



## 2009 SENATE BILL 368

October 27, 2009 - Introduced by Senators ERPENBACH, TAYLOR and MILLER, cosponsored by Representatives POCAN, BLACK, ROYS, HILGENBERG, BERCEAU, PARISI, KESSLER, ZEPNICK, DANOU, POPE-ROBERTS, GRIGSBY, PASCH, TOLES and SHERMAN. Referred to Committee on Health, Health Insurance, Privacy, Property Tax Relief, and Revenue.

1     **AN ACT** *to renumber* subchapter IV of chapter 50 [precedes 50.90]; *to renumber*  
2     *and amend* 59.54 (25), 961.55 (8), 968.19 and 968.20 (1); *to amend* 20.435 (6)  
3     (jm), 50.56 (3), 59.54 (25m), 66.0107 (1) (bm), 66.0107 (1) (bp), 146.40 (1) (bo),  
4     146.81 (1) (L), 146.997 (1) (d) 18., 149.14 (3) (nm), 173.12 (1m), 289.33 (3) (d),  
5     349.02 (2) (b) 4., 767.41 (5) (am) (intro.), 961.555 (2) (a), 961.56 (1) and 968.20  
6     (3) (a) and (b); and *to create* 20.435 (1) (gq), 20.435 (1) (jm), subchapter IV of  
7     chapter 50 [precedes 50.60], 59.54 (25) (b) 2., 59.54 (25) (b) 3., 146.44, 767.41 (5)  
8     (d), 767.451 (5m) (d), 961.01 (5m), 961.01 (11v), 961.01 (12v), 961.01 (14c),  
9     961.01 (14g), 961.01 (17k), 961.01 (19m), 961.01 (20hm), 961.01 (20ht), 961.01  
10     (20t), 961.01 (21f), 961.01 (21t), 961.436, 961.55 (8) (b), 961.55 (8) (c), 961.55 (8)  
11     (d), 961.555 (2) (e), 961.555 (2m), 961.5755, 968.072, 968.12 (5), 968.19 (2),  
12     968.20 (1d) and 968.20 (1j) of the statutes; **relating to:** medical use of  
13     marijuana, the regulation of marijuana distribution organizations, requiring

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1 the exercise of rule-making authority, making appropriations, and providing  
2 a penalty.

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***Analysis by the Legislative Reference Bureau******Current prohibitions and penalties***

Current law prohibits the manufacture, distribution, and delivery of marijuana (also known as tetrahydrocannabinols) and the possession of marijuana with intent to manufacture, distribute, or deliver it. Penalties for violating these prohibitions depend on the amount of marijuana involved. If the crime involves 200 grams or less or four or fewer marijuana plants, the person is guilty of a felony and may be fined up to \$10,000, sentenced to a term of imprisonment of up to three years and six months, or both. If the crime involves more than 200 grams but not more than 1,000 grams, or more than four plants but not more than 20 plants, the person is guilty of a felony and may be fined up to \$10,000, sentenced to a term of imprisonment of up to six years, or both. If the crime involves more than 1,000 grams but not more than 2,500 grams, or more than 20 plants but not more than 50 plants, the person is guilty of a felony and may be fined up to \$25,000, sentenced to a term of imprisonment of up to ten years, or both. If the crime involves more than 2,500 grams but not more than 10,000 grams, or more than 50 plants but not more than 200 plants, the person is guilty of a felony and may be fined up to \$25,000, sentenced to a term of imprisonment of up to 12 years and 6 months, or both. If the crime involves more than 10,000 grams or more than 200 plants, the person is guilty of a felony and may be fined up to \$50,000, sentenced to a term of imprisonment of up to 15 years, or both.

Current law also prohibits a person from possessing or attempting to possess marijuana. A person who violates this prohibition and who has no prior drug convictions is guilty of a misdemeanor and may be fined not more than \$1,000, sentenced to the county jail for up to six months, or both. For a second or subsequent offense, a person is guilty of a Class I felony.

Current law also contains certain prohibitions regarding drug paraphernalia, which includes equipment, products, and materials used to produce, distribute, and use controlled substances, including marijuana. Under current law, a person who uses drug paraphernalia or who possesses it with the primary intent to produce, distribute, or use a controlled substance, other than methamphetamine, unlawfully is guilty of a misdemeanor and may be fined not more than \$500, imprisoned for not more than 30 days, or both. A person who delivers drug paraphernalia, possesses it with intent to deliver it, or manufactures it with intent to deliver it, knowing that it will be primarily used to produce, distribute, or use a controlled substance, other than methamphetamine, unlawfully may be fined not more than \$1,000, imprisoned for not more than 90 days, or both.

***Medical necessity defense and immunity from arrest and prosecution***

This bill establishes a medical necessity defense to marijuana-related prosecutions and forfeiture actions. A person having or undergoing a debilitating medical condition or treatment (qualifying patient) may invoke this defense. A

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debilitating medical condition or treatment means any of the following: 1) cancer, glaucoma, AIDS, a positive HIV test, Crohn's disease, a Hepatitis C virus infection, Alzheimer's disease, Amyotrophic Lateral Sclerosis, nail patella syndrome, Ehlers-Danlos Syndrome, post-traumatic stress disorder, or the treatment of these conditions; 2) a chronic or debilitating disease or medical condition, or the treatment of such a disease or condition, that causes wasting away, severe pain, severe nausea, seizures, or severe and persistent muscle spasms; or 3) any other medical condition or treatment for a medical condition designated as a debilitating medical condition or treatment in rules promulgated by the Department of Health Services (DHS).

A qualifying patient may invoke this defense if he or she acquires, possesses, cultivates, transports, or uses marijuana to alleviate the symptoms or effects of his or her debilitating medical condition or treatment, but only if no more than the maximum authorized amount of marijuana (that is, 12 marijuana plants and three ounces — approximately 85 grams — of marijuana leaves or flowers) is involved. If a person has obtained a valid registry identification card from DHS or a valid out-of-state registry identification card (see ***Registry and distribution centers for medical users of marijuana*** below) or has a written certification from his or her physician documenting that the person has or is undergoing a debilitating medical condition or treatment and that the potential benefits to the person of using marijuana outweigh the health risks involved, the person is presumed to have this defense if no more than the maximum authorized amount of marijuana is involved.

The bill also prohibits the arrest or prosecution of a qualifying patient who acquires, possesses, cultivates, transports, or uses marijuana to alleviate the symptoms or effects of his or her debilitating medical condition or treatment if the person possesses a valid registry identification card, a valid out-of-state registry identification card, or a written certification. This prohibition, however, applies only if no more than the maximum authorized amount of marijuana is involved. In addition, the bill prohibits the arrest or prosecution of or the imposition of any penalty on a physician who provides a written certification to a person in good faith.

The defense provided under the bill and the prohibition on arrest and prosecution contained in the bill do not apply if the person possesses or attempts to possess marijuana and if: 1) while under the influence of marijuana, the person drives or operates a motor vehicle; 2) while under the influence of marijuana, the person operates heavy machinery or engages in any other conduct that endangers the health or well-being of another person; or 3) the person smokes marijuana on a bus, at his or her workplace, on school premises, in an adult or juvenile correctional facility or jail, at a public park, beach, or recreation center, or at a youth center. In addition, if the putative qualifying patient is under 18 years of age, the defense provided under the bill and the prohibition on arrest and prosecution contained in the bill apply only if the person's parent, guardian, or legal custodian agrees to serve as a primary caregiver for the person. The bill defines a primary caregiver as a person who is at least 18 years old and who has agreed to be responsible for managing a qualifying patient's medical use of marijuana.

The defense provided under the bill and the prohibition on arrest and prosecution contained in the bill apply also to a primary caregiver for any qualifying

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patient, if the primary caregiver acquires, possesses, cultivates, transfers, or transports marijuana to facilitate the qualifying patient's medical use of it. The defense and the prohibition apply to the primary caregiver only if it is not practicable for the qualifying patient to acquire, possess, cultivate, or transport marijuana independently or if the qualifying patient is under 18. The defense and the prohibition apply also to offenses involving drug paraphernalia if the qualifying patient uses the drug paraphernalia for the medical use of marijuana.

***Registry and distribution centers for medical users of marijuana***

The bill requires DHS to establish a registry for medical users of marijuana. Under the bill, a person claiming to be a qualifying patient may apply for a registry identification card by submitting to DHS a signed application, accompanied by a written certification and a registration fee of not more than \$150. DHS must verify the information and issue the person a registry identification card. A qualifying patient and one of his or her primary caregivers may also jointly apply for a registry identification card for the primary caregiver. DHS may not disclose that it has issued to a person a registry identification card, or information from an application for one, except to a law enforcement agency for the purpose of verifying that a person possesses a valid registry identification card. A registry identification card is valid for one year, unless revoked sooner by DHS based on a change of circumstances, and may be renewed. This bill also requires DHS to promulgate a rule listing any state, district, commonwealth, territory, or insular possession thereof that allows the medical use of marijuana by a visiting qualifying patient or allows a person to assist with a visiting qualifying patient's medical use of marijuana. Under this bill, documents issued by these entities identifying a person as a qualifying patient, primary caregiver, or equivalent are treated the same as registry identification cards issued by DHS.

The bill requires DHS to license and regulate nonprofit corporations, known as compassion centers, that distribute or deliver marijuana or drug paraphernalia or possess or manufacture marijuana or drug paraphernalia with the intent to deliver or distribute to facilitate the medical use of marijuana. This bill prohibits compassion centers from being located less than 500 feet from a school, prohibits a compassion center from distributing to a qualifying patient more than a maximum amount of marijuana, and prohibits an organization from possessing a quantity that exceeds, by an amount determined by DHS, the total maximum amount of marijuana of all of the qualifying patients it serves. An applicant for a license must pay an initial application fee of \$250, and a compassion center must pay an annual fee of \$5,000.

***Effect on federal law***

This bill changes state law regarding marijuana. It does not affect federal law, which generally prohibits persons from manufacturing, delivering, or possessing marijuana and applies to both intrastate and interstate violations.

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

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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.

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

1           **SECTION 1.** 20.435 (1) (gq) of the statutes is created to read:

2           20.435 (1) (gq) *Medical marijuana registry.* All moneys received from  
3 applicants, as defined in s. 146.44 (1) (a), as fees under s. 146.44 (2) (a) 4., for the  
4 purposes of the Medical Marijuana Registry Program under s. 146.44.

5           **SECTION 2.** 20.435 (1) (jm) of the statutes is created to read:

6           20.435 (1) (jm) *Licensing and support services for compassion centers.* All  
7 moneys received under s. 50.64 to regulate and license compassion centers under  
8 subch. IV of ch. 50.

9           **SECTION 3.** 20.435 (6) (jm) of the statutes, as affected by 2008 Wisconsin Act  
10 28, is amended to read:

11           20.435 (6) (jm) *Licensing and support services.* The amounts in the schedule  
12 for the purposes specified in ss. 48.685 (2) (am) and (b) 1., (3) (a) and (b), and (5) (a),  
13 49.45 (47), 50.02 (2), 50.025, 50.031, 50.065 (2) (am) and (b) 1., (3) (a) and (b), and (5),  
14 50.13, 50.135, 50.36 (2), 50.49 (2) (b), 50.495, 50.52 (2) (a), 50.57, 50.981, and 146.40  
15 (4r) (b) and (er), and subch. IV V of ch. 50 and to conduct health facilities plan and  
16 rule development activities, for accrediting nursing homes, convalescent homes, and  
17 homes for the aged, to conduct capital construction and remodeling plan reviews  
18 under ss. 50.02 (2) (b) and 50.36 (2), and for the costs of inspecting, licensing or  
19 certifying, and approving facilities, issuing permits, and providing technical  
20 assistance, that are not specified under any other paragraph in this subsection. All

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1 moneys received under ss. 48.685 (8), 49.45 (42) (c), 49.45 (47) (c), 50.02 (2), 50.025,  
2 50.031 (6), 50.065 (8), 50.13, 50.36 (2), 50.49 (2) (b), 50.495, 50.52 (2) (a), 50.57, 50.93  
3 (1) (c), and 50.981, all moneys received from fees for the costs of inspecting, licensing  
4 or certifying, and approving facilities, issuing permits, and providing technical  
5 assistance, that are not specified under any other paragraph in this subsection, and  
6 all moneys received under s. 50.135 (2) shall be credited to this appropriation  
7 account.

8 **SECTION 4.** 50.56 (3) of the statutes is amended to read:

9 50.56 (3) Notwithstanding sub. (2), insofar as a conflict exists between this  
10 subchapter, or the rules promulgated under this subchapter, and subch. I, II or IV  
11 V, or the rules promulgated under subch. I, II or IV V, the provisions of this  
12 subchapter and the rules promulgated under this subchapter control.

13 **SECTION 5.** Subchapter IV of chapter 50 [precedes 50.60] of the statutes is  
14 created to read:

**CHAPTER 50****SUBCHAPTER IV****DISTRIBUTION CENTERS**

18 **50.60 Definitions.** In this subchapter:

19 (1) “Compassion center” means a licensed organization that grows and  
20 distributes marijuana for the medical use of tetrahydrocannabinols.

21 (2) “Maximum authorized amount” has the meaning given in s. 961.01 (14c).

22 (3) “Medical use of tetrahydrocannabinols” has the meaning given in s. 961.01  
23 (14g).

24 (4) “Qualifying patient” has the meaning given in s. 961.01 (20hm).

25 (5) “Registry identification card” has the meaning given in s. 146.44 (1) (g).

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1           (6) “Treatment team” has the meaning given in s. 961.01 (20t).

2           (7) “Usable marijuana” has the meaning given in s. 961.01 (21f).

3           (8) “Written certification” has the meaning given in s. 961.01 (21t).

4           **50.61 Departmental powers and duties.** The department shall provide  
5           licensing, regulation, record keeping, and security for compassion centers.

6           **50.62 Licensing.** The department shall issue licenses to operate as a  
7           compassion center and shall decide which and how many applicants for a license  
8           receive a license based on all of the following:

9           (1) Convenience to treatment teams and the preferences of treatment teams.

10          (2) The ability of an applicant to provide to treatment teams a sufficient  
11          amount of medical marijuana for the medical use of tetrahydrocannabinols.

12          (3) The experience the applicant has running a nonprofit organization or a  
13          business.

14          (4) The preferences of the governing bodies with jurisdiction over the area in  
15          which the applicants are located.

16          (5) The ability of the applicant to keep records confidential and maintain a safe  
17          and secure facility.

18          (6) The ability of the applicant to abide by the prohibitions under s. 50.63.

19          **50.63 Prohibitions.** The department may not issue a license to, and must  
20          revoke a license of, any organization to which any of the following applies:

21          (1) The organization does not qualify as a nonprofit organization, as defined  
22          in s. 108.02 (19).

23          (2) The organization is located less than 500 feet from a public or private  
24          elementary or secondary school, including a charter school.

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1           **(3)** The compassion center distributes to a treatment team an amount of plants  
2 or ounces of usable marijuana that, in the period of distribution, results in the  
3 treatment team possessing an amount that exceeds the maximum authorized  
4 amount.

5           **(4)** The compassion center possesses an amount of plants or ounces of usable  
6 marijuana that exceeds the combined maximum authorized amount for all of the  
7 treatment teams that use the organization by an amount determined by the  
8 department by rule to be unacceptable.

9           **50.64 Licensing procedure.** **(1)** The application for a license shall:

10           (a) Be in writing on a form provided by the department.

11           (b) Include the licensing application fee under sub. (2) (a).

12           **(2)** (a) A licensing application fee is \$250.

13           (b) The annual fee for a compassion center is \$5,000.

14           **(3)** A compassion center license is valid until revoked. Each license shall be  
15 issued only for the applicant named in the application and may not be transferred  
16 or assigned.

17           **50.65 Distribution of medical marijuana.** **(1)** A compassion center may  
18 deliver or distribute tetrahydrocannabinols or drug paraphernalia to a member of a  
19 treatment team if the compassion center receives a copy of the qualifying patient's  
20 written certification or registry identification card.

21           **(2)** A compassion center may possess or manufacture tetrahydrocannabinols  
22 or drug paraphernalia with the intent to deliver or distribute under sub. (1).

23           **(3)** A compassion center may have 2 locations, one for cultivation and one for  
24 distribution.



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1           **SECTION 6.** Subchapter IV of chapter 50 [precedes 50.90] of the statutes is  
2           renumbered subchapter V of chapter 50.

3           **SECTION 7.** 59.54 (25) of the statutes is renumbered 59.54 (25) (a) and amended  
4           to read:

5           59.54 **(25)** (a) The board may enact and enforce an ordinance to prohibit the  
6           possession of 25 grams or less of marijuana, as defined in s. 961.01 (14), subject to  
7           par. (b) and the exceptions in s. 961.41 (3g) (intro.), and provide a forfeiture for a  
8           violation of the ordinance; except that any person who is charged with possession of  
9           more than 25 grams of marijuana, or who is charged with possession of any amount  
10          of marijuana following a conviction for possession of marijuana, in this state shall  
11          not be prosecuted under this subsection. Any ordinance enacted under this  
12          paragraph shall provide a person who is prosecuted under it with the defenses that  
13          the person has under s. 961.436 to prosecutions under s. 961.41 (1) (h), (1m) (h), or  
14          (3g) (e).

15          (b) 1. Any ordinance enacted under this subsection par. (a) applies in every  
16          municipality within the county.

17          **SECTION 8.** 59.54 (25) (b) 2. of the statutes is created to read:

18          59.54 **(25)** (b) 2. A person may not be prosecuted under an ordinance enacted  
19          under par. (a) if, under s. 968.072 (2) or (4) (b), the person would not be subject to  
20          prosecution under s. 961.41 (3g) (e).

21          **SECTION 9.** 59.54 (25) (b) 3. of the statutes is created to read:

22          59.54 **(25)** (b) 3. No person who is charged with possession of more than 25  
23          grams of marijuana, or who is charged with possession of any amount of marijuana  
24          following a conviction for possession of marijuana, in this state may be prosecuted  
25          under an ordinance enacted under par. (a).

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1           **SECTION 10.** 59.54 (25m) of the statutes is amended to read:

2           59.54 **(25m)** DRUG PARAPHERNALIA. The board may enact an ordinance to  
3 prohibit conduct that is the same as that prohibited by s. 961.573 (1) or (2), 961.574  
4 (1) or (2), or 961.575 (1) or (2) and provide a forfeiture for violation of the ordinance.  
5 Any ordinance enacted under this subsection shall provide a person prosecuted  
6 under it with the defenses that the person has under s. 961.5755 to prosecutions  
7 under s. 961.573 (1), 961.574 (1), or 961.575 (1). A person may not be prosecuted  
8 under an ordinance enacted under this subsection if, under s. 968.072 (3) or (4) (b),  
9 the person would not be subject to prosecution under s. 961.573 (1), 961.574 (1), or  
10 961.575 (1). The board may enforce an ordinance enacted under this subsection in  
11 any municipality within the county.

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

13           66.0107 **(1)** (bm) Enact and enforce an ordinance to prohibit the possession of  
14 25 grams or less of marijuana, as defined in s. 961.01 (14), subject to this paragraph  
15 and the exceptions in s. 961.41 (3g) (intro.), and provide a forfeiture for a violation  
16 of the ordinance; ~~except that any.~~ Any ordinance enacted under this paragraph shall  
17 provide a person prosecuted under it with the defenses that the person has under s.  
18 961.436 to prosecutions under s. 961.41 (1) (h), (1m) (h), or (3g) (e). A person may not  
19 be prosecuted under an ordinance enacted under this paragraph if, under s. 968.072  
20 (2) or (4) (b), the person would not be subject to prosecution under s. 961.41 (3g) (e).  
21 No person who is charged with possession of more than 25 grams of marijuana, or  
22 who is charged with possession of any amount of marijuana following a conviction  
23 for possession of marijuana, in this state shall ~~not~~ may be prosecuted under this  
24 paragraph.

25           **SECTION 12.** 66.0107 (1) (bp) of the statutes is amended to read:

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1           66.0107 (1) (bp) Enact and enforce an ordinance to prohibit conduct that is the  
2 same as that prohibited by s. 961.573 (1) or (2), 961.574 (1) or (2), or 961.575 (1) or  
3 (2) and provide a forfeiture for violation of the ordinance. Any ordinance enacted  
4 under this paragraph shall provide a person prosecuted under it with the defenses  
5 that the person has under s. 961.5755 to prosecutions under s. 961.573 (1), 961.574  
6 (1), or 961.575 (1). A person may not be prosecuted under an ordinance enacted  
7 under this paragraph if, under s. 968.072 (3) or (4) (b), the person would not be subject  
8 to prosecution under s. 961.573 (1), 961.574 (1), or 961.575 (1).

9           **SECTION 13.** 146.40 (1) (bo) of the statutes is amended to read:

10           146.40 (1) (bo) “Hospice” means a hospice that is licensed under subch. IV V  
11 of ch. 50.

12           **SECTION 14.** 146.44 of the statutes is created to read:

13           **146.44 Medical Marijuana Registry Program. (1) DEFINITIONS.** In this  
14 section:

15           (a) “Applicant” means a person who is applying for a registry identification card  
16 under sub. (2) (a).

17           (b) “Debilitating medical condition or treatment” has the meaning given in s.  
18 961.01 (5m).

19           (c) “Medical use of tetrahydrocannabinols” has the meaning given in s. 961.01  
20 (14g).

21           (cm) “Out-of-state registry identification card” means a document issued by  
22 an entity listed in the rule promulgated under sub. (7) (f) that identifies the person  
23 as a qualifying patient or primary caregiver, or an equivalent designation.

24           (d) “Primary caregiver” has the meaning given in s. 961.01 (19m).

25           (e) “Qualifying patient” has the meaning given in s. 961.01 (20hm).

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1 (f) “Registrant” means a person to whom a registry identification card is issued  
2 under sub. (4).

3 (g) “Registry identification card” means a document issued by the department  
4 under this section that identifies a person as a qualifying patient or primary  
5 caregiver.

6 (h) “Written certification” has the meaning given in s. 961.01 (21t).

7 **(2) APPLICATION.** (a) An adult who is claiming to be a qualifying patient may  
8 apply for a registry identification card by submitting to the department a signed  
9 application form containing or accompanied by all of the following:

- 10 1. His or her name, address, and date of birth.
- 11 2. A written certification.
- 12 3. The name, address, and telephone number of the person’s current physician,  
13 as listed in the written certification.
- 14 4. A registration fee in an amount determined by the department, but not to  
15 exceed \$150.

16 (b) A qualifying patient who is an adult and who has been issued a registry  
17 identification card under sub. (4) or an applicant may jointly apply with another  
18 adult to the department for a registry identification card for the other adult,  
19 designating him or her as a primary caregiver for the qualifying patient or the  
20 applicant. Both persons who jointly apply for a registry identification card under this  
21 paragraph shall sign the application form, which shall contain the name, address,  
22 and date of birth of the individual applying to be registered as a primary caregiver.

23 (c) The department shall promulgate rules specifying how a parent, guardian,  
24 or person having legal custody of a child may apply for a registry identification card

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1 for himself or herself and for the child and the circumstances under which the  
2 department may approve or deny the application.

3 **(3) PROCESSING THE APPLICATION.** The department shall verify the information  
4 contained in or accompanying an application submitted under sub. (2) and shall  
5 approve or deny the application within 30 days after receiving it. Except as provided  
6 in sub. (2) (c), the department may deny an application submitted under sub. (2) only  
7 if the required information has not been provided or if false information has been  
8 provided.

9 **(4) ISSUING A REGISTRY IDENTIFICATION CARD.** The department shall issue a  
10 registry identification card within 5 days after approving an application under sub.  
11 (3). Unless voided under sub. (5) (b) or (c) or revoked under rules issued by the  
12 department under sub. (7) (d), a registry identification card shall expire one year  
13 from the date of issuance. A registry identification card shall contain all of the  
14 following:

- 15 (a) The name, address, and date of birth of all of the following:
- 16 1. The registrant.
  - 17 2. The primary caregivers, if the registrant is a qualifying patient.
  - 18 3. The qualifying patient, if the registrant is a primary caregiver.
- 19 (b) The date of issuance and expiration date of the registry identification card.
- 20 (c) A photograph of the registrant.
- 21 (d) Other information that the department may require by rule.

22 **(5) ADDITIONAL INFORMATION TO BE PROVIDED BY REGISTRANT.** (a) 1. An adult  
23 registrant shall notify the department of any change in the registrant's name and  
24 address. An adult registrant who is a qualifying patient shall notify the department  
25 of any change in his or her physician, of any significant improvement in his or her

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1 health as it relates to his or her debilitating medical condition or treatment, and if  
2 a registered primary caregiver no longer assists the registrant with the medical use  
3 of tetrahydrocannabinols.

4 2. If a qualifying patient is a child, a primary caregiver for the child shall  
5 provide the department with any information that the child, if he or she were an  
6 adult, would have to provide under subd. 1. within 10 days after the date of the  
7 change to which the information relates.

8 (b) If a registrant fails to notify the department within 10 days after any change  
9 for which notification is required under par. (a) 1., his or her registry identification  
10 card is void. If a registrant fails to comply with par. (a) 2., the registry identification  
11 card for the qualifying patient to whom the information under par. (a) 2. relates is  
12 void.

13 (c) If a qualifying patient's registry identification card becomes void under par.  
14 (b), the registry identification card for each of the qualifying patient's primary  
15 caregivers is void. The department shall send written notice of this fact to each such  
16 primary caregiver.

17 **(6) RECORDS.** (a) The department shall maintain a list of all registrants.

18 (b) Notwithstanding s. 19.35 and except as provided in par. (c), the department  
19 may not disclose information from an application submitted or a registry  
20 identification card issued under this section.

21 (c) The department may disclose to state or local law enforcement agencies  
22 information from an application submitted by, or from a registry identification card  
23 issued to, a specific person under this section, for the purpose of verifying that the  
24 person possesses a valid registry identification card.

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1           **(7) RULES.** The department shall promulgate rules to implement this section,  
2 including the rules required under sub. (2) (c) and rules doing all of the following:

3           (a) Creating forms for applications to be used under sub. (2).

4           (b) Specifying how the department will verify the truthfulness of information  
5 submitted on an application under sub. (2).

6           (c) Specifying how and under what circumstances registry identification cards  
7 may be renewed.

8           (d) Specifying how and under what changed circumstances a registry  
9 identification card may be revoked.

10          (e) Specifying under what circumstances a person whose application for a  
11 registry identification card is denied may reapply.

12          (f) Listing each state, district, commonwealth, territory, or insular possession  
13 thereof that allows the medical use of marijuana by a visiting qualifying patient or  
14 allows a person to assist with a visiting qualifying patient's medical use of  
15 marijuana.

16           **SECTION 15.** 146.81 (1) (L) of the statutes is amended to read:

17           146.81 (1) (L) A hospice licensed under subch. IV V of ch. 50.

18           **SECTION 16.** 146.997 (1) (d) 18. of the statutes is amended to read:

19           146.997 (1) (d) 18. A hospice licensed under subch. IV V of ch. 50.

20           **SECTION 17.** 149.14 (3) (nm) of the statutes is amended to read:

21           149.14 (3) (nm) Hospice care provided by a hospice licensed under subch. IV  
22 V of ch. 50.

23           **SECTION 18.** 173.12 (1m) of the statutes is amended to read:

24           173.12 (1m) If an animal has been seized because it is alleged that the animal  
25 has been used in or constitutes evidence of any crime specified in s. 951.08, the

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1 animal may not be returned to the owner by an officer under s. 968.20 (2). In any  
2 hearing under s. 968.20 ~~(1)~~ (1f), the court shall determine if the animal is needed as  
3 evidence or there is reason to believe that the animal has participated in or been  
4 trained for fighting. If the court makes such a finding, the animal shall be retained  
5 in custody.

6 **SECTION 19.** 289.33 (3) (d) of the statutes, as affected by 2009 Wisconsin Act 28,  
7 is amended to read:

8 289.33 **(3)** (d) “Local approval” includes any requirement for a permit, license,  
9 authorization, approval, variance or exception or any restriction, condition of  
10 approval or other restriction, regulation, requirement or prohibition imposed by a  
11 charter ordinance, general ordinance, zoning ordinance, resolution or regulation by  
12 a town, city, village, county or special purpose district, including without limitation  
13 because of enumeration any ordinance, resolution or regulation adopted under s.  
14 91.73, 2007 stats., s. 59.03 (2), 59.11 (5), 59.42 (1), 59.48, 59.51 (1) and (2), 59.52 (2),  
15 (5), (6), (7), (8), (9), (11), (12), (13), (15), (16), (17), (18), (19), (20), (21), (22), (23), (24),  
16 (25), (26) and (27), 59.53 (1), (2), (3), (4), (5), (7), (8), (9), (11), (12), (13), (14), (15), (19),  
17 (20) and (23), 59.535 (2), (3) and (4), 59.54 (1), (2), (3), (4), (4m), (5), (6), (7), (8), (10),  
18 (11), (12), (16), (17), (18), (19), (20), (21), (22), (23), (24), (25) (a), and (26), 59.55 (3),  
19 (4), (5) and (6), 59.56 (1), (2), (4), (5), (6), (7), (9), (10), (11), (12), (12m), (13) and (16),  
20 59.57 (1), 59.58 (1) and (5), 59.62, 59.69, 59.692, 59.693, 59.696, 59.697, 59.698, 59.70  
21 (1), (2), (3), (5), (7), (8), (9), (10), (11), (21), (22) and (23), 59.79 (1), (2), (3), (5), (6), (7),  
22 (8), (10) and (11), 59.792 (2) and (3), 59.80, 59.82, 60.10, 60.22, 60.23, 60.54, 60.77,  
23 61.34, 61.35, 61.351, 61.354, 62.11, 62.23, 62.231, 62.234, 66.0101, 66.0415, 87.30,  
24 196.58, 200.11 (8), 236.45, 281.43 or 349.16, subch. VIII of ch. 60, or subch III of ch.  
25 91.



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1           **SECTION 20.** 349.02 (2) (b) 4. of the statutes is amended to read:

2           349.02 **(2)** (b) 4. Local ordinances enacted under s. 59.54 (25) (a) or (25m) or  
3           66.0107 (1) (bm).

4           **SECTION 21.** 767.41 (5) (am) (intro.) of the statutes is amended to read:

5           767.41 **(5)** (am) (intro.) Subject to pars. (bm) ~~and~~, (c), and (d), in determining  
6           legal custody and periods of physical placement, the court shall consider all facts  
7           relevant to the best interest of the child. The court may not prefer one parent or  
8           potential custodian over the other on the basis of the sex or race of the parent or  
9           potential custodian. Subject to pars. (bm) ~~and~~, (c), and (d), the court shall consider  
10          the following factors in making its determination:

11          **SECTION 22.** 767.41 (5) (d) of the statutes is created to read:

12          767.41 **(5)** (d) The court may not consider as a factor in determining the legal  
13          custody of a child whether a parent or potential custodian holds, or has applied for,  
14          a registry identification card, as defined in s. 146.44 (1) (g), is or has been the subject  
15          of a written certification, as defined in s. 961.01 (21t), or is or has been a qualified  
16          patient, as defined in s. 961.01 (20hm), or a primary caregiver, as defined in s. 961.01  
17          (19m), unless the parent or potential custodian's behavior creates an unreasonable  
18          danger to the child that can be clearly articulated and substantiated.

19          **SECTION 23.** 767.451 (5m) (d) of the statutes is created to read:

20          767.451 **(5m)** (d) In an action to modify a legal custody order, the court may not  
21          consider as a factor in making a determination whether a parent or potential  
22          custodian holds, or has applied for, a registry identification card, as defined in s.  
23          146.44 (1) (g), is or has been the subject of a written certification, as defined in s.  
24          961.01 (21t), or is or has been a qualified patient, as defined in s. 961.01 (20hm), or  
25          a primary caregiver, as defined in s. 961.01 (19m), unless the parent or potential

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1 custodian’s behavior creates an unreasonable danger to the child that can be clearly  
2 articulated and substantiated.

3 **SECTION 24.** 961.01 (5m) of the statutes is created to read:

4 961.01 (5m) “Debilitating medical condition or treatment” means any of the  
5 following:

6 (a) Cancer, glaucoma, acquired immunodeficiency syndrome, a positive test for  
7 the presence of HIV, antigen or nonantigenic products of HIV, or an antibody to HIV,  
8 Crohn’s disease, a Hepatitis C virus infection, Alzheimer’s disease, Amyotrophic  
9 Lateral Sclerosis, nail patella syndrome, Ehlers–Danlos Syndrome, post-traumatic  
10 stress disorder, or the treatment of these conditions.

11 (b) A chronic or debilitating disease or medical condition or the treatment of  
12 such a disease or condition that causes cachexia, severe pain, severe nausea,  
13 seizures, including those characteristic of epilepsy, or severe and persistent muscle  
14 spasms, including those characteristic of multiple sclerosis.

15 (c) Any other medical condition or any other treatment for a medical condition  
16 designated as a debilitating medical condition or treatment in rules promulgated by  
17 the department of health services under s. 961.436 (5).

18 **SECTION 25.** 961.01 (11v) of the statutes is created to read:

19 961.01 (11v) “HIV” means any strain of human immunodeficiency virus, which  
20 causes acquired immunodeficiency syndrome.

21 **SECTION 26.** 961.01 (12v) of the statutes is created to read:

22 961.01 (12v) “Lockable, enclosed facility” means an enclosed area that is  
23 lockable, or may use a security device, to permit access only by a member of a  
24 qualifying patient’s treatment team.

25 **SECTION 27.** 961.01 (14c) of the statutes is created to read:

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1           961.01 (14c) “Maximum authorized amount” means 12 live marijuana plants  
2           and 3 ounces of usable marijuana.

3           **SECTION 28.** 961.01 (14g) of the statutes is created to read:

4           961.01 (14g) “Medical use of tetrahydrocannabinols” means any of the  
5           following:

6           (a) The use of tetrahydrocannabinols by a qualifying patient to alleviate the  
7           symptoms or effects of the qualifying patient’s debilitating medical condition or  
8           treatment.

9           (b) The acquisition, possession, cultivation, or transportation of  
10          tetrahydrocannabinols by a qualifying patient if done to facilitate his or her use of  
11          the tetrahydrocannabinols under par. (a).

12          (c) The acquisition, possession, cultivation, or transportation of  
13          tetrahydrocannabinols by a primary caregiver of a qualifying patient, the transfer  
14          of tetrahydrocannabinols between a qualifying patient and his or her primary  
15          caregivers, or the transfer of tetrahydrocannabinols between persons who are  
16          primary caregivers for the same qualifying patient if all of the following apply:

17           1. The acquisition, possession, cultivation, transportation, or transfer of the  
18           tetrahydrocannabinols is done to facilitate the qualifying patient’s use of  
19           tetrahydrocannabinols under par. (a) or (b).

20           2. It is not practicable for the qualifying patient to acquire, possess, cultivate,  
21           or transport the tetrahydrocannabinols independently, or the qualifying patient is  
22           under 18 years of age.

23          **SECTION 29.** 961.01 (17k) of the statutes is created to read:

24          961.01 (17k) “Out-of-state registry identification card” has the meaning given  
25          in s. 146.44 (1) (cm).

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1           **SECTION 30.** 961.01 (19m) of the statutes is created to read:

2           961.01 (**19m**) “Primary caregiver” means a person who is at least 18 years of  
3 age and who has agreed to help a qualifying patient in his or her medical use of  
4 tetrahydrocannabinols.

5           **SECTION 31.** 961.01 (20hm) of the statutes is created to read:

6           961.01 (**20hm**) “Qualifying patient” means a person who has been diagnosed  
7 by a physician as having or undergoing a debilitating medical condition or treatment  
8 but does not include a person under the age of 18 years unless all of the following  
9 apply:

10           (a) The person’s physician has explained the potential risks and benefits of the  
11 medical use of tetrahydrocannabinols to the person and to a parent, guardian, or  
12 person having legal custody of the person.

13           (b) The parent, guardian, or person having legal custody provides the physician  
14 a written statement consenting to do all of the following:

- 15           1. Allow the person’s medical use of tetrahydrocannabinols.
- 16           2. Serve as a primary caregiver for the person.
- 17           3. Manage the person’s medical use of tetrahydrocannabinols.

18           **SECTION 32.** 961.01 (20ht) of the statutes is created to read:

19           961.01 (**20ht**) “Registry identification card” has the meaning given in s. 146.44  
20 (1) (g).

21           **SECTION 33.** 961.01 (20t) of the statutes is created to read:

22           961.01 (**20t**) “Treatment team” means a qualifying patient and his or her  
23 primary caregivers.

24           **SECTION 34.** 961.01 (21f) of the statutes is created to read:

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1           961.01 (21f) “Usable marijuana” means dried marijuana leaves or flowers but  
2 does not include marijuana seeds, stalks, or roots.

3           **SECTION 35.** 961.01 (21t) of the statutes is created to read:

4           961.01 (21t) “Written certification” means a statement made by a person’s  
5 physician if all of the following apply:

6           (a) The statement indicates that, in the physician’s professional opinion, the  
7 person has or is undergoing a debilitating medical condition or treatment and the  
8 potential benefits of the person’s use of tetrahydrocannabinols under sub. (14g) (a)  
9 would likely outweigh the health risks for the person.

10           (b) The statement indicates that the opinion described in par. (a) was formed  
11 after a full assessment, made in the course of a bona fide physician-patient  
12 relationship, of the person’s medical history and current medical condition.

13           (c) The statement is signed by the physician or is contained in the person’s  
14 medical records.

15           **SECTION 36.** 961.436 of the statutes is created to read:

16           **961.436           Medical use defense in cases involving**  
17 **tetrahydrocannabinols.** (1) A member of a qualifying patient’s treatment team  
18 has a defense to prosecution under s. 961.41 (1) (h) or (1m) (h) for manufacturing, or  
19 possessing with intent to manufacture, tetrahydrocannabinols if all of the following  
20 apply:

21           (a) The manufacture or possession is a medical use of tetrahydrocannabinols  
22 by the treatment team.

23           (b) The amount of tetrahydrocannabinols does not exceed the maximum  
24 authorized amount.

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1 (c) Any live marijuana plants are in a lockable, enclosed facility unless a  
2 member of a qualifying patient's treatment team is accessing the plants or has the  
3 plants in his or her possession.

4 (d) If the member is a primary caregiver, he or she is not a primary caregiver  
5 to more than 5 qualifying patients.

6 **(2)** A member of a qualifying patient's treatment team has a defense to  
7 prosecution under s. 961.41 (1) (h) or (1m) (h) for distributing or delivering, or  
8 possessing with intent to distribute or deliver, tetrahydrocannabinols to another  
9 member of the treatment team if all of the following apply:

10 (a) The distribution, delivery, or possession is a medical use of  
11 tetrahydrocannabinols by the treatment team.

12 (b) The amount of tetrahydrocannabinols does not exceed the maximum  
13 authorized amount.

14 (c) Any live marijuana plants are in a lockable, enclosed facility unless a  
15 member of a qualifying patient's treatment team is accessing the plants or has the  
16 plants in his or her possession.

17 (d) If the member is a primary caregiver, he or she is not a primary caregiver  
18 to more than 5 qualifying patients.

19 **(3)** (a) Except as provided in par. (b), a member of a qualifying patient's  
20 treatment team has a defense to a prosecution under s. 961.41 (3g) (e) if all of the  
21 following apply:

22 1. The possession or attempted possession is a medical use of  
23 tetrahydrocannabinols by the treatment team.

24 2. The amount of tetrahydrocannabinols does not exceed the maximum  
25 authorized amount.

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1           3. Any live marijuana plants are in a lockable, enclosed facility unless a  
2 member of a qualifying patient's treatment team is accessing the plants or has the  
3 plants in his or her possession.

4           4. If the member is a primary caregiver, he or she is not a primary caregiver  
5 to more than 5 qualifying patients.

6           (b) A person may not assert the defense described in par. (a) if, while he or she  
7 possesses or attempts to possess tetrahydrocannabinols, any of the following applies:

8           1. The person drives or operates a motor vehicle while under the influence of  
9 tetrahydrocannabinols in violation of s. 346.63 (1) or a local ordinance in conformity  
10 with s. 346.63 (1).

11           2. While under the influence of tetrahydrocannabinols, the person operates  
12 heavy machinery or engages in any other conduct that endangers the health or  
13 well-being of another person.

14           3. The person smokes marijuana in, on, or at any of the following places:

15           a. A school bus or a public transit vehicle.

16           b. The person's place of employment.

17           c. Public or private school premises.

18           d. A juvenile correctional facility.

19           e. A jail or adult correctional facility.

20           f. A public park, beach, or recreation center.

21           g. A youth center.

22           (4) For the purposes of a defense raised under sub. (1), (2), or (3) (a), a valid  
23 registry identification card, a valid out-of-state registry identification card, or a  
24 written certification is presumptive evidence that the person identified on the card  
25 as a qualifying patient or the subject of the written certification is a qualifying

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1 patient and that, if the person uses tetrahydrocannabinols, he or she does so to  
2 alleviate the symptoms or effects of his or her debilitating medical condition or  
3 treatment.

4 (5) Notwithstanding s. 227.12 (1), any person may petition the department of  
5 health services to promulgate a rule to designate a medical condition or treatment  
6 as a debilitating medical condition or treatment. The department of health services  
7 shall promulgate rules providing for public notice of and a public hearing regarding  
8 any such petition, with the public hearing providing persons an opportunity to  
9 comment upon the petition. After the hearing, but no later than 180 days after the  
10 submission of the petition, the department of health services shall approve or deny  
11 the petition. The department's decision to approve or deny a petition is subject to  
12 judicial review under s. 227.52.

13 **SECTION 37.** 961.55 (8) of the statutes is renumbered 961.55 (8) (intro.) and  
14 amended to read:

15 961.55 (8) (intro.) The failure, upon demand by any officer or employee  
16 designated in s. 961.51 (1) or (2), of the person in occupancy or in control of land or  
17 premises upon which the species of plants are growing or being stored, to produce an  
18 any of the following constitutes authority for the seizure and forfeiture of the plants:

19 (a) An appropriate federal registration, or proof that the person is the holder  
20 thereof, ~~constitutes authority for the seizure and forfeiture of the plants.~~

21 **SECTION 38.** 961.55 (8) (b) of the statutes is created to read:

22 961.55 (8) (b) A valid registry identification card or a valid out-of-state  
23 registry identification card.

24 **SECTION 39.** 961.55 (8) (c) of the statutes is created to read:



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1           961.55 (8) (c) The person's written certification, if the person is a qualifying  
2 patient.

3           **SECTION 40.** 961.55 (8) (d) of the statutes is created to read:

4           961.55 (8) (d) A written certification for a qualifying patient for whom the  
5 person is a primary caregiver.

6           **SECTION 41.** 961.555 (2) (a) of the statutes is amended to read:

7           961.555 (2) (a) ~~The Except as provided in par. (e), the district attorney of the~~  
8 county within which the property was seized shall commence the forfeiture action  
9 within 30 days after the seizure of the property, ~~except that the defendant may~~  
10 ~~request that the forfeiture proceedings be adjourned until after adjudication of any~~  
11 ~~charge concerning a crime which was the basis for the seizure of the property. The~~  
12 ~~request shall be granted.~~ The forfeiture action shall be commenced by filing a  
13 summons, complaint and affidavit of the person who seized the property with the  
14 clerk of circuit court, provided service of authenticated copies of those papers is made  
15 in accordance with ch. 801 within 90 days after filing upon the person from whom  
16 the property was seized and upon any person known to have a bona fide perfected  
17 security interest in the property.

18           **SECTION 42.** 961.555 (2) (e) of the statutes is created to read:

19           961.555 (2) (e) The court shall adjourn forfeiture proceedings until after  
20 adjudication of any charge concerning a crime that was the basis for the seizure of  
21 the property if any of the following applies:

- 22           1. The defendant requests an adjournment.
- 23           2. The defendant invokes a defense to the crime under s. 961.436 or 961.5755.

24           **SECTION 43.** 961.555 (2m) of the statutes is created to read:

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1           961.555 (2m) MEDICAL NECESSITY DEFENSE. (a) In an action to forfeit property  
2 seized under s. 961.55, the person who was in possession of the property when it was  
3 seized has a defense to the forfeiture of the property if any of the following applies:

4           1. The person was prosecuted under s. 961.41 (1) (h), (1m) (h), or (3g) (e),  
5 961.573 (1), 961.574 (1), or 961.575 (1) in connection with the seized property but had  
6 a valid defense under s. 961.436 (1), (2), or (3) (a) or 961.5755 (1) (a) or (2).

7           2. The person was not prosecuted under s. 961.41 (1) (h), (1m) (h), or (3g) (e),  
8 961.573 (1), 961.574 (1), or 961.575 (1) in connection with the seized property, but,  
9 if the person had been, he or she would have had a valid defense under s. 961.436 (1),  
10 (2), or (3) (a) or 961.5755 (1) (a) or (2).

11           (b) The owner of property seized under s. 961.55 who is raising a defense under  
12 par. (a) shall do so in the answer to the complaint that he or she serves under sub.  
13 (2) (b). If a property owner raises such a defense in his or her answer, the state must,  
14 as part of the burden of proof specified in sub. (3), prove that the facts constituting  
15 the defense do not exist.

16           **SECTION 44.** 961.56 (1) of the statutes is amended to read:

17           961.56 (1) ~~It~~ Except as provided in s. 961.555 (2m) (b) and except for any  
18 presumption arising under s. 961.436 (4) or 961.5755 (3), it is not necessary for the  
19 state to negate any exemption or exception in this chapter in any complaint,  
20 information, indictment or other pleading or in any trial, hearing or other proceeding  
21 under this chapter. ~~The, and the~~ burden of proof of any exemption or exception is  
22 upon the person claiming it.

23           **SECTION 45.** 961.5755 of the statutes is created to read:

24           **961.5755 Medical use of marijuana defense in drug paraphernalia**  
25 **cases. (1) (a)** Except as provided in par. (b), a member of a treatment team has a

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1 defense to prosecution under s. 961.573 (1) if he or she uses, or possesses with the  
2 primary intent to use, drug paraphernalia only for the medical use of  
3 tetrahydrocannabinols by the treatment team.

4 (b) This subsection does not apply if while the person uses, or possesses with  
5 the primary intent to use, drug paraphernalia s. 961.436 (3) (b) 1., 2., or 3. applies.

6 (2) A member of a treatment team has a defense to prosecution under s. 961.574  
7 (1) or 961.575 (1) if he or she delivers, possesses with intent to deliver, or  
8 manufactures with intent to deliver to another member of his or her treatment team  
9 drug paraphernalia, knowing that it will be primarily used for the medical use of  
10 tetrahydrocannabinols by the treatment team.

11 (3) For the purposes of a defense raised under sub. (1) (a) or (2), a valid registry  
12 identification card, a valid out-of-state registry identification card, or a written  
13 certification is presumptive evidence that the person identified on the valid registry  
14 identification card or valid out-of-state registry identification card as a qualifying  
15 patient or the subject of the written certification is a qualifying patient and that, if  
16 the person uses tetrahydrocannabinols, he or she does so to alleviate the symptoms  
17 or effects of his or her debilitating medical condition or treatment.

18 **SECTION 46.** 968.072 of the statutes is created to read:

19 **968.072 Medical use of marijuana; arrest and prosecution. (1)**

20 DEFINITIONS. In this section:

21 (a) "Lockable, enclosed facility" has the meaning given in s. 961.01 (12v).

22 (am) "Maximum authorized amount" has the meaning given in s. 961.01 (14c).

23 (b) "Medical use of tetrahydrocannabinols" has the meaning given in s. 961.01  
24 (14g).

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1 (bm) “Out-of-state registry identification card” has the meaning given in s.  
2 146.44 (1) (cm).

3 (c) “Primary caregiver” has the meaning given in s. 961.01 (19m).

4 (d) “Qualifying patient” has the meaning given in s. 961.01 (20hm).

5 (e) “Registry identification card” has the meaning given in s. 146.44 (1) (g).

6 (f) “Treatment team” has the meaning given in s. 961.01 (20t).

7 (g) “Written certification” has the meaning given in s. 961.01 (21t).

8 **(2) LIMITATIONS ON ARRESTS AND PROSECUTION; MEDICAL USE OF MARIJUANA.** Unless  
9 s. 961.436 (3) (b) 1., 2., or 3. applies, a member of a qualifying patient’s treatment  
10 team may not be arrested or prosecuted for a violation of s. 961.41 (1) (h), (1m) (h),  
11 or (3g) (e) if all of the following apply:

12 (a) The person manufactures, distributes, delivers, or possesses  
13 tetrahydrocannabinols for their medical use by the treatment team.

14 (b) The person possesses a valid registry identification card, a valid  
15 out-of-state registry identification card, or a copy of the qualifying patient’s written  
16 certification.

17 (c) The quantity of tetrahydrocannabinols does not exceed the maximum  
18 authorized amount.

19 (d) Any live marijuana plants are in a lockable, enclosed facility unless the  
20 person is accessing the plants or has the plants in his or her possession.

21 (e) If the member is a primary caregiver, he or she is not a primary caregiver  
22 to more than 5 qualifying patients.

23 **(3) LIMITATIONS ON ARRESTS AND PROSECUTION; DRUG PARAPHERNALIA FOR MEDICAL**  
24 **USE OF MARIJUANA.** (a) Unless s. 961.436 (3) (b) 1., 2., or 3. applies, a member of a

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1 treatment team may not be arrested or prosecuted for a violation of s. 961.573 (1) if  
2 all of the following apply:

3 1. The person uses, or possesses with the primary intent to use, drug  
4 paraphernalia only for the medical use of tetrahydrocannabinols by the treatment  
5 team.

6 2. The person possesses a valid registry identification card, a valid out-of-state  
7 registry identification card, or a copy of the qualifying patient's written certification.

8 3. The person does not possess more than the maximum authorized amount of  
9 tetrahydrocannabinols.

10 4. Any live marijuana plants are in a lockable, enclosed facility unless the  
11 person is accessing the plants or has the plants in his or her possession.

12 5. If the member is a primary caregiver, he or she is not a primary caregiver  
13 to more than 5 qualifying patients.

14 (b) Unless s. 961.436 (3) (b) 1., 2., or 3. applies, a member of a treatment team  
15 may not be arrested or prosecuted for a violation of s. 961.574 (1) or 961.575 (1) if all  
16 of the following apply:

17 1. The person delivers, possesses with intent to deliver, or manufactures with  
18 intent to deliver to another member of his or her treatment team drug paraphernalia,  
19 knowing that it will be primarily used for the medical use of tetrahydrocannabinols  
20 by the treatment team.

21 2. The person possesses a valid registry identification card, a valid out-of-state  
22 registry identification card, or a copy of the qualifying patient's written certification.

23 3. The person does not possess more than the maximum authorized amount of  
24 tetrahydrocannabinols.

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1           4. Any live marijuana plants are in a lockable, enclosed facility unless the  
2 person is accessing the plants or has the plants in his or her possession.

3           5. If the member is a primary caregiver, he or she is not a primary caregiver  
4 to more than 5 qualifying patients.

5           **(4) LIMITATIONS ON ARRESTS, PROSECUTION, AND OTHER SANCTIONS.** (a) A physician  
6 may not be arrested and a physician, hospital, or clinic may not be subject to  
7 prosecution, denied any right or privilege, or penalized in any manner for making or  
8 providing a written certification in good faith.

9           (b) An employee of a compassion center licensed under subch. IV of ch. 50 may  
10 not be arrested and such employee or compassion center licensed under subch. IV of  
11 ch. 50 may not be subject to prosecution, denied any right or privilege, or penalized  
12 in any manner for any good faith action under subch. IV of ch. 50.

13           **(5) PENALTY FOR FALSE STATEMENTS.** Whoever intentionally provides false  
14 information to a law enforcement officer in an attempt to avoid arrest or prosecution  
15 under this section for a violation of s. 961.41 (1) (h), (1m) (h), or (3g) (e), 961.573 (1),  
16 961.574 (1), or 961.575 (1) may be fined not more than \$500.

17           **SECTION 47.** 968.12 (5) of the statutes is created to read:

18           968.12 **(5) MEDICAL USE OF MARIJUANA.** A person's possession, use, or submission  
19 of or connection with an application for a registry identification card under s. 146.44  
20 (2), the issuance of such a card under s. 146.44 (4), or a person's possession of such  
21 a card, a valid out-of-state registry identification card, as defined in s. 146.44 (1)  
22 (cm), or an original or a copy of a written certification, as defined in s. 961.01 (21t),  
23 may not, by itself, constitute probable cause under sub. (1) or otherwise subject any  
24 person or the property of any person to inspection by any governmental agency.

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1           **SECTION 48.** 968.19 of the statutes is renumbered 968.19 (1) and amended to  
2 read:

3           968.19 (1) Property Except as provided in sub. (2), property seized under a  
4 search warrant or validly seized without a warrant shall be safely kept by the officer,  
5 who may leave it in the custody of the sheriff and take a receipt therefor, so long as  
6 necessary for the purpose of being produced as evidence on any trial.

7           **SECTION 49.** 968.19 (2) of the statutes is created to read:

8           968.19 (2) A law enforcement agency that has seized a live marijuana plant is  
9 not responsible for the plant's care and maintenance.

10          **SECTION 50.** 968.20 (1) of the statutes is renumbered 968.20 (1f), and 968.20  
11 (1f) (intro.), as renumbered, is amended to read:

12          968.20 (1f) (intro.) Any person claiming the right to possession of property  
13 seized pursuant to a search warrant or seized without a search warrant may apply  
14 for its return to the circuit court for the county in which the property was seized or  
15 where the search warrant was returned. The court shall order such notice as it  
16 deems adequate to be given the district attorney and all persons who have or may  
17 have an interest in the property and shall hold a hearing to hear all claims to its true  
18 ownership. If Except as provided in sub. (1j), if the right to possession is proved to  
19 the court's satisfaction, it shall order the property, ~~other than contraband or property~~  
20 ~~covered under sub. (1m) or (1r) or s. 173.12, 173.21 (4), or 968.205,~~ returned if:

21          **SECTION 51.** 968.20 (1d) of the statutes is created to read:

22          968.20 (1d) In this section:

23          (a) "Drug paraphernalia" has the meaning given in s. 961.571 (1) (a).

24          (b) "Tetrahydrocannabinols" means a substance included in s. 961.14 (4) (t).

25          **SECTION 52.** 968.20 (1j) of the statutes is created to read:

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1           968.20 **(1j)** (a) Except as provided in par. (b), sub. (1f) does not apply to  
2           contraband or property covered under sub. (1m) or (1r) or s. 173.12, 173.21 (4), or  
3           968.205.

4           (b) Under sub. (1f), the court may return drug paraphernalia or  
5           tetrahydrocannabinols that have been seized to the person from whom they were  
6           seized if any of the following applies:

7           1. The person was prosecuted under s. 961.41 (1) (h), (1m) (h), or (3g) (e),  
8           961.573 (1), 961.574 (1), or 961.575 (1) in connection with the seized property but had  
9           a valid defense under s. 961.436 (1), (2), or (3) (a) or 961.5755 (1) (a) or (2).

10          2. The person was not prosecuted under s. 961.41 (1) (h), (1m) (h), or (3g) (e),  
11          961.573 (1), 961.574 (1), or 961.575 (1) in connection with the seized property, but,  
12          if the person had been, he or she would have had a valid defense under s. 961.436 (1),  
13          (2), or (3) (a) or 961.5755 (1) (a) or (2).

14          **SECTION 53.** 968.20 (3) (a) and (b) of the statutes are amended to read:

15          968.20 **(3)** (a) First class cities shall dispose of dangerous weapons or  
16          ammunition seized 12 months after taking possession of them if the owner,  
17          authorized under sub. (1m), has not requested their return and if the dangerous  
18          weapon or ammunition is not required for evidence or use in further investigation  
19          and has not been disposed of pursuant to a court order at the completion of a criminal  
20          action or proceeding. Disposition procedures shall be established by ordinance or  
21          resolution and may include provisions authorizing an attempt to return to the  
22          rightful owner any dangerous weapons or ammunition which appear to be stolen or  
23          are reported stolen. If enacted, any such provision shall include a presumption that  
24          if the dangerous weapons or ammunition appear to be or are reported stolen an  
25          attempt will be made to return the dangerous weapons or ammunition to the



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1 authorized rightful owner. If the return of a seized dangerous weapon other than a  
2 firearm is not requested by its rightful owner under sub. ~~(1)~~ (1f) and is not returned  
3 by the officer under sub. (2), the city shall safely dispose of the dangerous weapon or,  
4 if the dangerous weapon is a motor vehicle, as defined in s. 340.01 (35), sell the motor  
5 vehicle following the procedure under s. 973.075 (4) or authorize a law enforcement  
6 agency to retain and use the motor vehicle. If the return of a seized firearm or  
7 ammunition is not requested by its authorized rightful owner under sub. ~~(1)~~ (1f) and  
8 is not returned by the officer under sub. (2), the seized firearm or ammunition shall  
9 be shipped to and become property of the state crime laboratories. A person  
10 designated by the department of justice may destroy any material for which the  
11 laboratory has no use or arrange for the exchange of material with other public  
12 agencies. In lieu of destruction, shoulder weapons for which the laboratories have  
13 no use shall be turned over to the department of natural resources for sale and  
14 distribution of proceeds under s. 29.934 or for use under s. 29.938.

15 (b) Except as provided in par. (a) or sub. (1m) or (4), a city, village, town or  
16 county or other custodian of a seized dangerous weapon or ammunition, if the  
17 dangerous weapon or ammunition is not required for evidence or use in further  
18 investigation and has not been disposed of pursuant to a court order at the  
19 completion of a criminal action or proceeding, shall make reasonable efforts to notify  
20 all persons who have or may have an authorized rightful interest in the dangerous  
21 weapon or ammunition of the application requirements under sub. ~~(1)~~ (1f). If, within  
22 30 days after the notice, an application under sub. ~~(1)~~ (1f) is not made and the seized  
23 dangerous weapon or ammunition is not returned by the officer under sub. (2), the  
24 city, village, town or county or other custodian may retain the dangerous weapon or  
25 ammunition and authorize its use by a law enforcement agency, except that a

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1 dangerous weapon used in the commission of a homicide or a handgun, as defined  
2 in s. 175.35 (1) (b), may not be retained. If a dangerous weapon other than a firearm  
3 is not so retained, the city, village, town or county or other custodian shall safely  
4 dispose of the dangerous weapon or, if the dangerous weapon is a motor vehicle, as  
5 defined in s. 340.01 (35), sell the motor vehicle following the procedure under s.  
6 973.075 (4). If a firearm or ammunition is not so retained, the city, village, town or  
7 county or other custodian shall ship it to the state crime laboratories and it is then  
8 the property of the laboratories. A person designated by the department of justice  
9 may destroy any material for which the laboratories have no use or arrange for the  
10 exchange of material with other public agencies. In lieu of destruction, shoulder  
11 weapons for which the laboratory has no use shall be turned over to the department  
12 of natural resources for sale and distribution of proceeds under s. 29.934 or for use  
13 under s. 29.938.

14 **SECTION 54. Effective dates.** This act takes effect on the day after publication,  
15 except as follows:

16 (1) The treatment of section 146.44 and subchapter IV of chapter 50 of the  
17 statutes takes effect on the first day of the 6th month beginning after publication.

18 (END)