



PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 **AN ACT** *to renumber* 961.571 (1) (a) (intro.), 1., 2., 3., 4., 5., 6., 8., 9. and 10.,
2 961.571 (1) (a) 7., 961.571 (1) (a) 11. a., b., c., d., f., g., h., i., j. and m. and
3 961.571 (1) (a) 11. e., k. and L.; *to renumber and amend* 961.41 (3g) (e) and
4 961.571 (1) (a) 11. (intro.); *to amend* 59.54 (25) (a) (intro.), 66.0107 (1) (bm),
5 961.41 (3g) (c), 961.41 (3g) (d), 961.41 (3g) (em), 961.47 (1), 961.48 (3), 961.573
6 (title), 961.574 (title) and 961.577; *to create* 66.0108, 778.25 (1) (a) 2m.,
7 961.571 (1) (ac), 961.571 (1) (b) 5., 961.571 (1) (c) (intro.) and 2. (intro.),
8 961.572 (1m), 961.573 (1m) and 961.574 (1m) of the statutes; **relating to:**
9 penalties for possession of marijuana and providing a penalty.

Analysis by the Legislative Reference Bureau

Current law prohibits a person from possessing or attempting to possess marijuana. A person who violates the prohibition is guilty of a misdemeanor crime and may be fined not more than \$1,000 or imprisoned for not more than six months, or both, for a first conviction and is guilty of a Class I felony and may be fined not more than \$10,000 or imprisoned for not more than three years and six months, or

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both, for a repeat conviction. Under current law, a repeat conviction includes any previous conviction for a state or federal misdemeanor or felony relating to a controlled substance.

This bill reduces to a \$100 civil forfeiture the penalty for possessing or attempting to possess 28 grams or less of marijuana. Under the bill, a person who possesses or attempts to possess more than 28 grams but not more than 56 grams of marijuana is guilty of a misdemeanor and may be subject to a fine of not more than \$1,000 or imprisoned for not more than 90 days or both, and a person who possesses or attempts to possess more than 56 grams is guilty of a misdemeanor for a first offense and may be subject to a fine of not more than \$1,000 or imprisoned for not more than six months or both and a Class I felony for a second or subsequent offense. The bill also eliminates counting, for the purposes of determining if a conviction is a repeat conviction, a criminal offense of marijuana possession involving 56 grams or less.

Current law also increases the penalties for possession of other controlled substances if the person has a prior conviction for a state or federal misdemeanor or felony relating to a controlled substance. The bill eliminates counting, as a prior conviction, a conviction for marijuana possession involving 56 grams or less.

Current law allows a local government to enact an ordinance prohibiting the possession of marijuana and to impose a forfeiture for a violation of the ordinance. Under current law, if a district attorney issues a complaint alleging possession of more than 25 grams, the local government may not prosecute the same action unless the district attorney dismisses the charges or declines to prosecute the case. The bill changes the threshold amount in the complaint to 56 grams from 25 grams.

Current law prohibits a person from using or possessing drug paraphernalia with the intent to produce, distribute, or use a controlled substance. A person who violates the prohibition is guilty of a misdemeanor and subject to a fine of not more than \$500 or imprisonment for not more than 30 days, or both. The bill reduces the penalty to a civil forfeiture of not more than \$10 for using or possessing drug paraphernalia that relates to marijuana consumption.

The bill also specifies that a citation issued for possession of marijuana or marijuana paraphernalia must contain provisions for a deposit in lieu of a court appearance. The court may consider the deposit as a plea of no contest and enter a judgment without the person appearing in court.

The bill allows law enforcement officers discretion in how they complete processing or “booking” of a person for a violation of state law or a local ordinance prohibiting possession or attempted possession of marijuana or marijuana paraphernalia, including whether to take the person to jail, complete a booking photo, or fingerprint the person. Under the bill, however, a law enforcement officer must still obtain certain personal information from the person sufficient for identification, including at least the person’s name and current address.

Because this bill creates a new crime or revises a penalty for an existing crime,

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the Joint Review Committee on Criminal Penalties may be requested to prepare a report.

For further information see the state and local fiscal estimate, which will be printed as an appendix to this bill.

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

1 **SECTION 1.** 59.54 (25) (a) (intro.) of the statutes is amended to read:

2 59.54 **(25)** (a) (intro.) The board may enact and enforce an ordinance to
3 prohibit the possession of marijuana, as defined in s. 961.01 (14), subject to the
4 exceptions in s. 961.41 (3g) (intro.), ~~and. The board may provide a forfeiture for a~~
5 ~~violation of the ordinance; except that if.~~ If a complaint is issued regarding an
6 allegation of possession of more than ~~25~~ 56 grams of marijuana, ~~or possession of any~~
7 ~~amount of marijuana following a conviction in this state for possession of~~
8 ~~marijuana,~~ the subject of the complaint may not be prosecuted under this
9 subsection for the same action that is the subject of the complaint unless all of the
10 following occur:

11 **SECTION 2.** 66.0107 (1) (bm) of the statutes is amended to read:

12 66.0107 **(1)** (bm) Enact and enforce an ordinance to prohibit the possession of
13 marijuana, as defined in s. 961.01 (14), subject to the exceptions in s. 961.41 (3g)
14 (intro.), and provide a forfeiture for a violation of the ordinance; ~~except that if.~~ If a
15 complaint is issued regarding an allegation of possession of more than ~~25~~ 56 grams
16 of marijuana, ~~or possession of any amount of marijuana following a conviction in~~
17 ~~this state for possession of marijuana,~~ the subject of the complaint may not be
18 prosecuted under this paragraph for the same action that is the subject of the

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1 complaint unless the charges are dismissed or the district attorney declines to
2 prosecute the case.

3 **SECTION 3.** 66.0108 of the statutes is created to read:

4 **66.0108 Discretion in processing certain marijuana violations.** (1) In
5 this section, “law enforcement officer” has the meaning given in s. 165.85 (2) (c).

6 (2) In processing a person for possession or attempted possession of not more
7 than 28 grams of marijuana, as defined in s. 961.01 (14), in violation of s. 961.41
8 (3g) (e) 1., for violation of an ordinance prohibiting the possession of marijuana
9 under s. 59.54 (25) or 66.0107 (1) (bm), or for a violation under s. 961.573 (1m) or
10 961.574 (1m), a law enforcement officer may exercise discretion regarding what, if
11 any, standard procedures to complete, including determining whether or not to take
12 the person to jail, complete fingerprinting, or have a formal police photograph
13 taken. Notwithstanding the use of discretion otherwise permitted under this
14 section, a law enforcement officer shall obtain sufficient personal information for
15 identification, including at least the person’s name and current address.

16 **SECTION 4.** 778.25 (1) (a) 2m. of the statutes is created to read:

17 778.25 (1) (a) 2m. Under s. 961.41 (3g) (e) 1., 961.573 (1m), or 961.574 (1m) or
18 a local ordinance under s. 59.54 (25) (a) or 66.0107 (1) (bm).

19 **SECTION 5.** 961.41 (3g) (c) of the statutes is amended to read:

20 961.41 (3g) (c) *Cocaine and cocaine base.* If a person possesses or attempts to
21 possess cocaine or cocaine base, or a controlled substance analog of cocaine or
22 cocaine base, the person shall be fined not more than \$5,000 and may be imprisoned
23 for not more than one year in the county jail upon a first conviction and is guilty of

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1 a Class I felony for a 2nd or subsequent offense. For purposes of this paragraph, an
2 offense is considered a 2nd or subsequent offense if, prior to the offender's
3 conviction of the offense, the offender has at any time been convicted of any felony or
4 misdemeanor under this chapter, except for a misdemeanor under par. (e) 2., or
5 under any statute of the United States or of any state relating to controlled
6 substances, controlled substance analogs, narcotic drugs, marijuana, or depressant,
7 stimulant, or hallucinogenic drugs, except that, if the statute relates to marijuana
8 possession, only felonies or misdemeanors involving more than 28 grams may be
9 counted.

10 **SECTION 6.** 961.41 (3g) (d) of the statutes is amended to read:

11 961.41 (3g) (d) *Certain hallucinogenic and stimulant drugs.* If a person
12 possesses or attempts to possess lysergic acid diethylamide, phencyclidine,
13 amphetamine, 3,4-methylenedioxymethamphetamine, methcathinone, cathinone,
14 N-benzylpiperazine, a substance specified in s. 961.14 (4) (a) to (h), (m) to (q), (sm),
15 (u) to (xb), or (7) (L), psilocin, or psilocybin, or a controlled substance analog of
16 lysergic acid diethylamide, phencyclidine, amphetamine, 3,4-
17 methylenedioxymethamphetamine, methcathinone, cathinone, N-benzylpiperazine,
18 a substance specified in s. 961.14 (4) (a) to (h), (m) to (q), (sm), (u) to (xb), or (7) (L),
19 psilocin, or psilocybin, the person may be fined not more than \$5,000 or imprisoned
20 for not more than one year in the county jail or both upon a first conviction and is
21 guilty of a Class I felony for a 2nd or subsequent offense. For purposes of this
22 paragraph, an offense is considered a 2nd or subsequent offense if, prior to the
23 offender's conviction of the offense, the offender has at any time been convicted of

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1 any felony or misdemeanor under this chapter, except for a misdemeanor under par.
2 (e) 2., or under any statute of the United States or of any state relating to controlled
3 substances, controlled substance analogs, narcotic drugs, marijuana,-or depressant,
4 stimulant, or hallucinogenic drugs, except that, if the statute relates to marijuana
5 possession, only misdemeanors or felonies involving more than 56 grams may be
6 counted.

7 **SECTION 7.** 961.41 (3g) (e) of the statutes is renumbered 961.41 (3g) (e) 1. and
8 amended to read:

9 961.41 (3g) (e) 1. If a person possesses or attempts to possess not more than
10 28 grams of tetrahydrocannabinols included under s. 961.14 (4) (t), or a controlled
11 substance analog of tetrahydrocannabinols, the person may be subject to a
12 forfeiture of not more than \$100.

13 2. If a person possesses or attempts to possess more than 28 grams but not
14 more than 56 grams of tetrahydrocannabinols included under s. 961.14 (4) (t), or a
15 controlled substance analog of tetrahydrocannabinols, the person may be fined not
16 more than \$1,000 or imprisoned for not more than ~~6 months~~ 90 days or both.

17 3. If a person possesses or attempts to possess more than 56 grams of
18 tetrahydrocannabinols included under s. 961.14 (4) (t), or a controlled substance
19 analog of tetrahydrocannabinols, the person may be fined not more than \$1,000 or
20 imprisoned for not more than 6 months or both upon a first conviction and is guilty
21 of a Class I felony for a 2nd or subsequent offense. For purposes of this paragraph
22 subdivision, an offense is considered a 2nd or subsequent offense if, prior to the

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1 offender's conviction of the offense, the offender has at any time been convicted of
2 any of the following:

3 a. A felony or misdemeanor under this chapter or, except that, if the felony or
4 misdemeanor relates to marijuana possession, only felonies or misdemeanors
5 involving more than 56 grams may be counted.

6 b. A felony or misdemeanor under any statute of the United States or of any
7 state relating to controlled substances, controlled substance analogs, narcotic
8 drugs, marijuana, or depressant, stimulant, or hallucinogenic drugs, except that, if
9 the felony or misdemeanor relates to marijuana possession, only felonies or
10 misdemeanors involving more than 56 grams may be counted.

11 **SECTION 8.** 961.41 (3g) (em) of the statutes is amended to read:

12 961.41 (3g) (em) *Synthetic cannabinoids*. If a person possesses or attempts to
13 possess a controlled substance specified in s. 961.14 (4) (tb), or a controlled
14 substance analog of a controlled substance specified in s. 961.14 (4) (tb), the person
15 may be fined not more than \$1,000 or imprisoned for not more than ~~6 months~~ 90
16 days or both upon a first conviction and is guilty of a Class I felony for a 2nd or
17 subsequent offense. For purposes of this paragraph, an offense is considered a 2nd
18 or subsequent offense if, prior to the offender's conviction of the offense, the
19 offender has at any time been convicted of any felony or misdemeanor under this
20 chapter, except for a misdemeanor under par. (e) 2., or under any statute of the
21 United States or of any state relating to controlled substances, controlled substance
22 analogs, narcotic drugs, marijuana, or depressant, stimulant, or hallucinogenic

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1 drugs, except that, if the statute relates to marijuana possession, only felonies or
2 misdemeanors involving more than 56 grams may be counted.

3 **SECTION 9.** 961.47 (1) of the statutes is amended to read:

4 961.47 (1) Whenever any person who has not previously been convicted of any
5 offense under this chapter, or of any offense under any statute of the United States
6 or of any state or of any county ordinance relating to controlled substances or
7 controlled substance analogs, narcotic drugs, marijuana or stimulant, depressant
8 or hallucinogenic drugs, pleads guilty to or is found guilty of possession or
9 attempted possession of a controlled substance or controlled substance analog
10 under s. 961.41 (3g) (b), the court, without entering a judgment of guilt and with
11 the consent of the accused, may defer further proceedings and place him or her on
12 probation upon terms and conditions. For purposes of this subsection, a conviction
13 does not count as a previous conviction if it was for an offense under s. 961.41 (3g)
14 (e) 1. or 2., 961.573 (1m), or 961.574 (1m) or, if the conviction was for marijuana
15 possession, if the conviction involved not more than 56 grams. Upon violation of a
16 term or condition, the court may enter an adjudication of guilt and proceed as
17 otherwise provided. Upon fulfillment of the terms and conditions, the court shall
18 discharge the person and dismiss the proceedings against him or her. Discharge
19 and dismissal under this section shall be without adjudication of guilt and is not a
20 conviction for purposes of disqualifications or disabilities imposed by law upon
21 conviction of a crime, including the additional penalties imposed for 2nd or
22 subsequent convictions under s. 961.48. There may be only one discharge and
23 dismissal under this section with respect to any person.

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1 **SECTION 10.** 961.48 (3) of the statutes is amended to read:

2 961.48 **(3)** For purposes of this section, a felony offense under this chapter is
3 considered a 2nd or subsequent offense if, prior to the offender's conviction of the
4 offense, the offender has at any time been convicted of any felony or misdemeanor
5 offense under this chapter, except for a misdemeanor under s. 961.41 (3g) (e) 2., or
6 under any statute of the United States or of any state relating to controlled
7 substances or controlled substance analogs, narcotic drugs, marijuana or
8 depressant, stimulant or hallucinogenic drugs, except that, if the statute relates to
9 marijuana possession, only felonies or misdemeanors involving more than 56 grams
10 may be counted.

11 **SECTION 11.** 961.571 (1) (a) (intro.), 1., 2., 3., 4., 5., 6., 8., 9. and 10. of the
12 statutes are renumbered 961.571 (1) (ag) (intro.), 1., 2., 3., 4., 5., 6., 7., 8. and 9.

13 **SECTION 12.** 961.571 (1) (a) 7. of the statutes is renumbered 961.571 (1) (c) 1.

14 **SECTION 13.** 961.571 (1) (a) 11. (intro.) of the statutes is renumbered 961.571
15 (1) (ag) 11. (intro.) and amended to read:

16 961.571 **(1)** (ag) 11. (intro.) Objects used, designed for use or primarily
17 intended for use in ingesting, inhaling or otherwise introducing ~~marijuana~~, cocaine,
18 hashish, or hashish oil into the human body, such as:

19 **SECTION 14.** 961.571 (1) (a) 11. a., b., c., d., f., g., h., i., j. and m. of the statutes
20 are renumbered 961.571 (1) (ag) 11. a., b., c., d., e., f., g., h., i. and j.

21 **SECTION 15.** 961.571 (1) (a) 11. e., k. and L. of the statutes are renumbered
22 961.571 (1) (c) 2. a., b. and c.

23 **SECTION 16.** 961.571 (1) (ac) of the statutes is created to read:

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1 961.571 (1) (ac) Notwithstanding s. 961.01 (4), “controlled substance” does not
2 include tetrahydrocannabinols or marijuana.

3 **SECTION 17.** 961.571 (1) (b) 5. of the statutes is created to read:

4 961.571 (1) (b) 5. Marijuana paraphernalia.

5 **SECTION 18.** 961.571 (1) (c) (intro.) and 2. (intro.) of the statutes are created to
6 read:

7 961.571 (1) (c) (intro.) “Marijuana paraphernalia” means all equipment,
8 products and materials of any kind that are used, designed for use or primarily
9 intended for use in planting, propagating, cultivating, growing, harvesting,
10 manufacturing, compounding, converting, producing, processing, preparing,
11 testing, analyzing, packaging, repackaging, storing, containing, concealing,
12 ingesting, inhaling or otherwise introducing into the human body
13 tetrahydrocannabinols or marijuana in violation of this chapter. “Marijuana
14 paraphernalia” includes, but is not limited to, any of the following:

15 2. (intro.) Objects used, designed for use or primarily intended for use in
16 ingesting, inhaling or otherwise introducing marijuana into the human body, such
17 as:

18 **SECTION 19.** 961.572 (1m) of the statutes is created to read:

19 961.572 (1m) In determining whether an object is marijuana paraphernalia,
20 a court or other authority shall consider, in addition to all other legally relevant
21 factors, the following:

22 (a) Statements by an owner or by anyone in control of the object concerning its
23 use.

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1 (b) The proximity of the object, in time and space, to a direct violation of this
2 chapter.

3 (c) The proximity of the object to marijuana.

4 (d) The existence of any residue of marijuana on the object.

5 (e) Direct or circumstantial evidence of the intent of an owner, or of anyone in
6 control of the object, to deliver it to persons whom he or she knows intend to use the
7 object to facilitate a violation of this chapter; the innocence of an owner, or of anyone
8 in control of the object, as to a direct violation of this chapter shall not prevent a
9 finding that the object is designed for use or primarily intended for use as
10 marijuana paraphernalia.

11 (f) Instructions, oral or written, provided with the object concerning its use.

12 (g) Descriptive materials accompanying the object that explain or depict its
13 use.

14 (h) Local advertising concerning its use.

15 (i) The manner in which the object is displayed for sale.

16 (j) Whether the owner, or anyone in control of the object, is a legitimate
17 supplier of like or related items to the community, such as a licensed distributor or
18 dealer of tobacco products.

19 (k) The existence and scope of legitimate uses for the object in the community.

20 (L) Expert testimony concerning its use.

21 **SECTION 20.** 961.573 (title) of the statutes is amended to read:

22 **961.573 (title) Possession of drug or marijuana paraphernalia.**

23 **SECTION 21.** 961.573 (1m) of the statutes is created to read:

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1 961.573 **(1m)** No person may use, or possess with the primary intent to use,
2 marijuana paraphernalia to plant, propagate, cultivate, grow, harvest,
3 manufacture, compound, convert, produce, process, prepare, test, analyze, pack,
4 repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the
5 human body marijuana or tetrahydrocannabinol in violation of this chapter. Any
6 person who violates this subsection may be subject to a civil forfeiture of no more
7 than \$10.

8 **SECTION 22.** 961.574 (title) of the statutes is amended to read:

9 **961.574** (title) **Manufacture or delivery of drug or marijuana**
10 **paraphernalia.**

11 **SECTION 23.** 961.574 (1m) of the statutes is created to read:

12 961.574 **(1m)** No person may deliver, possess with intent to deliver, or
13 manufacture with intent to deliver, marijuana paraphernalia, knowing that it will
14 be primarily used to plant, propagate, cultivate, grow, harvest, manufacture,
15 compound, convert, produce, process, prepare, test, analyze, pack, repack, store,
16 contain, conceal, inject, ingest, inhale or otherwise introduce into the human body
17 marijuana or tetrahydrocannabinol in violation of this chapter. Any person who
18 violates this subsection may be subject to a civil forfeiture of not more than \$10.

19 **SECTION 24.** 961.577 of the statutes is amended to read:

20 **961.577 Municipal ordinances.** Nothing in this subchapter precludes a
21 city, village, or town from prohibiting conduct that is the same as that prohibited by
22 s. 961.573 (1), (1m), or (2), 961.574 (1), (1m), or (2), or 961.575 (1) or (2) or a county

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1 from prohibiting conduct that is the same as that prohibited by s. 961.573 (1), (1m),
2 or (2), 961.574 (1), (1m), or (2), or 961.575 (1) or (2).

3 (END)