

6005 CONTROLLED SUBSTANCE ANALOG — § 961.01(4m)

[INSERT THE FOLLOWING IN INSTRUCTIONS FOR VIOLATIONS OF CHAPTER 961 INVOLVING "CONTROLLED SUBSTANCE ANALOGS."]

"Controlled substance analog" is a substance with a chemical structure substantially similar to¹ (name controlled substance included in Schedule I or II)² and

[which has a (stimulant), (depressant), (narcotic) (or) (hallucinogenic)³ effect on the central nervous system substantially similar to the effect⁴ of (name controlled substance included in schedule I or II)];⁵ [or]

[which the defendant⁶ represents or intends to have a (stimulant), (depressant), (narcotic) (or) (hallucinogenic)⁷ effect on the central nervous system substantially similar to the effect of (name controlled substance included in schedule I or II)].⁸

COMMENT

Wis JI-Criminal 6005 was originally published in 1996. This revision adopted a new format and was approved by the Committee in October 2009.

The definition provided here for "controlled substance analog" is based on the one provided in § 961.01(4m)(a). The statute was created by 1995 Wisconsin Act 448 [effective date: July 9, 1996] which also renumbered Chapter 161 to Chapter 961 and extended all controlled substance violations to include "controlled substance analogs."

See Wis JI-Criminal 6020A for an example instruction building in the definition of "controlled substance analog." Note that other changes were necessary in the text of the instruction.

The statutory definition of "controlled substance analog" requires that the analog have a substantially similar chemical structure and that the analog either have a substantially similar effect or that the defendant intend or represent that it have a substantially similar effect.

The complete definition of § 961.01(4m) reads as follows:

- (a) "Controlled substance analog" means a substance the chemical structure of which is substantially similar to the chemical structure of a controlled substance included in schedule I or II and:

1. Which has a stimulant, depressant, narcotic, or hallucinogenic effect on the central nervous system substantially similar to the stimulant, depressant, narcotic, or hallucinogenic effect on the central nervous system of a controlled substance included in schedule I or II; or
2. With respect to a particular individual, which the individual represents or intends to have a stimulant, depressant, narcotic or hallucinogenic effect on the central nervous system substantially similar to the stimulant, depressant, narcotic, or hallucinogenic effect on the central nervous system of a controlled substance included in schedule I or II.

(b) "Controlled substance analog" does not include:

1. A controlled substance.
2. A substance for which there is an approved new drug application;
3. A substance with respect to which an exemption is in effect for investigational use by a particular person under 21 USC 355 to the extent that conduct with respect to the substance is permitted by the exemption; or
4. Any substance to the extent not intended for human consumption before an exemption takes effect with respect to the substance.

The Committee concluded that it was necessary to try to simplify this lengthy definition. See notes 1-8, below.

1. The instruction substitutes ". . . is a substance with a chemical structure substantially similar to . . ." for the statute's ". . . means a substance the chemical structure of which is substantially similar to the chemical structure of . . ." No change of meaning is intended.

2. The Committee recommends using the name of the controlled substance which the analog resembles, assuring that the controlled substance appears in Schedule I or II. Schedule I is found in § 961.14; Schedule II is found in § 961.16. With a name inserted, the first part of the definition would read as follows: "Controlled substance analog" is a substance with a chemical structure substantially similar to cocaine."

3. The Committee recommends selecting the effect or effects supported by the evidence. More than one effect may apply, but it appeared to be unlikely that all alternative would be applicable to a single substance.

4. The instruction uses "similar to the effect of" in place of the statute's "similar to the stimulant, depressant, narcotic or hallucinogenic effect on the central nervous system of." No change of meaning is intended.

5. See note 2, supra.

6. The instruction substitutes the term "defendant" for the following phrase in the statute: "with respect to a particular individual, the individual . . ." The Committee reads the statutory definition as requiring either that the analog have a substantially similar effect or that the defendant represent or intend that the analog have a substantially similar effect. Some repetition in the statutory definition was also eliminated. See note 1, supra.

7. See note 3, supra.

8. See note 2, supra.