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THE WHITE HOUSE  
WASHINGTON

August 4, 1986

TO: Legislative Affairs  
FROM: Carlton E. Turner

This might be of interest to  
other legislators.

Attachments

JOHN L. MERKT

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1 (800) 362-9696



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 21, 1986

3632

24 JUL 1986

Dr. Carlton Turner  
Deputy Assistant to the President  
and Director of Drug Abuse Policy  
White House  
Washington, D.C. 20500

Dear Dr. Turner:

The courtesy your office has afforded us is very much appreciated.

Enclosed you will find press releases explaining our proposal, editorials from two papers in response to the proposal, and our current statutes dealing with both second degree murder and with cocaine. We will send a copy of the actual legislation as soon as we receive it.

Once again, thank you for all your assistance. We look forward to continuing working with you and your staff.

Sincerely,

A handwritten signature in cursive script that reads "John".

John L. Merkt  
58th Assembly District  
State Representative of Wisconsin

JLM:tjr  
Enc.

## 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?

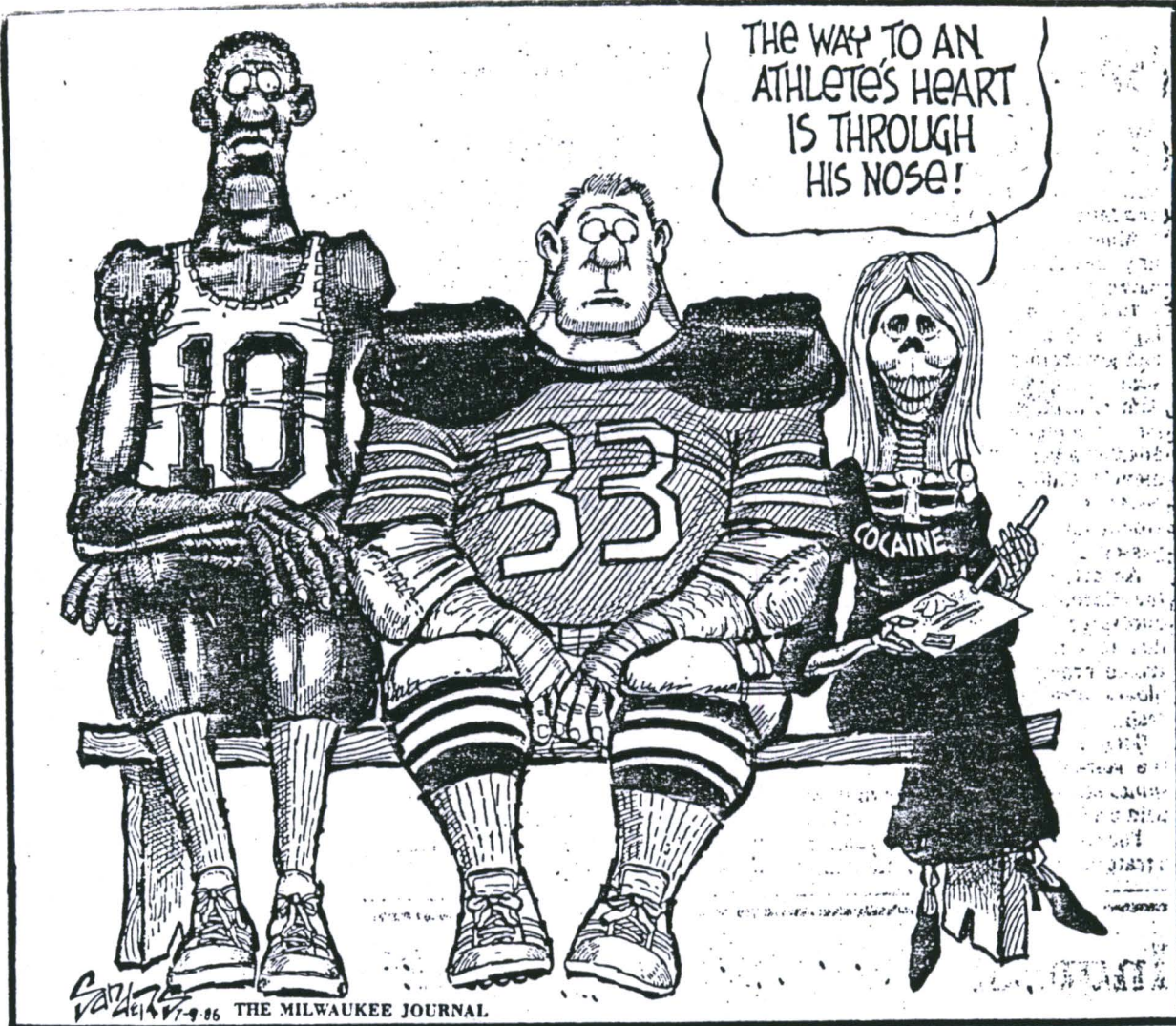
State Reps. John Merkt (R-Mequon) and John Medinger (D-La Crosse), chairman of the Council on Alcohol and Drug Abuse, are looking for some answers and plan to present them to the council in August.

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.



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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 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 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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Ways & Means  
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

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:**

Ways & Means  
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-one 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

Merkt  
Press Release  
Add One

The lawmakers are also working with Mr. Carlton Turner, Deputy Assistant to President Reagan and Director of Drug Abuse Policy, for his guidance in how to word a suitable law.

President Reagan is scheduled to deliver a series of speeches on combatting drug abuse in the upcoming weeks.

Douglas Chiappetta, the Director of the National Federation of Parents For a Drug Free Youth, is apprising Mrs. Nancy Reagan of the lawmakers' plan to strongly link cocaine with death and second degree murder, according to Merkt. "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," said Chiappetta, "I feel this legislation could have nationwide implications." The First Lady has made combatting alcohol and drug abuse her highest priority.

Merkt and Medinger have been encouraged by Milwaukee County District Attorney, E. Michael McCann, who has stated that Wisconsin would be "well-served" by a change in state statutes, according to Merkt.

"With the potency of this drug increasing, while at the same time it may be purchased for less and less money, we feel strong measures are called for," said Medinger.

The two lawmakers hope to have national experts assist them in presenting their case for a tougher law before the Wisconsin Council on Alcohol and Other Drug Abuse at its next meeting on August 1st at the State Capitol.

"If you compare Organized Crime to a Naval fleet, cocaine is the aircraft carrier. We would love to fire several torpedoes at that carrier via our new proposal," said Merkt.

The following are lawmakers indicating support thus far for the

Merkt  
Press Release  
Add Two

Medinger-Merkt initiative:

Rep. Dwight York  
Rep. Terry Musser  
Rep. John Manske  
Rep. William Plizka  
Rep. Dale Schultz  
Rep. Lary Swoboda  
Rep. Gus Menos  
Rep. Susan Vergeront  
Rep. Peter Barca  
Rep. James Ladwig  
Rep. Steven Foti  
Rep. Lolita Schneiders  
Rep. Calvin Potter  
Rep. Richard Grobschmidt  
Rep. Robert Cowles  
Rep. Heron Van Gorden  
Rep. Robert Goetsch  
Rep. Tommy Thompson  
Rep. David Prosser  
Rep. Richard Shoemaker  
Rep. Wayne Wood  
Rep. Dismas Becker  
Rep. Mary Hubler  
Sen. Alan Lasee  
Sen. Joseph Andrea  
Sen. Brian Rude  
Sen. Marvin Roshell  
Sen. Susan Engeleiter  
Sen. Joseph Leean



## FINES AND PENALTIES—COCAINE OR ECGONINE

Date of enactment: June 3, 1986

Date of publication: June 11, 1986

Effective date: Sept. 1, 1986

## 1985 Wisconsin Act 328

AN ACT to renumber 161.41 (1) (c) and (d), 161.41 (1m) (c) and (d), 161.465 (2) and 161.48 (2) and (3); to amend 14.24 (2) (c), 161.41 (1) (b), 161.41 (1m) (b), 161.41 (3), 161.46, 161.465 (1), 161.475, 161.48 (1), 161.55 (1) (d) 3 and 939.31; and to create 46.03 (18) (fm), 161.41 (1) (c), 161.41 (1m) (c), 161.41 (1r), 161.41 (1x), 161.41 (3m), 161.46 (3), 161.465 (2), 161.472, 161.48 (2), 161.49 and 971.365 of the statutes, relating to creating assessment and prosecution procedures and revising penalties for crimes involving cocaine or ecgonine.

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

SECTION 1. 14.24 (2) (c) of the statutes is amended to read:

14.24 (2) (c) In any report submitted by the council under s. 15.09 (7), review state activities in the area of alcohol and other drug abuse prevention and control, including the effects of 1985 Wisconsin Act .... (this act), and make recommendations for further legislation.

SECTION 2. 46.03 (18) (fm) of the statutes is created to read:

46.03 (18) (fm) Notwithstanding par. (a), any person who submits to an assessment under s. 161.472 shall pay a fee to the appropriate county department under s. 51.42. The department of health and social services shall set fees for each county department under s. 51.42 designed to offset all the costs to the county in providing the assessment program. The department of health and social services shall provide for the reduction or waiver of the fee for persons who are unable to pay the complete fee.

SECTION 3. 161.41 (1) (b) of the statutes is amended to read:

161.41 (1) (b) Any Except as provided in par. (c), any other controlled substance classified in schedule I, II or III, may be fined not more than \$15,000 or imprisoned not more than 5 years or both;

SECTION 4. 161.41 (1) (c) and (d) of the statutes are renumbered 161.41 (1) (d) and (e).

SECTION 5. 161.41 (1) (c) of the statutes is created to read:

161.41 (1) (c) A controlled substance included under s. 161.16 (2) (b), is subject to the following penalties:

1. If the amount manufactured or delivered is 10 grams or less, the person shall be fined not less than \$1,000 nor more than \$200,000 and may be imprisoned for not more than 5 years.

2. If the amount manufactured or delivered is more than 10 grams but not more than 30 grams, the person

shall be fined not less than \$1,000 nor more than \$250,000 and shall be imprisoned for not less than 6 months nor more than 5 years.

3. If the amount manufactured or delivered is more than 30 grams, the person shall be fined not less than \$1,000 nor more than \$500,000 and shall be imprisoned for not less than one year nor more than 15 years.

SECTION 6. 161.41 (1m) (b) of the statutes is amended to read:

161.41 (1m) (b) Any Except as provided in par. (c), any other controlled substance classified in schedule I, II or III, may be fined not more than \$15,000 or imprisoned not more than 5 years or both;

SECTION 7. 161.41 (1m) (c) and (d) of the statutes are renumbered 161.41 (1m) (d) and (e).

SECTION 8. 161.41 (1m) (c) of the statutes is created to read:

161.41 (1m) (c) A controlled substance included under s. 161.16 (2) (b), is subject to the following penalties:

1. If the amount possessed, with intent to manufacture or deliver, is 10 grams or less, the person shall be fined not less than \$1,000 nor more than \$100,000 and may be imprisoned for not more than 5 years.

2. If the amount possessed, with intent to manufacture or deliver, is more than 10 grams but not more than 30 grams, the person shall be fined not less than \$1,000 nor more than \$200,000 and shall be imprisoned for not less than 6 months nor more than 5 years.

3. If the amount possessed, with intent to manufacture or deliver, is more than 30 grams, the person shall be fined not less than \$1,000 nor more than \$500,000 and shall be imprisoned for not less than one year nor more than 15 years.

SECTION 9. 161.41 (1r) of the statutes is created to read:

161.41 (1r) In determining amounts under subs. (1) and (1m), an amount includes the weight of the controlled substance included under s. 161.16 (2) (b) together with any compound, mixture, diluent or other substance mixed or combined with the controlled substance.

Changes or additions in text are indicated by underline; deletions by ~~strikeouts~~

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OR ECGONINE

Date of enactment: June 3, 1986  
Date of publication: June 11, 1986  
Effective date: Sept. 1, 1986

ct 328

465 (2) and 161.48 (2) and (3); to amend 161.45 (1), 161.475, 161.48 (1), 161.55 (1) (d) 1m (c), 161.41 (1r), 161.41 (1x), 161.41 365 of the statutes, relating to creating crimes involving cocaine or ecgonine.

not less than \$1,000 nor more than shall be imprisoned for not less than 6 more than 5 years.

ount manufactured or delivered is more than \$500,000 and shall be imprisoned for not less than one year nor more than 15

6. 161.41 (1m) (b) of the statutes is read:

(b) Any Except as provided in par. (c), a controlled substance classified in schedule I, shall be fined not more than \$15,000 or more than 5 years or both;

7. 161.41 (1m) (c) and (d) of the statutes and 161.41 (1m) (d) and (e).

8. 161.41 (1m) (c) of the statutes is created:

(c) A controlled substance included under 161.42 (b), is subject to the following

ount possessed, with intent to manufacture, is 10 grams or less, the person shall be fined not more than \$100,000 and imprisoned for not more than 5 years.

ount possessed, with intent to manufacture, is more than 10 grams but not more than 30 grams, the person shall be fined not less than \$200,000 and shall be imprisoned for not less than 6 months nor more than 5 years.

ount possessed, with intent to manufacture, is more than 30 grams, the person shall be fined not less than \$500,000 and shall be imprisoned for not less than one year nor more than 5 years.

161.41 (1r) of the statutes is created to

n determining amounts under subs. (1) amount includes the weight of the controlled substance included under s. 161.16 (2) (b) any compound, mixture, diluent or carrier combined with the controlled substance.

161.41 (1r) of the statutes is created to

SECTION 9m. 161.41 (1x) of the statutes is created to read:

161.41 (1x) Any person who conspires, as specified in s. 939.31, to commit a crime under sub. (1) (c) or (1m) (c) is subject to the applicable penalties under sub. (1) (c) or (1m) (c).

SECTION 10. 161.41 (3) of the statutes is amended to read:

161.41 (3) It Except as provided in sub. (3m), it is unlawful for any person to possess a controlled substance, other than a controlled substance classified in schedule I or II which is a narcotic drug, unless the substance was obtained directly from, or pursuant to a valid prescription or order of, a practitioner while acting in the course of his or her professional practice, or except as otherwise authorized by this chapter. Any person who violates this subsection is guilty of a misdemeanor, punishable under s. 939.61.

SECTION 11. 161.41 (3m) of the statutes is created to read:

161.41 (3m) It is unlawful for any person to possess a controlled substance included under s. 161.16 (2) (b), unless the substance was obtained directly from, or pursuant to a valid prescription or order of, a practitioner while acting in the course of his or her professional practice, or except as otherwise authorized by this chapter. Any person who violates this subsection shall be fined not less than \$250 nor more than \$5,000 and may be imprisoned for not more than one year in the county jail.

SECTION 12. 161.46 of the statutes is amended to read:

161.46 Distribution to persons under age 18. (1) Any person 18 years of age or over who violates s. 161.41 (1) by distributing a controlled substance listed in schedule I or II which is a narcotic drug to a person under 18 years of age who is at least 3 years his or her junior is punishable by the fine authorized by s. 161.41 (1) (a) or a term of imprisonment of up to twice that authorized by s. 161.41 (1) (a), or both. Any

(2) Except as provided in sub. (3), any person 18 years of age or over who violates s. 161.41 (1) by distributing any other controlled substance listed in schedule I, II, III, IV or V to a person under 18 years of age who is at least 3 years his or her junior is punishable by the fine authorized by s. 161.41 (1) (b); (e) or (d) or (e) or a term of imprisonment of up to twice that authorized by s. 161.41 (1) (b), (e) or (d) or (e) or both.

SECTION 13. 161.46 (3) of the statutes is created to read:

161.46 (3) If any person 18 years of age or over violates s. 161.41 (1) (c) by distributing a controlled substance included under s. 161.16 (2) (b) to a person under 18 years of age who is at least 3 years his or her junior, any applicable minimum and maximum fines and minimum and maximum periods of imprisonment under s. 161.41 (1) (c) are doubled.

SECTION 14. 161.465 (1) of the statutes is amended to read:

161.465 (1) Any Except as provided in sub. (2), any person who violates s. 161.41 (1) or (1m) by delivering

or possessing with intent to deliver a controlled substance to a prisoner within the precincts of any prison, jail or house of correction is subject to the applicable fine under s. 161.41 (1) or (1m) or a term of imprisonment of up to twice that authorized by s. 161.41 (1) or (1m) or both.

SECTION 15. 161.465 (2) of the statutes is renumbered 161.465 (3).

SECTION 16. 161.465 (2) of the statutes is created to read:

161.465 (2) If a person violates s. 161.41 (1) (c) or (1m) (c) by delivering or possessing with intent to deliver a controlled substance included under s. 161.16 (2) (b) to a prisoner within the precincts of any prison, jail or house of correction, any applicable minimum and maximum fines and minimum and maximum periods of imprisonment under s. 161.41 (1) (c) or (1m) (c) are doubled.

SECTION 17. 161.472 of the statutes is created to read:

161.472 Assessment; certain possession offenses. (1) In this section, "facility" means an approved public treatment facility, as defined under s. 51.45 (2) (c).

(2) Except as provided in sub. (5), if a person pleads guilty or is found guilty of possession of a controlled substance under s. 161.41 (3m), the court shall order the person to comply with an assessment of the person's use of controlled substances. The court's order shall designate a facility which is operated by or pursuant to a contract with the county department established under s. 51.42 and which is certified by the department of health and social services to provide assessment services to perform the assessment and, if appropriate, to develop a proposed treatment plan. The court shall notify the person that noncompliance with the order limits the court's ability to determine whether the treatment option under s. 161.475 is appropriate. The court shall also notify the person of the fee provisions under s. 46.03 (18) (fm).

(3) The facility shall submit an assessment report within 14 days to the court. At the request of the facility, the court may extend the time period by not more than 20 additional workdays. The assessment report may include a proposed treatment plan.

(4) The court shall consider the assessment report in determining whether the treatment option under s. 161.475 is appropriate.

(5) If the court finds that a person under sub. (2) is already covered by or has recently completed an assessment under this section or a substantially similar assessment, the court is not required to make the order under sub. (2).

SECTION 18. 161.475 of the statutes is amended to read:

161.475 Treatment option. Whenever any person pleads guilty to or is found guilty of possession of a controlled substance under s. 161.41 (2r) or (3) or (3m), the court may, upon request of such the person and with the consent of a treatment facility with special inpatient or outpatient programs for the treatment of drug dependent persons, allow the person to enter such the treatment programs voluntarily for pur-

Changes or additions in text are indicated by underline; deletions by strikeouts



poses of treatment and rehabilitation. Treatment shall be for the period the treatment facility feels is necessary and required, but shall not exceed the maximum sentence allowable unless the person consents to ~~such~~ the continued treatment. At the end of ~~such~~ the necessary and required treatment, with the consent of the court, the person may be released from sentence. If treatment efforts are ineffective or the person ceases to cooperate with treatment rehabilitation efforts, the person may be remanded to the court for completion of sentencing.

SECTION 19. 161.48 (1) of the statutes is amended to read:

161.48 (1) Any ~~Except as provided in subs. (2) and (4), any~~ person convicted of a 2nd or subsequent offense under this chapter may be fined an amount up to twice that otherwise authorized or imprisoned for a term up to twice the term otherwise authorized or both.

SECTION 20. 161.48 (2) and (3) of the statutes are renumbered 161.48 (3) and (4).

SECTION 21. 161.48 (2) of the statutes is created to read:

161.48 (2) If any person is convicted of a 2nd or subsequent offense under this chapter which is specified in s. 161.41 (1) (c), (1m) (c) or (3m), any applicable minimum and maximum fines and minimum and maximum periods of imprisonment under s. 161.41 (1) (c), (1m) (c) or (3m) are doubled. A 2nd offense under s. 161.41 (3m) is a felony and the person may be imprisoned in state prison.

SECTION 21m. 161.49 of the statutes is created to read:

161.49 Distribution on school grounds; cocaine or ecgonine. If any person violates s. 161.41 (1) (c) by distributing a controlled substance included under s. 161.16 (2) (b) while within 1,000 feet of any private or public school building, the maximum term of imprisonment prescribed by law for that crime may be increased by 5 years.

SECTION 22. 161.55 (1) (d) 3 of the statutes is amended to read:

161.55 (1) (d) 3. A vehicle is not subject to forfeiture for a violation of s. 161.41 (3) or (3m); and

SECTION 22g. 939.31 of the statutes is amended to read:

939.31 Conspiracy. Except as provided in ss. 161.41 (1x), 940.43 (4) and 940.45 (4), whoever, with intent that a crime be committed, agrees or combines with another for the purpose of committing that crime may, if one or more of the parties to the conspiracy does an act to effect its object, be fined or imprisoned or both not to exceed the maximum provided for the completed crime; except that for a conspiracy to commit a crime for which the penalty is life imprisonment, the actor is guilty of a Class B felony.

SECTION 22m. 971.365 of the statutes is created to read:

971.365 Crimes involving cocaine or ecgonine. (1) (a) In any case under s. 161.41 (1) (c) involving more than one violation, all violations may be prosecuted as a single crime if the violations were pursuant to a single intent and design.

(b) In any case under s. 161.41 (1m) (c) involving more than one violation, all violations may be prosecuted as a single crime if the violations were pursuant to a single intent and design.

(c) In any case under s. 161.41 (3m) involving more than one violation, all violations may be prosecuted as a single crime if the violations were pursuant to a single intent and design.

(2) An acquittal or conviction under sub. (1) does not bar a subsequent prosecution for any acts in violation of s. 161.41 (1) (c), (1m) (c) or (3m) on which no evidence was received at the trial on the original charge.

SECTION 23. Nonstatutory provisions. The department of health and social services and the department of justice shall jointly study the issue of having persons who commit crimes involving cocaine or ecgonine make payments to be used for law enforcement services costs, and prevention, intervention and treatment costs, relating to controlled substances. The departments shall report their recommendations to the legislature when it convenes in 1987.

SECTION 24. Program responsibility changes. In the sections of the statutes listed in Column A, the program responsibilities references shown in Column B are deleted and the program responsibilities references shown in Column C are inserted:

A	B	C
Statute Sections	References Deleted	References Inserted
15.191 (intro.)	none	161.472 (2)

SECTION 25. Initial applicability. This act applies to offenses occurring on or after the effective date of this SECTION, but does not preclude the counting of other offenses as prior offenses for sentencing a person.

SECTION 26. Effective date. This act takes effect on September 1, 1986.



## CHAPTER 940

## CRIMES AGAINST LIFE AND BODILY SECURITY

## LIFE.

- 940.01 First-degree murder.
- 940.02 Second-degree murder.
- 940.04 Abortion.
- 940.05 Manslaughter.
- 940.06 Homicide by reckless conduct.
- 940.07 Homicide resulting from negligent control of vicious animal.
- 940.08 Homicide by negligent use of vehicle or weapon.
- 940.09 Homicide by intoxicated user of vehicle or firearm.
- 940.12 Assisting suicide.

## BODILY SECURITY.

- 940.19 Battery; aggravated battery.
- 940.20 Battery; special circumstances.
- 940.201 Abuse of children.
- 940.203 Sexual exploitation of children.
- 940.21 Mayhem.
- 940.225 Sexual assault.
- 940.23 Injury by conduct regardless of life.

- 940.24 Injury by negligent use of weapon.
- 940.25 Injury by intoxicated use of a vehicle.
- 940.28 Abandonment of young child.
- 940.29 Abuse of residents of facilities.
- 940.30 False imprisonment.
- 940.305 Taking hostages.
- 940.31 Kidnapping.
- 940.32 Abduction.
- 940.33 Violation of certain restraining orders or injunctions.
- 940.41 Definitions.
- 940.42 Intimidation of witnesses; misdemeanor.
- 940.43 Intimidation of witnesses; felony.
- 940.44 Intimidation of victims; misdemeanor.
- 940.45 Intimidation of victims; felony.
- 940.46 Attempt prosecuted as completed act.
- 940.47 Court orders.
- 940.48 Violation of court orders.
- 940.49 Pretrial release.

## LIFE.

**940.01 First-degree murder. (1)** Whoever causes the death of another human being with intent to kill that person or another is guilty of a Class A felony.

**(2)** In this chapter "intent to kill" means the mental purpose to take the life of another human being.

**History:** 1977 c. 173.

Conviction of 1st degree murder upheld where, in the course of a robbery, defendant severely and repeatedly hit the victim with a heavy bottle. *State v. Wells*, 51 W (2d) 477, 187 NW (2d) 328.

Evidence sufficiently supported defendant's conviction of first-degree murder (party to a crime) under proof that the victim was murdered by another with a weapon and ammunition supplied by defendant, who prior thereto, knowing his accomplice was looking for the victim and intended to kill him, not only furnished the murder weapon and demonstrated its use, but supplied his confederate with gasoline money for a car into which defendant, under pretext, lured the victim, and after the murder, defendant caused the weapon to be thrown into a lake in an attempt to hide his involvement. *Clark v. State*, 62 W (2d) 194, 214 NW (2d) 450.

Evidence warranted the jury in reasonably concluding defendant possessed the requisite intent to kill, contrary to his claim of intoxication based on his prior ingestion of liquor, the record disclosing he later, accompanied by a friend, knocked at the door of the victim's dwelling, and after a short conversation between the two, lunged at the door, pulled it open and fired his gun point-blank at the victim's head, his sobriety being further made manifest by his verbal recognition of his culpable plight and the manner in which he immediately thereafter maneuvered his car when he drove away. *State v. Nemoir*, 62 W (2d) 206, 214 NW (2d) 297.

Defendant's denial of intent to kill is refuted by the record establishing that after beating his victim about the head with the butt of his gun, defendant almost fatally injured the victim by firing a shot into her abdomen at almost point-blank range. *Fells v. State*, 65 W (2d) 525, 223 NW (2d) 507.

Trial court omission to instruct on intoxication cannot be urged on appeal to invalidate defendant's 1st-degree murder conviction, absent any request for an instruction on that defense or objections to the instructions given. *Lee v. State*, 65 W (2d) 648, 223 NW (2d) 455.

Where a person discharges a weapon at a vital body part and death ensues as a natural and probable result, a rebuttable presumption arises that he intended to take a human life, the burden of rebutting which is upon the defendant to bring forth evidence raising a reasonable doubt as to his intention to take life or as to whether such taking was justifiable or excusable. *Smith v. State*, 69 W (2d) 297, 230 NW (2d) 858.

Person convicted under this section is eligible for probation. *State v. Wilson*, 77 W (2d) 15, 252 NW (2d) 64.

Conviction of 1st degree murder was upheld where defendant's confession was corroborated by independent evidence in the record, including the defendant's own testimony. *Schultz v. State*, 82 W (2d) 737, 264 NW (2d) 245.

Psychiatric testimony which purports to prove or disprove specific intent is inadmissible during guilt phase of bifurcated trial. Court doubts whether such testimony is competent, relevant or probative in any criminal case. *Steele v. State*, 97 W (2d) 72, 294 NW (2d) 2 (1980).

See note to 907.02, citing *State v. Dalton*, 98 W (2d) 725, 298 NW (2d) 398 (Ct. App. 1980).

Trial court erred in refusing to submit verdict of endangering safety as lesser included offense on attempted murder charge where defendant admitted shooting victim in stomach but claimed self-defense. *State v. Cartagena*, 99 W (2d) 657, 299 NW (2d) 872 (1981).

See note to 903.03, citing *State v. Schulz*, 102 W (2d) 423, 307 NW (2d) 151 (1981).

See note to 939.05, citing *State v. Stanton*, 106 W (2d) 172, 316 NW (2d) 134 (Ct. App. 1982).

Where jury was instructed that persons are presumed to intend probable consequences of acts and where defendant was precluded from offering psychiatric testimony as to inability to form intent required for first-degree murder, prosecution was unconstitutionally relieved of proving intent element of crime. *Hughes v. Mathews*, 576 F (2d) 1250 (1978).

Evidence of diminished capacity inadmissible to show lack of intent. 1976 WLR 623.

*Beck v. Alabama*: The right to a lesser included offense instruction in capital cases. 1981 WLR 560.

Restricting the admission of psychiatric testimony on a defendant's mental state: Wisconsin's Steele curtain. 1981 WLR 733.

**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.

It is not correct that provocation may reduce a homicide to 2nd degree murder even though the provocation is not sufficient to reduce the offense to manslaughter. *State v. Anderson*, 51 W (2d) 557, 187 NW (2d) 335.

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).

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. *Colautti 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.



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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 17, 1986

Ken -

Mr. Ken Barun  
The White House  
East Wing 213  
Washington, D.C. 20500

Dear Mr. Barun:

Wisconsin State Representative John Medinger and I have taken the initiative on advancing anti-cocaine legislation within our state. Rep. Medinger, as the Chairman of our State Council on Alcohol and Other Drug Abuse, and I, as a member of the Council, have worked at strengthening current penalties for the distribution of cocaine.

We have found, along with the rest of the nation, that cocaine has become our largest drug problem. The Wisconsin Controlled Substances Board showed the number of clients admitted for treatment of primarily cocaine-related problems in our state had increased nearly 700% from 1976 to 1981. The deaths of 21 of our residents within the last five years, and most recently the deaths of Len Bias and Don Rogers, is convincing the public of something we already knew; cocaine and those who distribute it kill.

Therefore, we are proposing that the distribution of cocaine that results in an individual's death because of that drug, be considered a second degree murder offense. We have been working with Doug Chiappetta, the Director of State and Federal Legislation for the National Federation of Parents For Drug Free Youth, and have found this legislation to be unprecedented.

In view of the First Lady's dedication to debilitating the drug market, we feel it would assist our efforts if, at her convenience, we could meet with Mrs. Reagan and discuss the far-reaching implications of this legislation. Our hope is that the threat of a Class B Felony, which in our state carries a maximum sentence of 20 years in prison, in a cocaine-related death will impede dealers and individuals from giving cocaine to first-time users and will cause the further realization that cocaine is a lethal drug.

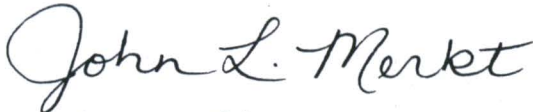
I am enclosing two editorials recently published in the Milwaukee Journal and Milwaukee Sentinel in response to our proposal. The strong support that these newspapers have allowed us is just a protion of the wide support we are receiving from medical and legal experts throughout the nation. I am also enclosing our offices' press releases to date.

Mr. Ken Barun  
Page 2  
July 17, 1986

Realizing the late date, I appreciate the time restraint. But if at all possible, I would appreciate your response before August 1st, the day we will be presenting our proposal to our State Council on Alcohol and Other Drug Abuse.

I look forward to your reply at your earliest convenience. Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "John L. Merkt". The signature is written in dark ink and is positioned above the typed name and title.

John L. Merkt  
Republican  
State Representative  
58th District

JLM:vls



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COMMITTEE MEMBER:

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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-one 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

Merkt  
Press Release  
Add One

The lawmakers are also working with Mr. Carlton Turner, Deputy Assistant to President Reagan and Director of Drug Abuse Policy, for his guidance in how to word a suitable law.

President Reagan is scheduled to deliver a series of speeches on combatting drug abuse in the upcoming weeks.

Douglas Chiappetta, the Director of the National Federation of Parents For a Drug Free Youth, is apprising Mrs. Nancy Reagan of the lawmakers' plan to strongly link cocaine with death and second degree murder, according to Merkt. "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," said Chiappetta, "I feel this legislation could have nationwide implications." The First Lady has made combatting alcohol and drug abuse her highest priority.

Merkt and Medinger have been encouraged by Milwaukee County District Attorney, E. Michael McCann, who has stated that Wisconsin would be "well-served" by a change in state statutes, according to Merkt.

"With the potency of this drug increasing, while at the same time it may be purchased for less and less money, we feel strong measures are called for," said Medinger.

The two lawmakers hope to have national experts assist them in presenting their case for a tougher law before the Wisconsin Council on Alcohol and Other Drug Abuse at its next meeting on August 1st at the State Capitol.

"If you compare Organized Crime to a Naval fleet, cocaine is the aircraft carrier. We would love to fire several torpedoes at that carrier via our new proposal," said Merkt.

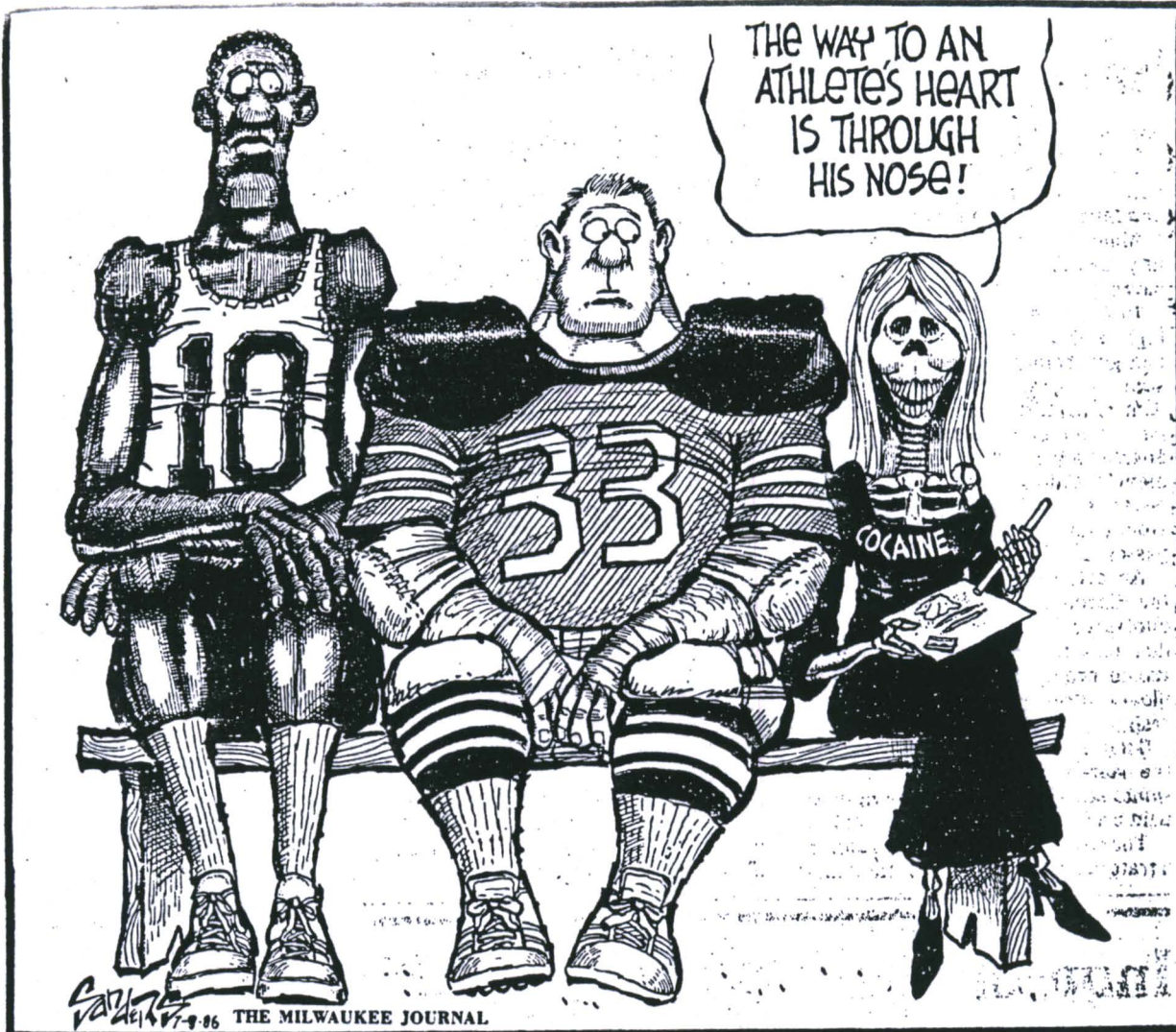
The following are lawmakers indicating support thus far for the

Merkt  
Press Release  
Add Two

Medinger-Merkt initiative:

Rep. Dwight York  
Rep. Terry Musser  
Rep. John Manske  
Rep. William Plizka  
Rep. Dale Schultz  
Rep. Lary Swoboda  
Rep. Gus Menos  
Rep. Susan Vergeront  
Rep. Peter Barca  
Rep. James Ladwig  
Rep. Steven Foti  
Rep. Lolita Schneiders  
Rep. Calvin Potter  
Rep. Richard Grobschmidt  
Rep. Robert Cowles  
Rep. Heron Van Gorden  
Rep. Robert Goetsch  
Rep. Tommy Thompson  
Rep. David Prosser  
Rep. Richard Shoemaker  
Rep. Wayne Wood  
Rep. Dismas Becker  
Rep. Mary Hubler  
Sen. Alan Lasee  
Sen. Joseph Andrea  
Sen. Brian Rude  
Sen. Marvin Roshell  
Sen. Susan Engeleiter  
Sen. Joseph Leean





## 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.



## 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



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City of Mequon

COMMITTEE MEMBER:

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

July 15, 1986

Dear Colleagues:

PLEASE JOIN US IN FIGHTING COCAINE TRAFFICKING AND LET YOUR CONSTITUENTS  
KNOW YOU ARE HITTING ORGANIZED CRIME WHERE IT HURTS:

We are working on many fronts, both state and national, to create  
a new statute that will, in some form, make selling or giving cocaine  
that directly results in death an offense classified as no less than some  
form of murder.

Just some of those supporting us are the following:

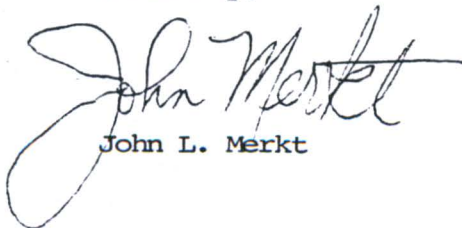
\*Mike McCann, District Attorney, Milwaukee County  
"It would well serve our state"

\*Thomas Hauratty, Legal Medical Investigator for Milwaukee County  
Medical Examiner's Office  
"It's an excellent idea. I'm all for it."

\*Doug Chiapetta, Director of the State and Federal National  
Federation of Parents for Drug Free Youth  
"People may find this legislation shocking . . . but we must send  
strong and strident messages to those dealing in Cocaine."

Please call either of our offices by noon today expressing your support  
for continuing the effort to link Cocaine with death and murder.

Sincerely,

  
John L. Merkt

  
John Medinger



## CHAPTER 940

## CRIMES AGAINST LIFE AND BODILY SECURITY

LIFE.			
940.01	First-degree murder.	940.24	Injury by negligent use of weapon.
940.02	Second-degree murder.	940.25	Injury by intoxicated use of a vehicle.
940.04	Abortion.	940.28	Abandonment of young child.
940.05	Manslaughter.	940.29	Abuse of residents of facilities.
940.06	Homicide by reckless conduct.	940.30	False imprisonment.
940.07	Homicide resulting from negligent control of vicious animal.	940.305	Taking hostages.
940.08	Homicide by negligent use of vehicle or weapon.	940.31	Kidnapping.
940.09	Homicide by intoxicated user of vehicle or firearm.	940.32	Abduction.
940.12	Assisting suicide.	940.33	Violation of certain restraining orders or injunctions.
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940.19	Battery; aggravated battery.	940.42	Intimidation of witnesses; misdemeanor.
940.20	Battery; special circumstances.	940.43	Intimidation of witnesses; felony.
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940.21	Mayhem.	940.46	Attempt prosecuted as completed act.
940.225	Sexual assault.	940.47	Court orders.
940.23	Injury by conduct regardless of life.	940.48	Violation of court orders.
		940.49	Pretrial release.

## LIFE.

**940.01 First-degree murder.** (1) Whoever causes the death of another human being with intent to kill that person or another is guilty of a Class A felony.

(2) In this chapter "intent to kill" means the mental purpose to take the life of another human being.

**History:** 1977 c. 173.

Conviction of 1st degree murder upheld where, in the course of a robbery, defendant severely and repeatedly hit the victim with a heavy bottle. *State v. Wells*, 51 W (2d) 477, 187 NW (2d) 328.

Evidence sufficiently supported defendant's conviction of first-degree murder (party to a crime) under proof that the victim was murdered by another with a weapon and ammunition supplied by defendant, who prior thereto, knowing his accomplice was looking for the victim and intended to kill him, not only furnished the murder weapon and demonstrated its use, but supplied his confederate with gasoline money for a car into which defendant, under pretext, lured the victim, and after the murder, defendant caused the weapon to be thrown into a lake in an attempt to hide his involvement. *Clark v. State*, 62 W (2d) 194, 214 NW (2d) 450.

Evidence warranted the jury in reasonably concluding defendant possessed the requisite intent to kill, contrary to his claim of intoxication based on his prior ingestion of liquor, the record disclosing he later, accompanied by a friend, knocked at the door of the victim's dwelling, and after a short conversation between the two, lunged at the door, pulled it open and fired his gun point-blank at the victim's head, his sobriety being further made manifest by his verbal recognition of his culpable plight and the manner in which he immediately thereafter maneuvered his car when he drove away. *State v. Nemoir*, 62 W (2d) 206, 214 NW (2d) 297.

Defendant's denial of intent to kill is refuted by the record establishing that after beating his victim about the head with the butt of his gun, defendant almost fatally injured the victim by firing a shot into her abdomen at almost point-blank range. *Fells v. State*, 65 W (2d) 525, 223 NW (2d) 507.

Trial court omission to instruct on intoxication cannot be urged on appeal to invalidate defendant's 1st-degree murder conviction, absent any request for an instruction on that defense or objections to the instructions given. *Lee v. State*, 65 W (2d) 648, 223 NW (2d) 455.

Where a person discharges a weapon at a vital body part and death ensues as a natural and probable result, a rebuttable presumption arises that he intended to take a human life, the burden of rebutting which is upon the defendant to bring forth evidence raising a reasonable doubt as to his intention to take life or as to whether such taking was justifiable or excusable. *Smith v. State*, 69 W (2d) 297, 230 NW (2d) 858.

Person convicted under this section is eligible for probation. *State v. Wilson*, 77 W (2d) 15, 252 NW (2d) 64.

Conviction of 1st degree murder was upheld where defendant's confession was corroborated by independent evidence in the record, including the defendant's own testimony. *Schultz v. State*, 82 W (2d) 737, 264 NW (2d) 245.

Psychiatric testimony which purports to prove or disprove specific intent is inadmissible during guilt phase of bifurcated trial. Court doubts whether such testimony is competent, relevant or probative in any criminal case. *Steele v. State*, 97 W (2d) 72, 294 NW (2d) 2 (1980).

See note to 907.02, citing *State v. Dalton*, 98 W (2d) 725, 298 NW (2d) 398 (Ct. App. 1980).

Trial court erred in refusing to submit verdict of endangering safety as lesser included offense on attempted murder charge where defendant admitted shooting victim in stomach but claimed self-defense. *State v. Cartagena*, 99 W (2d) 657, 299 NW (2d) 872 (1981).

See note to 903.03, citing *State v. Schulz*, 102 W (2d) 423, 307 NW (2d) 151 (1981).

See note to 939.05, citing *State v. Stanton*, 106 W (2d) 172, 316 NW (2d) 134 (Ct. App. 1982).

Where jury was instructed that persons are presumed to intend probable consequences of acts and where defendant was precluded from offering psychiatric testimony as to inability to form intent required for first-degree murder, prosecution was unconstitutionally relieved of proving intent element of crime. *Hughes v. Mathews*, 576 F (2d) 1250 (1978).

Evidence of diminished capacity inadmissible to show lack of intent. 1976 WLR 623.

*Beck v. Alabama*: The right to a lesser included offense instruction in capital cases. 1981 WLR 560.

Restricting the admission of psychiatric testimony on a defendant's mental state: Wisconsin's Steele curtain. 1981 WLR 733.

**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.

It is not correct that provocation may reduce a homicide to 2nd degree murder even though the provocation is not sufficient to reduce the offense to manslaughter. *State v. Anderson*, 51 W (2d) 557, 187 NW (2d) 335.

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).

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. *Colautti 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 *Babbitt 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.



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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 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 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."





**Office of the Republican Leader**  
**United States House of Representatives**  
**Washington, DC 20515**

August 8, 1986

Dear Republican Colleague:

Our Leadership Task Force on Drug Abuse has produced some preliminary recommendations on what we would like to see included in a comprehensive drug bill this fall, and we would like to solicit your comments and suggestions.

As we mentioned in an earlier letter to you, the Task Force is composed of members of those numerous committees which have jurisdiction over various aspects of drug abuse issues. The group has been meeting regularly to monitor and supplant what has been going on in the Committees.

Our purpose is to make sure that those ideas we consider essential to any solution are not lost as a result of our minority status in Committee. It would be our intention to seek full consideration of these recommendations as part of any bi-partisan discussions we have with the Democratic Leadership following the conclusion of Committee action.

Our Task Force is working from the premise that any solution requires (1) a beefed-up campaign against the supply lines; (2) a grassroots program to discourage demand; and (3) tougher enforcement of existing laws and increased prosecution of drug peddlers.

The specific proposals under consideration now include:

EDUCATION

1. Proposed Commission on Anti-Drug Education. Commission would have automatic sunset provision as well as decreasing funding levels each year for the five-year life of the Commission. The Commission would work with State and Local Education agencies to develop model curricula.
2. Revise the Alcohol, Drug Abuse and Mental Health Service Block grant to provide a special \$100 million emergency funding authority to provide substance abuse prevention and treatment services.
3. Expand Chapter 2 educational authority and funding provisions for five regional centers currently involved in anti-drug education efforts.

4. Call on television networks, private sector organizations, and local communities to undertake an anti-drug campaign.
5. Authorize withholding of Federal funds from educational institutions which fail to implement anti-drug programs.
6. Provide for drug testing for Federal employees with security clearances or those employed in health and safety related occupations.

#### ENFORCEMENT

1. Increased penalties for trafficking in crack and PCP (HR 5112-DioGuardi). Mandatory minimum sentences of 20 years for drug traffickers (HR 1946 Hunter).
2. Designer Drug Control Act (HR 5246-Lungren).
3. Money Laundering Control Act (HR 5217-McCollum).
4. Amend Comprehensive Control Act of 1984 to change sentencing provisions for selling drugs on or near colleges and universities and strengthen federal forfeiture laws.
5. End preferential trade treatment for countries who fail to cooperate with drug eradication efforts.
6. End Most Favored Nation Status for countries producing illegal drugs.
7. Authorize \$600 Million for additional prison construction, U.S. Marshals, DEA agents, border patrol agents as well as additional equipment for Customs and Coast Guard.
8. Fund Department of State's Bureau of International Narcotics Control -\$100 million.
9. Amend Posse Comitatus provision allowing naval and other military personnel forces to be more actively involved in arrest and seizure of those engaged in illegal drug activities.
10. Amend the FAA Act of 1958 increasing penalties for those falsifying aircraft registration; and permit state and local authorities to enforce violations (Clay Shaw HR 5281).
11. Increase criminal penalties for operating aircraft without registrations, lights or authorized fuel tanks (HR 3479).



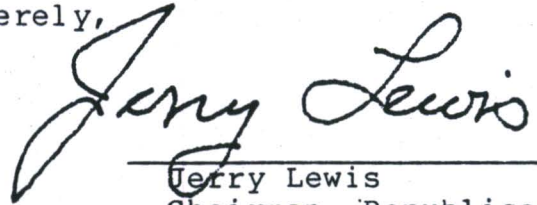
12. Authorize a Treasury Department study on replacement of one hundred dollar bills.
13. Amend the exclusionary rule in the Crime Control Act (HR 1125).
14. Authorize the death penalty in certain drug related crimes.

If you have any comments or suggestions, direct them to your representative on the Task Force or the Research Committee, Room 1616 Longworth, 5-0871.

Sincerely,



Robert H. Michel  
Republican Leader



Jerry Lewis  
Chairman, Republican  
Research Committee





H.R. 5334

1. Financial Assistance to States and Communities (p. 2)
  - Cost: \$180 billion in FY-87
  - Establishes Agency for Substance Abuse Prevention at ADAMHA (\$30 million)
  - Treatment allotments for states (\$100 million)
  - Prevention allotments for states (\$50 million)
2. White House Conference on Drug Abuse and Drug Trafficking Control (p. 6)
3. Inclusion of designer drugs in CSA (p. 11)
4. Substance Abuse Among Indians (p. 13)
  - Calls for interagency agreement between DOI, HHS, DOE, among other things.
  - Cost \$400,000+
5. Advisory Commission of the Comprehensive Education of Intercollegiate Athletics @\$650,000 per year (p. 19)
6. Alkyl nitrites (p. 26)
  - Alkyl nitrites to be treated as drug under Federal Food, Drug and Cosmetic Act

For: SL



EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

**SPECIAL**

August 12, 1986

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer -  
  
Department of Health and Human Services  
Department of the Interior  
Department of Justice  
Department of Education

SUBJECT: H.R. 5334, the "Drug Abuse Prevention and Treatment Act of 1986."

The Office of Management and Budget requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with OMB Circular A-19.

A response to this request for your views is needed no later than Friday, August 15, 1986.

Questions should be referred to Rich Jacob (395-4926), or to Bob Pellicci (395-7362), the legislative analyst in this office.

Naomi R. Sweeney for  
Assistant Director for  
Legislative Reference

Enclosures

cc: ~~Carlton~~ Turner  
Bernie Martin  
Barry Clendenin  
Barry White  
Mark Taylor  
Kathy Burchard  
Lisa Berger



→ Bt/Nami

I

99TH CONGRESS  
2D SESSION

# H. R. 5334

To establish Federal programs for the prevention and treatment of drug abuse.

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## IN THE HOUSE OF REPRESENTATIVES

AUGUST 5, 1986

Mr. DINGELL (for himself, Mr. WAXMAN, Mr. SCHEUER, Mr. WIRTH, Mr. FLOEIO, Mr. LUKE, Mr. WALGREN, Ms. MIKULSKI, Mrs. COLLINS, Mr. RICHARDSON, Mr. SLATTERY, Mr. SIKORSKI, Mr. BATES, and Mr. LEVINE of California) introduced the following bill; which was referred jointly to the Committees on Energy and Commerce, Interior and Insular Affairs, the Judiciary, and Education and Labor

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## A BILL

To establish Federal programs for the prevention and treatment of drug abuse.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 SECTION 1. SHORT TITLE.

4 This Act may be cited as the "Drug Abuse Prevention  
5 and Treatment Act of 1986".

1       **TITLE I—FINANCIAL ASSISTANCE TO**  
2               **STATES AND COMMUNITIES**

3   **SEC. 101. ALLOTMENTS TO STATES.**

4       Title XIX of the Public Health Service Act is amended  
5   by adding at the end the following:

6   **"PART D—EMERGENCY SUBSTANCE ABUSE TREATMENT**  
7               **AND PREVENTION**

8               **"AUTHORIZATION OF APPROPRIATIONS**

9       **"SEC. 1935. For the purpose of the Agency for Sub-**  
10   **stance Abuse Prevention and for allotments under sections**  
11   **1937 and 1938, there is authorized to be appropriated**  
12   **\$180,000,000 for fiscal year 1987.**

13              **"AGENCY FOR SUBSTANCE ABUSE PREVENTION**

14       **"SEC. 1936. Of the funds appropriated under section**  
15   **1935, \$30,000,000 shall be made available for the Agency**  
16   **for Substance Abuse Prevention established under section**  
17   **507.**

18              **"ALLOTMENTS FOR TREATMENT SERVICES FOR DRUG**  
19                **ABUSE**

20       **"SEC. 1937. (a) From two thirds of the amount appropri-**  
21   **ated under section 1935 and available for allotments, the**  
22   **Secretary shall allot to each State an amount determined by**  
23   **a formula prescribed by the Secretary which is based equally**  
24   **on the population of each State and on the population of each**  
25   **State weighted by its relative per capita income. Any amount**



1 paid to a State from its allotment and remaining unobligated  
2 at the end of fiscal year 1987 shall be returned to the Treasury.

3 “(b) Amounts paid to a State under its allotment under  
4 subsection (a) shall be used to provide treatment and rehabili-  
5 tation services for persons suffering from drug abuse.

6 “ALLOTMENTS FOR COMMUNITY-BASED PREVENTION  
7 ACTIVITIES

8 “SEC. 1938. (a) From one third of the amounts appro-  
9 priated under section 1935 and available for allotments, the  
10 Secretary, acting through the Agency for Substance Abuse  
11 Prevention established under section 507, shall allot to each  
12 State an amount determined on the basis of the relative pop-  
13 ulation of each State in the age group of 5 through 24.

14 “(b) Amounts paid to a State under its allotment under  
15 subsection (a) shall be used for—

16 “(1) the development by the State of a substance  
17 abuse prevention education program, and

18 “(2) the development of community-based sub-  
19 stance abuse prevention activities among school-aged  
20 children which will make the use of drugs unattractive  
21 to such children,

22 “(3) the development by the State of an education  
23 program relating to the risks of acquired immune defi-  
24 ciency syndrome among individuals who use drugs in-  
25 travenously and relating to the transmittal of acquired

1 immune deficiency syndrome from pregnant women to  
2 unborn children.

3 “(c) In order to receive an allotment under subsection  
4 (a) each State shall transmit an application to the Secretary.  
5 Each such application shall be in such form and transmitted  
6 by such date as the Secretary shall require. Each such appli-  
7 cation shall contain a plan for the use of amounts paid to the  
8 State under its allotment in accordance with subsection (c).

9 “GENERAL PROVISIONS

10 “SEC. 1939. (a) A State may not use amounts paid to it  
11 under its allotment under section 1937 or 1938 to—

12 “(1) provide inpatient hospital services,

13 “(2) make cash payments to intended recipients of  
14 health services,

15 “(3) purchase or improve land, purchase, con-  
16 struct, or permanently improve (other than minor re-  
17 modeling) any building or other facility, or purchase  
18 major medical equipment,

19 “(4) satisfy any requirement for the expenditure of  
20 non-Federal funds as a condition for the receipt of Fed-  
21 eral funds,

22 “(5) pay administrative costs, or

23 “(6) provide financial assistance to any entity  
24 other than a public or nonprofit private entity.



1       “(b) The provisions of part B which are not inconsistent  
2 with subsection (a) or sections 1937 or 1938 shall apply with  
3 respect to allotments made under sections 1937 and 1938.”.

4       **TITLE II—AGENCY FOR SUBSTANCE ABUSE**  
5                                   **PREVENTION**

6       SEC. 201. Part A of title V of the Public Health Service  
7 Act is amended by adding at the end the following:

8               **“AGENCY FOR SUBSTANCE ABUSE PREVENTION**

9               **“SEC. 507. (a) There is established in the Alcohol, Drug**  
10 **Abuse, and Mental Health Administration the Agency for**  
11 **Substance Abuse Prevention. The Agency shall be headed by**  
12 **a Director appointed by the Secretary from individuals with**  
13 **extensive experience or academic qualifications in the pre-**  
14 **vention of drug or alcohol abuse.**

15              **“(b) The Director of the Office shall—**

16                   **“(1) sponsor regional workshops on the prevention**  
17 **of drug and alcohol abuse,**

18                   **“(2) coordinate the findings of research sponsored**  
19 **by agencies of the Service on the prevention of drug**  
20 **and alcohol abuse,**

21                   **“(3) develop effective drug and alcohol abuse pre-**  
22 **vention literature (including literature on the adverse**  
23 **effects of cocaine free base (known as ‘crack’),**

24                   **“(4) create public service announcements for radio**  
25 **and television broadcasting on the prevention of drug**  
26 **and alcohol abuse,**

1           “(5) in cooperation with the Secretary of Educa-  
2           tion, assure the widespread dissemination of prevention  
3           materials among States, political subdivisions, and  
4           school systems,

5           “(6) support programs of clinical training of sub-  
6           stance abuse counselors and other health professionals,

7           “(7) in cooperation with the Director of the Cen-  
8           ters for Disease Control, develop educational materials  
9           to reduce the risks of acquired immune deficiency syn-  
10          drome among intravenous drug abusers, and

11          “(8) administer the allotment programs under part  
12          D of title XIX.”.

13 **TITLE III—WHITE HOUSE CONFERENCE ON**  
14 **DRUG ABUSE AND DRUG TRAFFICKING**  
15 **CONTROL**

16 **SEC. 301. AUTHORIZATION OF WHITE HOUSE CONFERENCE.**

17          The President shall call a White House Conference on  
18 Drug Abuse and Drug Trafficking Control (in this title re-  
19 ferred to as the “Conference”), in accordance with this title,  
20 not later than 9 months after the date of the enactment of  
21 this title in order to develop recommendations for further  
22 action to prevent drug abuse and make treatment services  
23 available to drug abusers and to control the illicit trafficking  
24 of controlled substances internationally and in the United  
25 States.



1 SEC. 302. PURPOSES OF CONFERENCE.

2 (a) IN GENERAL.—The purposes of the Conference  
3 are—

4 (1) to increase public awareness of, and to focus  
5 attention on, various aspects of the problems of drug  
6 abuse and drug trafficking control (including issues of  
7 enforcement of controlled substance laws and of pre-  
8 vention of drug abuse and treatment and rehabilitation  
9 of drug abusers);

10 (2) to pool information and experiences to vigor-  
11 ously and directly attack drug abuse at all levels—  
12 local, State, Federal, and international; and

13 (3) to assist in formulating a national strategy (en-  
14 compassing international, Federal, State, and local ac-  
15 tivities) to control trafficking in controlled substances  
16 and to prevent and discourage drug abuse and to make  
17 treatment services available to drug abusers.

18 (b) SPECIFIC CONSIDERATIONS.—The Conference shall  
19 specifically review—

20 (1) the impact of recently enacted laws (including  
21 the Comprehensive Crime Control Act of 1984 and the  
22 Balanced Budget and Emergency Deficit Reduction  
23 Act of 1985) on efforts to control trafficking in con-  
24 trolled substances and to prevent drug abuse and to  
25 treat drug abusers,

1           (2) the recommendations of the President's Com-  
2           mission on Organized Crime as they relate to drug  
3           abuse and control of trafficking in controlled sub-  
4           stances,

5           (3) the extent to which the sanctions in section  
6           481 of the Foreign Assistance Act of 1961 (22 U.S.C.  
7           2291) have been, or should be, used in encouraging  
8           foreign states to comply with their international re-  
9           sponsibilities respecting controlled substances, and

10          (4) the circumstances contributing to the initiation  
11          of illicit drug usage, with particular emphasis on the  
12          onset of drug use by youth.

13   **SEC. 303. CONFERENCE REPORT AND FOLLOW-UP ACTIONS.**

14          (a) **FINAL REPORT.**—Not more than 6 months after the  
15          date on which the Conference is convened, a final report of  
16          the Conference shall be submitted to the President and the  
17          Congress. The report shall include the findings and recom-  
18          mendations of the Conference as well as proposals for any  
19          legislative action necessary to implement the recommenda-  
20          tions of the Conference. The final report of the Conference  
21          shall be available to the public.

22          (b) **FOLLOW-UP ACTIONS.**—The President shall report  
23          to the Congress annually, during the 3-year period following  
24          the submission of the final report of the Conference, on the



1 status and implementation of the findings and recommenda-  
2 tions of the Conference.

3 **SEC. 304. ORGANIZATION OF CONFERENCE.**

4 (a) **PARTICIPATION OF APPROPRIATE CABINET OFFI-**  
5 **CERS AND OTHER OFFICIALS.**—The President shall—

6 (1) ensure the active participation in the Confer-  
7 ence of appropriate cabinet officers, and

8 (2) shall provide for the involvement in the Con-  
9 ference of—

10 (A) elected officials at the Federal, State,  
11 and local levels,

12 (B) persons from business and industry,

13 (C) individuals distinguished in medicine,  
14 public health, law, sociology, education, and law  
15 enforcement, and

16 (D) private citizens who have first-hand ex-  
17 perience with drug abuse.

18 (b) **ASSISTANCE OF FEDERAL AGENCIES.**—All Federal  
19 departments, agencies, and instrumentalities shall provide  
20 such support and assistance as may be necessary to facilitate  
21 the planning and administration of the Conference.

22 (c) **NO PAYMENT OF INDIVIDUAL EXPENSES.**—Each  
23 participant in the Conference shall be responsible for the par-  
24 ticipant's expenses related to attending the Conference and

1 shall not be reimbursed from funds appropriated to carry out  
2 this title.

3 (d) **DETAIL OF STAFF.**—Appropriate cabinet officers  
4 may detail employees to work on the planning and adminis-  
5 tering of the Conference without regard to section 3341(b) of  
6 title 5, United States Code.

7 (e) **AUTHORIZATION OF APPROPRIATIONS.**—There are  
8 authorized to be appropriated for fiscal year 1987 to carry  
9 out this joint title such sums as may be necessary.

10 (f) **RESTRICTION ON EXPENDITURES AND CONTRACT-**  
11 **ING.**—New spending authority or authority to enter contracts  
12 as provided in this title shall be effective only to such extent  
13 and in such amounts as are provided in advance in appropria-  
14 tion Acts.

15 **SEC. 305. DEFINITIONS.**

16 In this title:

17 (1) **CONTROLLED SUBSTANCES.**—The term “con-  
18 trolled substances” has the meaning given such term in  
19 section 102(6) of the Controlled Substances Act (21  
20 U.S.C. 802(6)).

21 (2) **APPROPRIATE CABINET OFFICER.**—The term  
22 “appropriate cabinet officers” means the Attorney  
23 General, the Secretary of State, the Secretary of  
24 Health and Human Services, the Secretary of Defense,  
25 the Secretary of the Treasury, the Secretary of Trans-



1       portation, the Secretary of Education, and such other  
2       cabinet officers as have responsibilities respecting con-  
3       trolled substances abuse and control (including combat-  
4       ing illicit production, trafficking, or distribution of con-  
5       trolled substances).

6               (3) STATE.—The term “State” includes the Dis-  
7       trict of Columbia, the Commonwealth of Puerto Rico,  
8       the Northern Mariana Islands, the Virgin Islands,  
9       Guam, and American Samoa.

10   SEC. 306. EFFECTIVE DATE.

11       This title shall take effect October 1, 1986.

12                   **TITLE IV—DESIGNER DRUGS**

13   SEC. 401. INCLUSION OF DESIGNER DRUGS IN CONTROLLED  
14                   SUBSTANCES ACT.

15       (a) DEFINITION.—Section 102 of the Controlled Sub-  
16       stances Act (21 U.S.C. 802) is amended by adding at the end  
17       thereof the following:

18               “(31)(A) Except as provided in subparagraph (B),  
19       the term ‘controlled substance analog’ means a sub-  
20       stance—

21               “(i) the chemical structure of which is sub-  
22       stantially similar to the chemical structure of a  
23       controlled substance in schedule I or II; and

1           “(ii)(I) which has a stimulant, depressant, or  
2 hallucinogenic effect on the central nervous  
3 system; or

4           “(II) with respect to a particular person,  
5 which such person represents or intends to have a  
6 stimulant, depressant, or hallucinogenic effect on  
7 the central nervous system substantially similar to  
8 the stimulant, depressant, or hallucinogenic effect  
9 on the central nervous system of a controlled sub-  
10 stance.

11          “(B) Such term does not include—

12           “(i) a controlled substance;

13           “(ii) any substance for which there is an ap-  
14 proved new drug application;

15           “(iii) with respect to a particular person any  
16 substance, if an exemption is in effect for investi-  
17 gational use, for that person, under section 505 of  
18 the Federal Food, Drug, and Cosmetic Act (21  
19 U.S.C. 355) to the extent conduct with respect to  
20 such substance is pursuant to such exemption; or

21           “(iv) any substance to the extent not intend-  
22 ed for human consumption before such an exemp-  
23 tion takes effect with respect to that substance.”.



1 (b) TREATMENT OF CONTROLLED SUBSTANCE ANA-  
2 LOGS.—Part B of the Controlled Substances Act is amended  
3 by adding at the end the following new section:

4 “TREATMENT OF CONTROLLED SUBSTANCE ANALOGS

5 “SEC. 203. A controlled substance analog shall, to the  
6 extent intended for human consumption, be treated, for the  
7 purposes of the Controlled Substances Act and the Con-  
8 trolled Substances Import and Export Act as a controlled  
9 substance in schedule I.”.

10 (c) CLERICAL AMENDMENT.—The table of contents of  
11 the Comprehensive Drug Abuse Prevention and Control Act  
12 of 1970 is amended by inserting after the item relating to  
13 section 202 the following new item:

“Sec. 203. Treatment of controlled substances analogs.”.

14 **TITLE V—SUBSTANCE ABUSE AMONG**  
15 **INDIANS**

16 **SEC. 501. INTER-AGENCY AGREEMENT.**

17 Within 180 days of the date of enactment of this title,  
18 the Secretary of Health and Human Services shall enter into  
19 an agreement with the Secretary of the Interior and the Sec-  
20 retary of Education to coordinate the efforts of their Depart-  
21 ments related to alcohol and drug abuse among Indian juve-  
22 niles. The agreement shall provide for the identification and  
23 coordination of available resources and programs, including  
24 the program developed under section 502, to combat Indian  
25 youth alcohol and drug abuse through prevention, education,

1 counseling, referral, and treatment. The Secretary shall pub-  
2 lish such agreement in the Federal Register within 30 days  
3 after an agreement has been entered into pursuant to this  
4 section.

5 **SEC. 502. INDIAN HEALTH SERVICE PREVENTION AND TREAT-**  
6 **MENT PROGRAM.**

7 (a) **SERVICES.**—The Secretary of Health and Human  
8 Services, acting through the Director of the Indian Health  
9 Service, shall in consultation with Indian tribes and organiza-  
10 tions, develop and implement a program of comprehensive  
11 alcohol and substance abuse prevention and treatment serv-  
12 ices, including detoxification, counseling services, and follow-  
13 up care, for Indian youths in need of such services.

14 (b) **REPORT.**—The Director of the Indian Health Serv-  
15 ice shall report on the progress of the program provided  
16 under subsection (a) to relevant committees of the Congress  
17 not later than 24 months after the date of the enactment of  
18 this title.

19 **SEC. 503. ALCOHOL AND SUBSTANCE ABUSE TREATMENT**  
20 **FACILITIES.**

21 (a) **FEDERALLY OWNED STRUCTURES.**—

22 (1) **IDENTIFICATION.**—The Secretary of Health  
23 and Human Services shall, acting through the Director  
24 of the Indian Health Service and in consultation with  
25 the Assistant Secretary of the Bureau of Indian Af-



1       fairs, identify and utilize, wherever appropriate and  
2       consistent with the needs of an Indian tribe or tribal  
3       organization, existing federally owned structures suitable  
4       as residential alcohol and substance abuse treatment  
5       centers for Indian youths.

6               (2) GUIDELINES FOR SUITABILITY.—The Secretary  
7       of Health and Human Services shall, in consultation  
8       with professionals involved in the clinical treatment  
9       of alcohol and substance abuse among Indian youth,  
10      establish guidelines for determining the suitability  
11      of any such federally owned structure to be used as  
12      a residential alcohol and substance abuse treatment  
13      center. No clinically inappropriate or structurally unsound  
14      building shall be used as such a treatment  
15      center.

16             (3) CONDITIONS OF USE.—Any structure described  
17      in paragraph (1) may be used under such terms and  
18      conditions as may be agreed upon by the Secretary  
19      of Health and Human Services and the agency having  
20      responsibility for the structure.

21             (4) RENOVATION.—The Secretary of Health and  
22      Human Services may, directly or by contract, renovate  
23      any facility described in paragraph (1). Any such renovation  
24      shall conform with—

1 (A) such terms and conditions as have been  
2 agreed upon under paragraph (3), and

3 (B) such clinical requirements for alcohol and  
4 substance abuse treatment centers as are deter-  
5 mined to be appropriate by alcohol and substance  
6 abuse treatment professionals.

7 (b) BUREAU OF INDIAN AFFAIRS FACILITIES.—

8 (1) IDENTIFICATION.—The Secretary of Interior  
9 shall identify for the Secretary of Health and Human  
10 Services any existing Bureau of Indian Affairs facilities  
11 that could be utilized for residential alcohol and sub-  
12 stance abuse treatment centers for Indian youths.

13 (2) LIMITATION.—No Bureau of Indian Affairs  
14 school shall be used under paragraph (1) as a treat-  
15 ment center for persons who are not students of such  
16 school without the express consent of the school board  
17 of such school.

18 SEC. 504. AUTHORIZATION.

19 There are authorized to be appropriated such sums as  
20 may be necessary to carry out sections 502 and 503.

21 SEC. 505. NAVAJO ALCOHOL REHABILITATION DEMONSTRA-  
22 TION PROGRAM.

23 (a) DEMONSTRATION PROGRAM.—The Secretary of  
24 Health and Human Services shall make grants to the Navajo  
25 tribe to establish a demonstration program in the city of



1 Gallup, New Mexico, to rehabilitate adult Navajo Indians  
2 suffering from alcoholism or alcohol abuse.

3 (b) EVALUATION AND REPORT.—The Secretary, acting  
4 through the National Institute on Alcohol Abuse and Alco-  
5 holism, shall evaluate the program established under subsec-  
6 tion (a) and submit a report on such evaluation to the appro-  
7 priate Committees of Congress by January 1, 1990.

8 (c) AUTHORIZATION.—There is authorized to be appro-  
9 priated for the purposes of this section \$400,000 for each of  
10 the fiscal years 1988, 1989, and 1990. Not more than 10  
11 percent of the funds appropriated for any fiscal year may be  
12 used for administrative purposes.

13 SEC. 506. DEFINITIONS.

14 For the purposes of this title—

15 (1) the term “agency office” means an administra-  
16 tive entity within the Bureau of Indian Affairs serving  
17 one or more Indian Tribes within a geographical area  
18 defined by regulation by the Bureau of Indian Affairs,

19 (2) the term “Bureau of Indian Affairs area  
20 office” means an administrative entity within the  
21 Bureau of Indian Affairs through which funds and  
22 services are provided to agency offices within a geo-  
23 graphical area defined by regulation by the Bureau of  
24 Indian Affairs,

1           (3) the term "Indian" means any person who is a  
2           member of an Indian Tribe or who is eligible for serv-  
3           ices under any program administered by the Assistant  
4           Secretary of Indian Affairs,

5           (4) the term "Indian Health Service area office"  
6           means an administrative entity within the Indian  
7           Health Service through which services and funds are  
8           provided to service units within a geographical area  
9           defined by regulation by the Indian Health Service,

10          (5) the term "Indian Tribe" means any Indian  
11          Tribe, band, nation, or other organized group or com-  
12          munity of Indians, including any Alaskan Native vil-  
13          lage or regional or village corporation as defined in, or  
14          established pursuant to, the Alaska Claims Settlement  
15          Act (43 U.S.C. 1601 et seq.) that is recognized as eli-  
16          gible for special programs and services provided by  
17          the United States to Indians because of their status as  
18          Indians,

19          (6) the term "service area" means the geographi-  
20          cal area served by a service unit,

21          (7) the term "service unit" means an administra-  
22          tive entity within the Indian Health Service serving  
23          one or more Indian Tribes within a geographical area  
24          defined by regulation by the Indian Health Service,



1 (8) the term "substance abuse" means abuse of  
2 any addictive or controlled substances or abuse of pro-  
3 pellants and inhalants, and

4 (9) the term "youth" means any Indian, under the  
5 age of 18, or who attends a secondary school.

6 **TITLE VI—ADVISORY COMMISSION ON THE**  
7 **COMPREHENSIVE EDUCATION OF**  
8 **INTERCOLLEGIATE ATHLETES**

9 **SEC. 601. ESTABLISHMENT.**

10 There is established a commission to be known as the  
11 Advisory Commission on the Comprehensive Education of  
12 Intercollegiate Athletes (hereafter in this title referred to as  
13 the "Commission").

14 **SEC. 602. DUTIES OF COMMISSION.**

15 The Commission shall investigate and advise Congress  
16 regarding issues related to athletic programs at colleges and  
17 universities in the United States, including—

18 (1) the use of drugs by athletes, examining in  
19 particular—

20 (A) the role of colleges and universities in  
21 discouraging the illegal use of drugs by athletes,  
22 and

23 (B) the need for mandatory testing of ath-  
24 letes for illegal drug use,

1           (2) the impact of television on athletics, examining  
2           in particular both the negative and positive effects on  
3           colleges and universities and their athletes of revenues  
4           received by televising athletic events,

5           (3) the balance between athletics and academics,  
6           examining in particular—

7           (A) the need for—

8                   (i) establishing stricter eligibility and  
9                   academic requirements for athletes, and

10                   (ii) less frequent and fewer competitive  
11                   events to allow for greater pursuit of aca-  
12                   demic goals by athletes, and

13           (B) the role of regulation and enforcement in  
14           the areas of athletic recruiting, financing, and  
15           scheduling, and

16           (4) the extent of the involvement of Federal and  
17           State government in intercollegiate athletics, including  
18           involvement in the form of taxation, grants, and stu-  
19           dent loans.

20   SEC. 603. MEMBERSHIP.

21           (a) NUMBER AND APPOINTMENT.—The Commission  
22           shall be composed of 16 members, appointed jointly by the  
23           Speaker of the House of Representatives and the majority  
24           leader of the Senate within 30 days after the date of the



1 enactment of this Act in a manner that insures balanced geo-  
2 graphic representation, as follows:

3 (1) 1 member who is the President of a college or  
4 university.

5 (2) 2 members who are college or university pro-  
6 fessors.

7 (3) 2 members who are college or university ad-  
8 missions officers.

9 (4) 1 member who is a college or university aca-  
10 demic advisor.

11 (5) 1 member who is a former or current college  
12 or university coach.

13 (6) 1 member who is a former or current college  
14 or university athletic director.

15 (7) 1 member who is a high school principal, guid-  
16, ance counselor, or teacher with special knowledge of  
17 high school academics and athletics.

18 (8) 1 member who is a current student athlete at  
19 a college or university.

20 (9) 1 member who is associated with one of the  
21 major regional college accrediting associations.

22 (10) 1 member who is associated with the Nation-  
23 al Collegiate Athletic Association.

24 (11) 1 member who is a physician with special  
25 knowledge of sports medicine and drug abuse problems.

1           (12) 1 member who is a former or current  
2 member of the House of Representatives and 1  
3 member who is a former or current member of the  
4 Senate.

5           (13) 1 member who is not associated with college  
6 and university academics or athletics.

7 Appointments may be made under this subsection without  
8 regard to section 5311(b) of title 5, United States Code.

9           (b) TERMS.—Members shall be appointed for the life of  
10 the Commission.

11          (c) PAY.—(1) Members of the Commission shall serve  
12 without pay.

13          (2) While away from their homes or regular place of  
14 business in the performance of services for the Commission,  
15 members shall be allowed travel expenses, including a per  
16 diem allowance in lieu of subsistence, in the same manner as  
17 persons serving intermittently in the Government service are  
18 allowed travel expenses under section 5703 of title 5 of the  
19 United States Code.

20          (d) CHAIRMAN.—(1) The member of the Commission  
21 who is a former or current member of the House of Repre-  
22 sentatives shall serve as Chairman of the Commission.

23          (2) The member of the Commission who is a former or  
24 current member of the Senate shall serve as Vice Chairman  
25 of the Commission.



1 **SEC. 604. MEETINGS.**

2 (a) **ORGANIZATIONAL MEETING.**—Not later than 30  
3 days after all members have been appointed to the Commis-  
4 sion, the Commission shall hold an organizational meeting to  
5 establish the rules and procedures under which it will carry  
6 out its responsibilities.

7 (b) **RULES AND PROCEDURES.**—The rules and proce-  
8 dures referred to in subsection (a) shall provide that—

9 (1) half of the total Commission membership shall  
10 constitute a quorum, and

11 (2) a majority of those voting at a properly called  
12 meeting shall be required to authorize any recommen-  
13 dation or other official action of the Commission.

14 **SEC. 605. STAFF OF COMMISSION; EXPERTS AND CONSULT-**  
15 **ANTS.**

16 (a) **STAFF.**—Subject to such rules as may be prescribed  
17 by the Commission and subsection (b), the Chairman may  
18 appoint and fix the pay of such personnel as the Chairman  
19 considers appropriate.

20 (b) **APPLICABILITY OF CERTAIN CIVIL SERVICE**  
21 **LAWS.**—The staff of the Commission shall—

22 (1) be appointed without regard to the provisions  
23 of title 5, United States Code, governing appointments  
24 in the competitive service; and

25 (2) be paid in accordance with the provisions of  
26 chapter 51 and subchapter III of chapter 53 of such

1 title relating to classification and General Schedule pay  
2 rates.

3 (c) **EXPERTS AND CONSULTANTS.**—Subject to such  
4 rules as may be prescribed by the Commission, the Chairman  
5 may procure temporary and intermittent services under sec-  
6 tion 3109(b) of title 5 of the United States Code.

7 (d) **STAFF OF FEDERAL AGENCIES.**—Upon request of  
8 the Chairman, the head of any Federal agency shall detail  
9 any of the personnel of such agency to the Commission to  
10 assist the Commission in carrying out its duties under section  
11 602.

12 **SEC. 606. POWERS OF COMMISSION.**

13 (a) **HEARINGS AND SESSIONS.**—(1) The Commission  
14 may, for the purpose of carrying out section 602, hold such  
15 hearings, sit and act at such times and places, take such tes-  
16 timony, and receive such evidence, as the Commission con-  
17 siders appropriate.

18 (2) Hearings, meetings, and other sessions of the Com-  
19 mission may be closed to the public only by vote of the  
20 Commission.

21 (b) **OBTAINING OFFICIAL DATA.**—The Commission  
22 may secure directly from any department or agency of the  
23 United States information necessary to enable it to carry out  
24 section 602. Upon request of the Chairman of the Commis-



1 sion, the head of such department or agency shall furnish  
2 such information to the Commission.

3 (c) **MAILS.**—The Commission may use the United  
4 States mails in the same manner and under the same condi-  
5 tions as other departments and agencies of the United States.

6 (d) **ADMINISTRATIVE SUPPORT SERVICES.**—The head  
7 of any department or agency of the United States shall pro-  
8 vide to the Commission such administrative support services  
9 as the Chairman may request.

10 (e) **OFFICE SPACE.**—The Administrator for General  
11 Services shall provide the Commission with appropriate office  
12 space, at no expense to the Commission, to enable it to carry  
13 out its responsibilities under section 602.

14 **SEC. 607. REPORT.**

15 The Commission shall transmit to the Congress not  
16 later than 18 months after the organizational meeting of the  
17 Commission is held under section 604 a report which shall  
18 contain a detailed statement of the findings and conclusions  
19 of the Commission as it considers appropriate.

20 **SEC. 608. TERMINATION.**

21 The Commission shall cease to exist 60 days after sub-  
22 mitting its report under section 607.

1 **SEC. 609. AUTHORIZATION OF APPROPRIATIONS**

2       There is authorized to be appropriated for fiscal years  
3 beginning after fiscal year 1986 not to exceed \$650,000 to  
4 carry out this title.

5                   **TITLE VII—ALKYL NITRITES**

6 **SEC. 701. REGULATION OF ALKYL NITRITES BY THE FOOD**  
7                   **AND DRUG ADMINISTRATION.**

8       Alkyl nitrites and their isomers shall be treated as a  
9 drug for purposes of the Federal Food, Drug, and Cosmetic  
10 Act.

○