

**6020A DELIVERY OF A CONTROLLED SUBSTANCE ANALOG — §
961.41(1); 961.01(4m)**

Statutory Definition of the Crime

The Wisconsin Statutes make it a crime to deliver a controlled substance analog.

State's Burden of Proof

Before you may find the defendant guilty of this offense, the State must prove by evidence which satisfies you beyond a reasonable doubt that the following three elements were present.

Elements of the Crime That the State Must Prove

1. The defendant delivered a substance.

"Deliver" means to transfer or attempt to transfer something from one person to another.¹

2. The substance was a controlled substance analog.

[USE THE PARTS OF THE FOLLOWING DEFINITION THAT APPLY]²

"Controlled substance analog" is a substance with a chemical structure substantially similar to (name controlled substance included in Schedule I or II)³ and

[which has a (stimulant) (depressant) (narcotic) (or) (hallucinogenic) effect on the central nervous system substantially similar to the effect of (name controlled substance included in schedule I or II)];⁴ [or]

[which the defendant represents or intends to have a (stimulant) (depressant) (narcotic) (or) (hallucinogenic) effect on the central nervous system substantially similar to the effect of (name controlled substance included in schedule I or II)].⁵

3. The defendant knew or believed that the substance was a controlled substance analog.⁶

This requires two things: first, that the defendant knew or believed that the chemical structure of the substance was substantially similar to (name controlled substance); and, second that the defendant knew or believed that the (stimulant) (depressant) (narcotic) (or) (hallucinogenic) effect of the substance was substantially similar to the effect of (name controlled substance) .]

Deciding About Knowledge or Belief

You cannot look into a person's mind to find knowledge or belief. Knowledge or belief must be found, if found at all, from the defendant's acts, words, and statements, if any, and from all the facts and circumstances in this case bearing upon knowledge.

Jury's Decision

If you are satisfied beyond a reasonable doubt that all three elements of this offense have been proved, you should find the defendant guilty.

If you are not so satisfied, you must find the defendant not guilty.

COMMENT

Wis JI-Criminal 6020A was originally published in 1996 and revised in 2010. This revision was approved by the Committee in April 2018; it added a cross reference to Wis JI-Criminal 6001 to the Comment.

The penalty for offenses involving the delivery of a controlled substance analog depends on the amount involved. An instruction for a jury finding of the amount is provided at Wis JI-Criminal 6001.

1995 Wisconsin Act 448 [effective date: July 9, 1996] extended all controlled substance violations to include "controlled substance analogs." [Act 448 also renumbered Chapter 161 to Chapter 961.]

A separate instruction defining "controlled substance analogs" is provided at Wis JI-Criminal 6005. This instruction is a revision of Wis JI-Criminal 6020 to apply to an offense involving a controlled substance analog. Accomplishing this revision required more than a mechanical substitution of "controlled substance analog" for references to "a controlled substance," so the Committee concluded it was advisable to publish this as a model.

At least one important substantive question was raised: Since regular controlled substance offenses require knowledge that the substance is a controlled substance, does the analog offense require knowledge that the substance is a controlled substance analog? The Committee concluded that a knowledge element should be required and therefore is included as the third element.

1. This definition was adapted from that found in § 961.01(6), which reads as follows:

"Deliver" or "delivery," unless the context otherwise requires, means the actual, constructive or attempted transfer from one person to another of a controlled substance, whether or not there is any agency relationship.

2. The text that follows is that of Wis JI-Criminal 6005. See that instruction for footnotes explaining the Committee's approach to the extensive statutory definition.

3. 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."

4. See note 3, supra.

5. See note 3, supra.

6. The Committee concluded that since regular controlled substance offenses require a knowledge element, a similar element should be included here. See Wis JI-Criminal 6000 for a discussion of the knowledge element for regular controlled substance offenses. This instruction relates the knowledge element to one of the alternatives provided in the "controlled substance analog" definition: knowledge that the chemical structure is substantially similar and knowledge that the effect on the central nervous system is substantially similar. The former is always required; the latter can be replaced by the defendant representing or intending that the effect on the nervous system be substantially similar. If the latter alternative is used, no additional knowledge element appears to be required; it would be subsumed by the

requirement that the defendant represent or intend that it have a similar effect on the central nervous system.