (1) requiring that defendant act "without intent to kill" is a legal fiction. Heat of passion negates intent required for 1st degree murder, but defendant acting in heat of passion may still intend to kill. See note to 939.32, citing *State v. Oliver*, 108 W (2d) 25, 321 NW (2d) 119 (1982).

See note to Art. I, sec. 7, citing *State v. Felton*, 110 W (2d) 455, 329 NW (2d) 161 (1983).

940.06 Homicide by reckless conduct. (1) Whoever causes the death of another human being by reckless conduct is guilty of a Class C felony.

(2) Reckless conduct consists of an act which creates a situation of unreasonable risk and high probability of death or great bodily harm to another and which demonstrates a conscious disregard for the safety of another and a willingness to take known chances of perpetrating an injury. It is intended that this definition embraces all of the elements of what was heretofore known as gross negligence in the criminal law of Wisconsin.

History: 1977 c. 173.

When death results from illegal race on public highway, each driver directly commits homicide by reckless conduct, regardless of which automobile causes death. *State v. McClellan*, 98 W (2d) 49, 289 NW (2d) 340 (Ct. App. 1980).

Conviction under this section does not require proof of intent to kill. See note to 855.11, citing in *Matter of Estate of Satran*, 102 W (2d) 29, 306 NW (2d) 27 (1981).

Modernizing Wisconsin's homicide statutes. Dickey and Fullin. WBB Jan. 1984.

940.07 Homicide resulting from negligent control of vicious animal. Whoever knowing the vicious propensities of any animal intentionally allows it to go at large or keeps it without ordinary care, if such animal, while so at large or not confined, kills any human being who has taken all the precautions which the circumstances may permit to avoid such animal, is guilty of a Class C felony.

History: 1977 c. 173.

940.08 Homicide by negligent use of vehicle or weapon. (1) Whoever causes the death of another human being by a high degree of negligence in the operation or handling of a vehicle, firearm, airgun, knife or bow and arrow is guilty of a Class E felony.

(2) A high degree of negligence is conduct which demonstrates ordinary negligence to a high degree, consisting of an act which the person should realize creates a situation of unreasonable risk and high probability of death or great bodily harm to another.

History: 1977 c. 173.

High degree of negligence is determined by objective "reasonable person" test; subjective intent is not an element of the offense. Victim's contributory negligence is no defense. *Hart v. State*, 75 W (2d) 371, 249 NW (2d) 810.

Motorist was properly convicted under this section for running red light at 50 m.p.h., even though speed limit was 55 m.p.h. *State v. Cooper*, 117 W (2d) 30, 344 NW (2d) 194 (Ct. App. 1983).

940.09 Homicide by intoxicated user of vehicle or firearm. (1) Any person who does either of the following under par. (a) or (b) is guilty of a Class D felony:

(a) Causes the death of another by the operation or handling of a vehicle, firearm or airgun and while under the influence of an intoxicant;

(b) Causes the death of another by the operation or handling of a vehicle, firearm or airgun while the person has a blood alcohol concentration of 0.1% or more by weight of alcohol in that person's blood or 0.1 grams or more of alcohol in 210 liters of that person's breath.

(c) A person may be charged with and a prosecutor may proceed upon an information based upon a violation of par. (a) or (b) or both for acts arising out of the same incident or occurrence. If the person is charged with violating both pars. (a) and (b) in the information, the crimes shall be joined under s. 971.12. If the person is found guilty of both pars. (a) and (b) for acts arising out of the same incident or occurrence, there shall be a single conviction for purposes of sentencing and for purposes of counting convictions under ss. 343.30 (1q) and 343.305. Paragraphs (a) and (b) each require

proof of a fact for conviction which the other does not require.

(2) The actor has a defense if it appears by a preponderance of the evidence that the death would have occurred even if the actor had not been under the influence of an intoxicant or did not have a blood alcohol concentration described under sub. (1) (b).

(3) An officer who makes an arrest for a violation of this section shall make the report required under s. 346.635.

History: 1977 c. 173, 1981 c. 20, 184, 314, 391; 1983 a. 459.

NOTE: For legislative intent see chapter 20, laws of 1981, section 2051 (13).

See note to art. I, sec. 11, citing *State v. Jenkins*, 80 W (2d) 426, 259 NW (2d) 109.

See note to art. I, sec. 11, citing *State v. Bentley*, 92 W (2d) 860, 286 NW (2d) 153 (Ct. App. 1979).

See note to art. I, sec. 8, citing *State v. Rabe*, 96 W (2d) 48, 291 NW (2d) 809 (1980).

940.12 Assisting suicide. Whoever with intent that another take his or her own life assists such person to commit suicide is guilty of a Class D felony.

History: 1977 c. 173.

BODILY SECURITY.

940.19 Battery; aggravated battery. (1) Whoever causes bodily harm to another by an act done with intent to cause bodily harm to that person or another without the consent of the person so harmed is guilty of a Class A misdemeanor.

(1m) Whoever causes great bodily harm to another by an act done with intent to cause bodily harm to that person or another without the consent of the person so harmed is guilty of a Class E felony.

(2) Whoever causes great bodily harm to another by an act done with intent to cause great bodily harm to that person or another with or without the consent of the person so harmed is guilty of a Class C felony.

(3) Whoever intentionally causes bodily harm to another by conduct which creates a high probability of great bodily harm is guilty of a Class E felony. A rebuttable presumption of conduct creating a high probability of great bodily harm arises:

(a) If the person harmed is 62 years of age or older; or

(b) If the person harmed has a physical disability, whether congenital or acquired by accident, injury or disease, which is discernible by an ordinary person viewing the physically disabled person.

History: 1977 c. 173, 1979 c. 111, 113.

See note to 939.22, citing *State v. Barrett*, 74 W (2d) 327, 286 NW (2d) 94.

Under facts of aggravated battery case, trial court erred from including "great bodily harm" as a matter of law and in

refusing to instruct jury in lesser included offense of battery. *Flores v. State*, 76 W (2d) 50, 250 NW (2d) 720.

See note to Art. I, sec. 5, citing *State v. Giwosky*, 109 W (2d) 446, 326 NW (2d) 232 (1982).

940.20 Battery: special circumstances. (1) **BATTERY BY PRISONERS.** Any prisoner confined to a state prison or other state, county or municipal detention facility who intentionally causes bodily harm to an officer, employee, visitor or another inmate of such prison or institution, without his or her consent, is guilty of a Class D felony.

(2) **BATTERY TO LAW ENFORCEMENT OFFICERS AND FIRE FIGHTERS.** Whoever intentionally causes bodily harm to a law enforcement officer or fire fighter, as those terms are defined in s. 102.475 (8) (b) and (c), acting in an official capacity and the person knows or has reason to know that the victim is a law enforcement officer or fire fighter, by an act done without the consent of the person so injured, is guilty of a Class D felony.

(3) **BATTERY TO WITNESSES AND JURORS.** Whoever intentionally causes bodily harm to a person who he or she knows or has reason to know is or was a witness as defined in s. 940.41 (3) or a grand or petit juror, and by reason of the person having attended or testified as a witness or by reason of any verdict or indictment assented to by the person, without the consent of the person injured, is guilty of a Class D felony.

(4) **BATTERY TO PUBLIC OFFICERS.** Whoever intentionally causes bodily harm to a public officer in order to influence the action of such officer or as a result of any action taken within an official capacity, without the consent of the person injured, is guilty of a Class E felony.

History: 1977 c. 173, 1979 c. 30, 113, 221, 1981 c. 118 s. 9; 1983 a. 189 s. 329 (4).

Resisting or obstructing an officer (946.41) is not a lesser-included crime of battery to a peace officer. *State v. Zdziarski*, 53 W (2d) 776, 193 NW (2d) 833.

Battery to prospective witness is prohibited by 940.206, 1975 stats. [now 940.20 (3)]. *McLeod v. State*, 85 W (2d) 787, 271 NW (2d) 157 (Ct. App. 1978).

County deputy sheriff was not acting in official capacity under 940.205, 1975 stats. [now 940.20 (2)] when making arrest outside county of employment. *State v. Barrett*, 96 W (2d) 174, 291 NW (2d) 498 (1980).

940.201 Abuse of children. Whoever tortures a child or subjects a child to cruel maltreatment, including, but not limited, to severe bruising, lacerations, fractured bones, burns, internal injuries or any injury constituting great bodily harm under s. 939.22 (14), is guilty of a Class E felony. In this section, "child" means a person under 16 years of age.

History: 1977 c. 173, 788.

Section is not unconstitutionally vague or overbroad. *State v. Katory*, 75 W (2d) 400, 243 NW (2d) 478.

Physical injury is not an element of crime of child maltreatment. *State v. Campbell*, 102 W (2d) 243, 267 NW (2d) 272 (Ct. App. 1981).

"LEN BIAS BILL"

1 AN ACT to amend 940.02 (intro.) and (1); and to create 940.02 (3) of the
2 statutes, relating to manufacturing or delivering a controlled sub-
3 stance which causes death.

Analysis by the Legislative Reference Bureau

Under present law, a person who commits 2nd-degree murder is subject to a prison sentence of not more than 20 years. Second-degree murder occurs in 2 situations: the death is caused by dangerous conduct by someone showing a "depraved mind" or the death is a natural result of the commission of or attempt to commit a felony (often referred to as "felony murder"). This bill adds a 3rd type of 2nd-degree murder, similar to felony murder.

Under the bill, a person is guilty of 2nd-degree murder if he or she illegally manufactures or delivers a schedule I or II controlled substance (such as heroin, opium or cocaine) and a person dies as a result of using that controlled substance. The schedules of controlled substances are listed under the uniform controlled substances act.

The people of the state of Wisconsin, represented in senate and assembly,
do enact as follows:

4 SECTION 1. 940.02 (intro.) and (1) of the statutes are amended to
5 read:

6 940.02 SECOND-DEGREE MURDER. (intro.) Whoever causes the death of
7 another human being under ~~either~~ any of the following circumstances is
8 guilty of a Class B felony:

9 (1) By conduct imminently dangerous to another and evincing a
10 depraved mind, regardless of human life; ~~or.~~

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Wisconsin Legislature
Assembly Chamber

58th Assembly District

Jackson, Germantown, Towns of
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Village of Thiensville,
City of Mequon

COMMITTEE MEMBER:

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Commerce & Consumer Affairs
Joint Committee on Tax
Exemptions

July 3, 1986
News Release
FOR IMMEDIATE RELEASE

MADISON . . . The District Attorney of Milwaukee County said Thursday that Wisconsin would be "well-served" if a state law were enacted to make a cocaine-related death clearly subject to a charge of murder.

E. Michael McCann encouraged Rep. John L. Merkt (R-Mequon) to proceed with his investigation on how Wisconsin's present second degree murder statute could be supplemented with a provision stating in no uncertain terms that a case may be successfully prosecuted against an individual selling or providing cocaine directly leading to death. According to Merkt, McCann told him that under present state statutes, a felony murder charge would be difficult to prove because the present statute is not at all clear, and also that there is no precedent for this type of case.

"The recent tragedies involving the deaths of famous athletes has brought out a fact that heretofore has not been publicized," said Merkt, "namely that cocaine has the nasty side effect of killing people. We must use every tool available to fight this insidious product from being advanced on such a massive scale by organized crime."

Rep. David Prosser (R-Appleton) released information on Wednesday pointing out that 21 deaths have been attributable to cocaine use in Wisconsin alone.

"I believe that Rep. Prosser is absolutely right in calling for an investigation of what the total scope of cocaine-related deaths is. Because of inadequate reporting mechanisms, I believe that the 21 deaths may be just the tip of an iceberg," said Merkt.

OVER

Rep. John L. Merkt

News Release

Page 2

Rep. John Medinger (D-La Crosse), Chairman of the Wisconsin Council on Alcohol and Drug Abuse, is working with Merkt to fashion an appropriate mechanism to see that severe penalties can be levied on individuals causing death by transferring cocaine. Like Medinger, Merkt is also a member of the Council on Alcohol and Drug Abuse.

Merkt and Medinger are working with various law enforcement agencies to devise a new second degree murder statute. Medinger has directed a task force that has already made sweeping proposals with regard to combatting the cocaine problem.

"I would love to see those who sell or 'share' this menacing drug to know that in Wisconsin they would be risking a murder conviction due to new tough state laws. When a respected District Attorney like Mike McCann says that a change in the law would be a valuable service, I believe he should be listened to.

"If the law could be revised so that murder charges could be brought right on down the line to the individual flying this poison in from Columbia, so much the better," said Merkt. "A model Wisconsin statute that the rest of the nation could emulate would be a significant step in combatting organized crime and its despicable lackeys."

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COMMITTEE MEMBER:

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Commerce & Consumer Affairs
Joint Committee on Tax
Exemptions

July 14, 1986
Press Release
FOR IMMEDIATE RELEASE

MADISON . . . Dr. Robert Hammel, a national expert on medical jurisprudence and an Administrator at the University of Wisconsin-Madison School of Pharmacy, told a state lawmaker that, "Cocaine is our greatest threat, not just in Wisconsin, but nationally because of its heightened availability and decreasing cost. Cocaine has gone from epidemic to pandemic proportions."

Rep. John L. Merkt (R-Mequon) and Rep. John Medinger (D-LaCrosse) have proposed unprecedented legislation that would make distribution of cocaine directly resulting in a death a second degree murder offense. "I have spoken to a vast array of medical and legal experts and have received overwhelming support for this piece of legislation," said Merkt.

"There is no doubt that giving or selling cocaine to an individual that results in their death is murder," said Thomas Hanratty, a Legal Medical Investigator for the Milwaukee County Medical Examiner's Office, "It's an excellent idea and I'm all for it."

Doug Chiappetta, the Director of the State and Federal Legislative Department of the National Federation of Parents for Drug Free Youth, also supports the legislation saying, "People may find this legislation shocking at first, but taking into account the exacerbated abuse of cocaine, we must start legislating laws that send strong and strident messages to those dealing in cocaine. The threat of a 20 year prison

John Merkt
Press Release
Page 2

term could possibly impede the market." Mr. Chiappetta plans to attend the August 1st meeting of the State Council on Alcohol and Other Drug Abuse, at which Reps. Merkt and Medinger intend to present their proposal. "I feel this legislation could have nationwide implications," added Chiappetta.

Rep. Merkt is also working with a prominent person in the Department of Justice with the goal of having President Reagan include the murder-cocaine proposal in a series of speeches that the President will be making on the subject of drug abuse in the coming weeks.

Merkt and Medinger will also be working with the help of the National Federation of Parents for Drug Free Youth to try to arrange a meeting with Nancy Reagan, who is the Honorary Chairman of the National Federation, to enlist her support for the new law.

For further information, Rep. Merkt can be reached at his Madison office at 608-266-3756 or at his home office, 414-242-4942.

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COMMITTEE MEMBER:

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Commerce & Consumer Affairs
Joint Committee on Tax
Exemptions

July 16, 1986
Press Release
FOR IMMEDIATE RELEASE

MADISON . . . Two state lawmakers are receiving support both in Madison and in Washington, D.C. on their unprecedented proposal to make a cocaine-related death punishable via a second degree murder charge.

Thirty-four state legislators have expressed their support for the efforts of Rep. John L. Merkt and Rep. John D. Medinger (D-LaCrosse) to proceed with their efforts to amend and supplement Wisconsin's second degree murder statute so that an individual who directly causes the death of another due to cocaine that has been given or sold, and which the coroner in the case attributes to cocaine ingestion, can be charged with no less than second degree murder.

"Rep. Medinger and I are extremely pleased that our colleagues are strongly backing up our attempts to "throw the book at" the scum who are not only destroying careers and families, but in many incidences causing death itself," said Merkt, "Several legislators told me yesterday that their constituents are terrified by the easy availability of cocaine and its derivative, Crack, in their Wisconsin communities."

Merkt has contacted Mr. John Richardson, Chief of Staff of Attorney General Edwin Meese; Richardson has pledged the Justice Department's scrutiny and appropriate assistance for the unprecedented Medinger-Merkt proposal.

OVER

LEGISLATORS SUPPORTING "LEN BIAS BILL"

Rep. Dwight York (R)
Rep. Terry Musser (R)
Rep. John Manske (R)
Rep. William Plizka (R)
Rep. Dale Schultz (R)
Rep. Lary Swoboda (D)
Rep. Gus Menos (D)
Rep. Susan Vergeront (R)
Rep. Peter Barca (D)
Rep. James Ladwig (R)
Rep. Steven Foti (R)
Rep. Lolita Schneiders (R)
Rep. Calvin Potter (D)
Rep. Richard Grobschmidt (D)
Rep. Robert Cowles (R)
Rep. Heron Van Gorden (R)
Rep. Robert Goetsch (R)
Rep. Tommy Thompson (R)
Rep. David Prosser (R)
Rep. Richard Shoemaker (D)
Rep. Wayne Wood (D)
Rep. Dismas Becker (D)
Rep. Mary Hubler (D)
Rep. Esther Walling (R)
Rep. John Medinger (D)
Rep. John Merkt (R)

Sen. Joseph Andrea (D)
Sen. Brian Rude (R)
Sen. Alan Lasee (R)
Sen. Marvin Roshell (D)
Sen. Susan Engeleiter (R)
Sen. Walter Chilsen (R)
Sen. Charles Chvala (D)
Sen. Joseph Leean (R)

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Wisconsin Legislature
Assembly Chamber

58th Assembly District

Jackson, Germantown, Towns of
West Bend, Polk & Cedarburg,
Village of Thiensville,
City of Mequon

COMMITTEE MEMBER:

Ways & Means
Commerce & Consumer Affairs
Joint Committee on Tax
Exemptions

July 22, 1986
Press Release
FOR IMMEDIATE RELEASE

MADISON . . . Two state legislators are drafting a proposal that would make the penalty for a drug-related death by far the toughest of all 50 states, second-degree murder, while at the same time providing that anyone in the chain of command of Organized Crime involved in the death could be prosecuted as accessories to second-degree murder.

Rep. John L. Merkt (R-Mequon) and Rep. John D. Medinger (D-LaCrosse) are having the Legislative Reference Bureau draw up a bill which would provide the murder charge for anyone delivering a schedule 1 or schedule 2 controlled substance that would result in deaths similar to the recently publicized cases involving athletes Len Bias and Don Rogers. Merkt and Medinger are also requesting that any person who delivered the substance to the distributor may also be charged as an accessory to the crime, therefore making these individuals subject to prosecution for second-degree murder, which is a Class B Felony and carries a penalty of 20 years imprisonment.

"I am disturbed that in the case of Don Rogers, no charges are being issued, and in the case of Len Bias, the prosecutor is evidently seeking an indictment for distribution of drugs," said Merkt, "Unfortunately, these are not isolated instances. After checking with various law enforcement agencies in the United States, there seems to be an almost total absence of the means for and the attempts of prosecutions for murder, which is what a cocaine-related death should require."

OVER

John L. Merkt
News Release
Add one

Merkt and Medinger have been working with assistants to President Reagan and the Department of Justice, as well as prosecutors in California, Arizona, Maryland, and other states.

"The recent search and destroy missions in Bolivia certainly have their place in curtailing the cocaine epidemic we face in this state and nation," said Medinger, "But we also must use every weapon in our arsenal to combat Organized Crime's big money-maker, cocaine distribution, within the United States itself."

After talking to law enforcement officers, the lawmakers feel that there has been a distinct lack of going after the peddlers and their bosses on murder charges for various reasons.

"Evidently, some people feel that murder charges are too harsh in these kinds of instances," said Merkt, "We feel that murder charges are precisely what is called for. The legislation we are having drafted can serve as a model for the rest of the United States."

The legislators intend to have their proposal ready to present before the Council on Alcohol and Other Drug Abuse at its meeting on August 1st at the State Capitol.

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City of Mequon

COMMITTEE MEMBER:
Ways & Means
Commerce & Consumer Affairs
Joint Committee on Tax
Exemptions

July 30, 1986
Press Release
For Immediate Release

MADISON . . . The Wisconsin Council on Alcohol and Drug Abuse will be asked Friday morning to lend its support for a controversial measure calling for murder charges in the cases of drug deaths.

"I realize there are some people who will feel this is much too drastic," said Rep. John L. Merkt (R-Mequon), one of the bill's co-authors, "but the drug terrorism, especially with cocaine, absolutely requires drastic steps on the part of government."

Under the proposal fashioned by Merkt and Rep. John D. Medinger (D-LaCrosse), a person would be guilty of 2nd-degree murder if he or she illegally manufactures or delivers a schedule I or II controlled substance (such as heroin, opium, or cocaine) and a person dies as a result of using that controlled substance; the bill also states that if the drug is transferred more than once prior to the death, all of the distributors could be charged as accessories. The penalty in Wisconsin for 2nd-degree murder is a maximum of 20 years as a Class B felony.

The nation as a whole was shocked by the recent Len Bias and Don Rogers deaths due to cocaine ingestion, and the legislators were shocked to discover that none of the 50 states provides prosecutors with a clear option of bringing murder charges against the person who gave or sold the drug, according to Merkt.

"The first thing I did was call Michael McCann, the District Attorney of Milwaukee County. When Mr. McCann told me our state would be 'well-served' by such a change in our statutes to provide for a mechanism to bring murder charges and that he is totally supportive of our effort, we proceeded to put in five weeks of an all-out effort to fashion a law that could be a model for the rest of the country," said Merkt.

"We have also contacted numerous officials at both the White House and the Department of Justice to get their assistance in garnering information, and ultimately we hope to get the President's backing for our murder statute.

"On July 30th President Reagan initiated his special efforts to fight drug abuse from within our borders," said Merkt, "and we have been assured by high level officials in Washington that the President is seriously considering including our proposal along with others he will be making, such as drug testing, as he continues to try to initiate new efforts to combat the \$125 billion drug trade in our country."

-OVER-

'Len Bias bill' would allow murder charges

-Mil. Sentinel 8/1/86

A person who provides narcotics to someone who later dies from the drug use could be charged with second-degree murder under a "Len Bias bill" backed by several state officials.

Rep. John L. Merkt (R-Mequon) said he would detail the proposal for members of the Wisconsin Council on Alcoholism and Other Drug Abuse Friday.

"I'm hoping they can support this rather controversial measure," Merkt said Thursday. "We want murder charges for those who

cause Len Bias-type deaths."

Bias was the University of Maryland basketball star who died June 19 after cocaine use.

Merkt said he had discussed the proposal with US Justice Department officials and received encouragement. He said the law would be the first of its kind in the country.

"We want Wisconsin to get a reputation as being the last place drug pushers would want to come," he said.

Merkt said Milwaukee County Dist. Atty. E.

Michael McCann also supported the measure.

US Atty. John R. Byrnes called the proposal a "good idea."

However, Byrnes said the law alone, if passed, would have little effect on curbing drug abuse.

"It's already against the law," he said. "But this ups the ante pretty considerably."

"I think it's a good idea because it will focus more attention on the fact that these drugs kill people," Byrnes said. "People who provide

them in a recreational setting have a substantial criminal risk."

Merkt said the bill was primarily aimed at users of cocaine and crack, a dangerous, highly addictive and cheaper form of cocaine.

"I want people to be scared to death to take it for the first time," Merkt said. "Because of the capricious nature of cocaine, you don't know how it is going to affect them."

Merkt said the proposal was tied to a new anti-drug-abuse campaign President Reagan was expected to announce next week.