



2005 ASSEMBLY BILL 255

March 18, 2005 – Introduced by Representatives JESKEWITZ, KESSLER, GRIGSBY, A. WILLIAMS, FIELDS, YOUNG, TOLES, BENEDICT, TURNER, POCAN, COLON and BERCEAU. Referred to Committee on Criminal Justice and Homeland Security.

1 **AN ACT to repeal** 961.48 (3); **to renumber and amend** 961.41 (3g) (e); **to amend**
2 938.17 (2) (c), 938.17 (2) (d), 938.17 (2) (e), 938.34 (14r) (a), 938.34 (14s) (a)
3 (intro.), 938.344 (2e) (b), 938.344 (3), 961.41 (3g) (c), 961.41 (3g) (d), 961.475,
4 961.48 (1) (intro.), 961.48 (2m) (a), 961.48 (2m) (b) 1., 961.48 (2m) (b) 2. and
5 961.495; and **to create** 938.344 (2e) (am), 961.01 (4t), 961.01 (20m) and 961.41
6 (3g) (e) 1. of the statutes; **relating to:** possession of marijuana and providing
7 a penalty.

Analysis by the Legislative Reference Bureau

Current law prohibits the possession or attempted possession of marijuana (tetrahydrocannabinol). In general, a person who violates this prohibition is guilty of a misdemeanor and may be fined not more than \$1,000 or imprisoned for not more than six months or both. But if the person is convicted of possessing or attempting to possess marijuana after having been convicted of any other controlled substance crime, the person is guilty of a Class I felony. He or she may then be fined up to \$10,000 or sentenced to a term of imprisonment of up to three and one-half years (which, if the sentence is for more than one year, includes a term of confinement and a term of extended supervision) or both. More severe penalties apply if the person is convicted of possessing or attempting to possess marijuana with intent to manufacture, distribute, or deliver it.

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Current law also authorizes counties and municipalities to enact ordinances prohibiting the possession of 25 grams or less of marijuana. A violation of such an ordinance is a civil offense punishable by a forfeiture (a civil fine). The ordinance, however, cannot be used to prosecute a person who has previously been convicted of possessing marijuana.

This bill converts certain possession-of-marijuana offenses under state law from misdemeanors into civil offenses. Under the bill, if a person possesses or attempts to possess 25 grams or less of marijuana, the person may be required to forfeit not more than \$1,000. Existing criminal penalties, however, still apply if: 1) the person has previously been found to have committed a civil possession-of-marijuana offense under state law; 2) the person has previously been convicted of a separate controlled substance crime; or 3) the person has previously been convicted of a felony.

Similarly, for juveniles, the bill converts possession or an attempt to possess 25 grams or less of marijuana from a delinquent act into a civil law violation, which is punishable by suspension of the juvenile's operating privilege for not less than six months nor more than five years and by a forfeiture of not more than \$50 or the juvenile's participation in community service work or both. Existing delinquency dispositions, however, still apply if the juvenile has previously been found to have possessed or attempted to possess 25 grams or less of marijuana, been convicted of or adjudicated delinquent for a separate controlled substance crime, or been convicted of or adjudicated delinquent for a felony.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

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.** 938.17 (2) (c) of the statutes is amended to read:
2 938.17 (2) (c) The citation procedures described in ch. 800 shall govern
3 proceedings involving juveniles in municipal court, except that this chapter shall
4 govern the taking and holding of a juvenile in custody and par. (cg) shall govern the
5 issuing of a summons to the juvenile's parent, guardian, or legal custodian. When
6 a juvenile is before the court assigned to exercise jurisdiction under this chapter and
7 ch. 48 upon a citation alleging the juvenile to have violated a civil law or municipal

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1 ordinance, the procedures specified in s. 938.237 shall apply. If a citation is issued
2 to a juvenile, the issuing agency shall notify the juvenile's parent, guardian, and
3 legal custodian within 7 days. The agency issuing a citation to a juvenile who is 12
4 to 15 years of age for a violation of s. 125.07 (4) (a) or (b), 125.085 (3) (b), 125.09 (2),
5 961.41 (3g) (e) 1., 961.573 (2), 961.574 (2), or 961.575 (2) or an ordinance conforming
6 to one of those statutes shall send a copy to an intake worker under s. 938.24 for
7 informational purposes only.

8 **SECTION 2.** 938.17 (2) (d) of the statutes is amended to read:

9 938.17 (2) (d) If a municipal court finds that the juvenile violated a municipal
10 ordinance other than an ordinance enacted under s. 118.163 or an ordinance that
11 conforms to s. 125.07 (4) (a) or (b), 125.085 (3) (b), 125.09 (2), 961.41 (3g) (e) 1.,
12 961.573 (2), 961.574 (2), or 961.575 (2), the court shall enter any of the dispositional
13 orders permitted under s. 938.343 that are authorized under par. (cm). If a juvenile
14 fails to pay the forfeiture imposed by the municipal court, the court may not impose
15 a jail sentence but may suspend any license issued under ch. 29 for not less than 30
16 days nor more than 5 years, or suspend the juvenile's operating privilege, as defined
17 in s. 340.01 (40), for not more than 2 years. If a court suspends a license or privilege
18 under this section, the court shall immediately take possession of the applicable
19 license and forward it to the department that issued the license, together with the
20 notice of suspension clearly stating that the suspension is for failure to pay a
21 forfeiture imposed by the court. If the forfeiture is paid during the period of
22 suspension, the court shall immediately notify the department, which shall
23 thereupon return the license to the person.

24 **SECTION 3.** 938.17 (2) (e) of the statutes is amended to read:

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1 938.17 (2) (e) If a municipal court finds that a juvenile violated a municipal
2 ordinance that conforms to s. 125.07 (4) (a) or (b), 125.085 (3) (b), 125.09 (2), 961.41
3 (3g) (e) 1., 961.573 (2), 961.574 (2), or 961.575 (2), the court shall enter a dispositional
4 order under s. 938.344 that is authorized under par. (cm).

5 **SECTION 4.** 938.34 (14r) (a) of the statutes is amended to read:

6 938.34 (14r) (a) In addition to any other dispositions imposed under this
7 section, if the juvenile is ~~found to have violated~~ adjudicated delinquent on the basis
8 of a violation of ch. 961, the court shall suspend the juvenile's operating privilege, as
9 defined in s. 340.01 (40), for not less than 6 months nor more than 5 years. The court
10 shall immediately take possession of any suspended license and forward it to the
11 department of transportation together with the notice of suspension clearly stating
12 that the suspension or revocation is for a violation of ch. 961.

13 **SECTION 5.** 938.34 (14s) (a) (intro.) of the statutes is amended to read:

14 938.34 (14s) (a) (intro.) In addition to any other dispositions imposed under
15 this section, if the juvenile is ~~found to have violated~~ adjudicated delinquent on the
16 basis of a violation of s. 961.41 (3g), the court shall order one of the following
17 penalties:

18 **SECTION 6.** 938.344 (2e) (am) of the statutes is created to read:

19 938.344 (2e) (am) If a court finds a juvenile committed a violation under s.
20 961.41 (3g) (e) 1. or a local ordinance that strictly conforms to that statute, the court
21 shall suspend the juvenile's operating privilege, as defined in s. 340.01 (40), for not
22 less than 6 months nor more than 5 years and, in addition, shall order a forfeiture
23 of not more than \$50 or the juvenile's participation in a supervised work program or
24 other community service work under s. 938.34 (5g) or both. This paragraph does not
25 apply if the juvenile violates s. 961.41 (3g) (e) 1. or a local ordinance that strictly

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1 conforms to that statute after having been found to have committed a violation
2 punishable under this paragraph, after having been convicted of or adjudicated
3 delinquent for a 2nd or subsequent controlled substance crime, as defined in s. 961.01
4 (20m), or after having been convicted of or adjudicated delinquent for any felony. A
5 violation punished under this paragraph counts as a violation for purposes of s.
6 938.34 (14s) (a).

7 3. For a violation committed within 12 months of 2 or more previous violations,
8 a forfeiture of not more than \$500 or the juvenile's participation in a supervised work
9 program or other community service work under s. 938.34 (5g) or both.

10 **SECTION 7.** 938.344 (2e) (b) of the statutes is amended to read:

11 938.344 (2e) (b) Whenever a court suspends a juvenile's operating privilege
12 under this subsection, the court shall immediately take possession of any suspended
13 license and forward it to the department of transportation, together with the notice
14 of suspension clearly stating that the suspension is for a violation under s. 961.41
15 (3g) (e) 1., 961.573 (2), 961.574 (2), or 961.575 (2), or a local ordinance that strictly
16 conforms to one of those statutes.

17 **SECTION 8.** 938.344 (3) of the statutes is amended to read:

18 938.344 (3) If the juvenile alleged to have committed the violation is within 3
19 months of his or her 17th birthday, the court assigned to exercise jurisdiction under
20 this chapter and ch. 48 may, at the request of the district attorney or on its own
21 motion, dismiss the citation without prejudice and refer the matter to the district
22 attorney for prosecution under s. 125.07 (4). The juvenile is entitled to a hearing only
23 on the issue of his or her age. This subsection does not apply to violations under s.
24 961.41 (3g) (e) 1., 961.573 (2), 961.574 (2), or 961.575 (2) or a local ordinance that
25 strictly conforms to one of those statutes.

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1 **SECTION 9.** 961.01 (4t) of the statutes is created to read:

2 961.01 (4t) “Controlled substance crime” means a felony or misdemeanor
3 committed under this chapter or under any statute of the United States or of any
4 state relating to controlled substances, controlled substance analogs, narcotic drugs,
5 marijuana, or depressant, stimulant, or hallucinogenic drugs.

6 **SECTION 10.** 961.01 (20m) of the statutes is created to read:

7 961.01 (20m) “Second or subsequent controlled substance crime” means a
8 controlled substance crime if, prior to the offender’s conviction for the crime, the
9 offender has at any time been convicted of another controlled substance crime.

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

11 961.41 (3g) (c) *Cocaine and cocaine base.* If a person ~~possess~~ possesses or
12 attempts to possess cocaine or cocaine base, or a controlled substance analog of
13 cocaine or cocaine base, the person shall be fined not more than \$5,000 and may be
14 imprisoned for not more than one year in the county jail upon a first conviction and
15 is guilty of a Class I felony ~~for~~ if the offense is a 2nd or subsequent offense. ~~For~~
16 ~~purposes of this paragraph, an offense is considered a 2nd or subsequent offense if,~~
17 ~~prior to the offender’s conviction of the offense, the offender has at any time been~~
18 ~~convicted of any felony or misdemeanor under this chapter or under any statute of~~
19 ~~the United States or of any state relating to controlled substances, controlled~~
20 ~~substance analogs, narcotic drugs, marijuana, or depressant, stimulant, or~~
21 ~~hallucinogenic drugs~~ controlled substance crime.

22 **SECTION 12.** 961.41 (3g) (d) of the statutes is amended to read:

23 961.41 (3g) (d) *Certain hallucinogenic and stimulant drugs.* If a person
24 possesses or attempts to possess lysergic acid diethylamide, phencyclidine,
25 amphetamine, methcathinone, psilocin or psilocybin, or a controlled substance

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1 analog of lysergic acid diethylamide, phencyclidine, amphetamine, methcathinone,
2 psilocin or psilocybin, the person may be fined not more than \$5,000 or imprisoned
3 for not more than one year in the county jail or both upon a first conviction and is
4 guilty of a Class I felony ~~for if the offense is a 2nd or subsequent offense. For purposes~~
5 ~~of this paragraph, an offense is considered a 2nd or subsequent offense if, prior to the~~
6 ~~offender's conviction of the offense, the offender has at any time been convicted of any~~
7 ~~felony or misdemeanor under this chapter or under any statute of the United States~~
8 ~~or of any state relating to controlled substances, controlled substance analogs,~~
9 ~~narcotic drugs, marijuana, or depressant, stimulant, or hallucinogenic drugs~~
10 controlled substance crime.

11 **SECTION 13.** 961.41 (3g) (e) of the statutes is renumbered 961.41 (3g) (e) (intro.)
12 and amended to read:

13 961.41 (3g) (e) (intro.) If a person possesses or attempts to possess
14 tetrahydrocannabinols included under s. 961.14 (4) (t), or a controlled substance
15 analog of tetrahydrocannabinols, the person may be penalized as follows:

16 2. If subd. 1. does not apply and the offense is not a 2nd or subsequent controlled
17 substance crime, the person may be fined not more than \$1,000 or imprisoned for not
18 more than 6 months or both upon a first conviction and.

19 3. If subd. 1. does not apply and the offense is a 2nd or subsequent controlled
20 substance crime, the person is guilty of a Class I felony for a 2nd or subsequent
21 offense. For purposes of this paragraph, an offense is considered a 2nd or subsequent
22 offense if, prior to the offender's conviction of the offense, the offender has at any time
23 been convicted of any felony or misdemeanor under this chapter or under any statute
24 of the United States or of any state relating to controlled substances, controlled

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1 ~~substance analogs, narcotic drugs, marijuana, or depressant, stimulant, or~~
2 ~~hallucinogenic drugs.~~

3 **SECTION 14.** 961.41 (3g) (e) 1. of the statutes is created to read:

4 961.41 (3g) (e) 1. If the person possesses or attempts to possess 25 grams or less
5 of tetrahydrocannabinols included under s. 961.14 (4) (t), or 25 grams or less of a
6 controlled substance analog of tetrahydrocannabinols, the person may be required
7 to forfeit not more than \$1,000. This subdivision does not apply if the person violates
8 this subdivision after having been found to have committed a violation punishable
9 under this subdivision, after having been convicted of a 2nd or subsequent controlled
10 substance crime, or after having been convicted of any felony.

11 **SECTION 15.** 961.475 of the statutes is amended to read:

12 **961.475 Treatment option.** Whenever any person pleads guilty to or is found
13 guilty of possession or attempted possession of a controlled substance or controlled
14 substance analog under s. 961.41 (3g), the court may, upon request of the person and
15 with the consent of a treatment facility with special inpatient or outpatient programs
16 for the treatment of drug dependent persons, allow the person to enter the treatment
17 programs voluntarily for purposes of treatment and rehabilitation. Treatment shall
18 be for the period the treatment facility feels is necessary and required, but shall not
19 exceed the maximum sentence allowable unless the person consents to the continued
20 treatment. At the end of the necessary and required treatment, with the consent of
21 the court, the person may be released from sentence. If treatment efforts are
22 ineffective or the person ceases to cooperate with treatment rehabilitation efforts,
23 the person may be remanded to the court for completion of sentencing. This section
24 does not apply to an offense punishable under s. 961.41 (3g) (e) 1.

25 **SECTION 16.** 961.48 (1) (intro.) of the statutes is amended to read:

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1 961.48 (1) (intro.) If a person is charged under sub. (2m) with a felony offense
2 under this chapter that is a 2nd or subsequent ~~offense as provided under sub. (3)~~
3 controlled substance crime and the person is convicted of that ~~2nd or subsequent~~
4 offense, the maximum term of imprisonment for the offense may be increased as
5 follows:

6 **SECTION 17.** 961.48 (2m) (a) of the statutes is amended to read:

7 961.48 (2m) (a) Whenever a person charged with a felony offense under this
8 chapter may be subject to a conviction for a 2nd or subsequent ~~offense~~ controlled
9 substance crime, he or she is not subject to an enhanced penalty under sub. (1) unless
10 any applicable prior convictions are alleged in the complaint, indictment or
11 information or in an amended complaint, indictment or information that is filed
12 under par. (b) 1. A person is not subject to an enhanced penalty under sub. (1) for
13 an offense if an allegation of applicable prior convictions is withdrawn by an
14 amended complaint filed under par. (b) 2.

15 **SECTION 18.** 961.48 (2m) (b) 1. of the statutes is amended to read:

16 961.48 (2m) (b) 1. Charges an offense as a 2nd or subsequent ~~offense~~ controlled
17 substance crime under this chapter by alleging any applicable prior convictions.

18 **SECTION 19.** 961.48 (2m) (b) 2. of the statutes is amended to read:

19 961.48 (2m) (b) 2. Withdraws the charging of an offense as a 2nd or subsequent
20 ~~offense~~ controlled substance crime under this chapter by withdrawing an allegation
21 of applicable prior convictions.

22 **SECTION 20.** 961.48 (3) of the statutes is repealed.

23 **SECTION 21.** 961.495 of the statutes is amended to read:

24 **961.495 Possession or attempted possession of a controlled substance**
25 **on or near certain places.** If any person violates s. 961.41 (3g) by possessing or

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1 attempting to possess a controlled substance included in schedule I or II, a controlled
2 substance analog of a controlled substance included in schedule I or II or ketamine
3 or flunitrazepam while in or on the premises of a scattered-site public housing
4 project, while in or on or otherwise within 1,000 feet of a state, county, city, village
5 or town park, a jail or correctional facility, a multiunit public housing project, a
6 swimming pool open to members of the public, a youth center or a community center,
7 while in or on or otherwise within 1,000 feet of any private or public school premises
8 or while in or on or otherwise within 1,000 feet of a school bus, as defined in s. 340.01
9 (56), the court shall, in addition to any other penalties that may apply to the crime,
10 impose 100 hours of community service work for a public agency or a nonprofit
11 charitable organization. The court shall ensure that the defendant is provided a
12 written statement of the terms of the community service order and that the
13 community service order is monitored. Any organization or agency acting in good
14 faith to which a defendant is assigned pursuant to an order under this section has
15 immunity from any civil liability in excess of \$25,000 for acts or omissions by or
16 impacting on the defendant. This section does not apply to an offense punishable
17 under s. 961.41 (3g) (e) 1.

SECTION 22. Initial applicability.

18
19 (1) The renumbering and amendment of section 961.41 (3g) (e) of the statutes
20 and the creation of section 961.41 (3g) (e) 1. of the statutes first apply to offenses
21 committed on the effective date of this subsection.

22 (END)