



2013 ASSEMBLY BILL 891

March 27, 2014 - Introduced by Representatives GOYKE, JOHNSON, BARNES, HEBL, SINICKI, SARGENT, HULSEY, POPE, BERCEAU and PASCH, cosponsored by Senator L. TAYLOR. Referred to Committee on Criminal Justice.

AUTHORS SUBJECT TO CHANGE

1 **AN ACT to amend** 59.54 (25), 66.0107 (1) (bm), 938.34 (14s) (a) (intro.), 938.34
2 (14t), 938.343 (2), 961.48 (5) and 961.495; and **to repeal and recreate** 961.41
3 (3g) (e) of the statutes; **relating to:** possession of tetrahydrocannabinols, and
4 providing a penalty.

Analysis by the Legislative Reference Bureau

Under current law, a person may not possess marijuana or another substance containing tetrahydrocannabinol (THC). In general, a person who violates this prohibition is guilty of a misdemeanor and may be fined not more than \$1,000, imprisoned for not more than six months, or both. A person who commits a second or subsequent violation is guilty of a Class I felony and may be fined up to \$10,000, imprisoned for up to three years and six months, or both. 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.

Under this bill, a person who commits a first offense of possession of THC commits a civil offense, punishable by a forfeiture of not less than \$150 nor more than \$300. Under the bill, a person who commits a second offense of possession of THC is guilty of a Class C misdemeanor and may be fined up to \$500, imprisoned for up to 30 days, or both. A person who commits a third offense is guilty of a Class A misdemeanor, and may be fined up to \$10,000, imprisoned for up to nine months, or both. Under the bill, a person who commits a fourth or subsequent possession of THC

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offense, or who has been convicted of a prior crime related to any controlled substance except possession of THC, is guilty of a Class I felony and may be fined up to \$10,000, imprisoned for up to three years and six months, or both.

The bill allows a county or municipality to enact ordinances that make the first possession of any amount of marijuana a civil offense, punishable by a forfeiture. The ordinance, however, cannot be used to prosecute a person who has committed a prior offense of possessing THC.

Similarly, the bill provides that a person under 17 years of age (juvenile) who is found to have committed a first violation of possession of THC is subject to the dispositions specified in the Juvenile Justice Code for a juvenile who violates a civil law rather than to the delinquency dispositions specified in the Juvenile Justice Code for a juvenile who violates a criminal law. Under the bill, a juvenile who is found to have committed a first violation of possession of THC may be ordered to pay a forfeiture not to exceed \$50 or to participate in a teen court program, in community service work, or in an alcohol or other drug abuse treatment or education program.

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.** 59.54 (25) of the statutes is amended to read:

2 59.54 (25) POSSESSION OF MARIJUANA. The board may enact and enforce an
3 ordinance to prohibit the possession of ~~25 grams or less of~~ marijuana, as defined in
4 s. 961.01 (14), subject to the exceptions in s. 961.41 (3g) (intro.), and provide a
5 forfeiture for a violation of the ordinance; ~~except that any person who is charged with~~
6 ~~possession of more than 25 grams of marijuana, or who is charged with possession~~
7 ~~of any amount of marijuana following a conviction for possession of marijuana, an~~
8 offense punishable under s. 961.41 (3g) (e) in this state shall not be prosecuted under
9 this subsection. Any ordinance enacted under this subsection applies in every
10 municipality within the county.

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

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1 66.0107 (1) (bm) Enact and enforce an ordinance to prohibit the possession of
2 ~~25 grams or less of~~ marijuana, as defined in s. 961.01 (14), subject to the exceptions
3 in s. 961.41 (3g) (intro.), and provide a forfeiture for a violation of the ordinance;
4 except that any person who is charged ~~with possession of more than 25 grams of~~
5 ~~marijuana, or who is charged with possession of any amount of~~ marijuana following
6 ~~a conviction~~ an offense punishable under s. 961.41 (3g) (e) for possession of
7 marijuana, in this state shall not be prosecuted under this paragraph.

8 **SECTION 3.** 938.34 (14s) (a) (intro.) of the statutes is amended to read:

9 938.34 (14s) (a) (intro.) In addition to any other dispositions imposed under
10 this section, if the juvenile is found to have ~~violated~~ committed a violation of s. 961.41
11 (3g) that would be a felony or misdemeanor if committed by an adult, the court shall
12 order one of the following penalties:

13 **SECTION 4.** 938.34 (14t) of the statutes is amended to read:

14 938.34 (14t) POSSESSION OF A CONTROLLED SUBSTANCE OR CONTROLLED SUBSTANCE
15 ANALOG ON OR NEAR CERTAIN PREMISES. If the juvenile is adjudicated delinquent under
16 a violation of s. 961.41 (3g) by possessing or attempting to possess a controlled
17 substance included in schedule I or II under ch. 961, a controlled substance analog
18 of a controlled substance included in schedule I or II under ch. 961 or ketamine or
19 flunitrazepam while in or on the premises of a scattered-site public housing project,
20 as defined in s. 961.01 (20i), while in or on or otherwise within 1,000 feet of a state,
21 county, city, village, or town park, a jail or correctional facility, as defined in s. 961.01
22 (12m), a multiunit public housing project, as defined in s. 961.01 (14m), a swimming
23 pool open to members of the public, a youth center, as defined in s. 961.01 (22), or a
24 community center, while in or on or otherwise within 1,000 feet of any private, tribal,
25 or public school premises, or while in or on or otherwise within 1,000 feet of a school

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1 bus, as defined in s. 340.01 (56), the court shall require that the juvenile participate
2 for 100 hours in a supervised work program or other community service work under
3 sub. (5g). This subsection does not apply to a violation that would be punishable
4 under s. 961.41 (3g) (e) 1. if committed by an adult.

5 **SECTION 5.** 938.343 (2) of the statutes is amended to read:

6 938.343 (2) FORFEITURE. Impose a forfeiture not to exceed the maximum
7 forfeiture that may be imposed on an adult for committing that violation or, if the
8 violation is only applicable to a person under 18 years of age or is a violation that
9 would be punishable under s. 961.41 (3g) (e) 1. if committed by an adult, \$50. The
10 order shall include a finding that the juvenile alone is financially able to pay and
11 shall allow up to 12 months for the payment. If a juvenile fails to pay the forfeiture,
12 the court may suspend any license issued under ch. 29 or suspend the juvenile's
13 operating privilege, as defined in s. 340.01 (40), for not more than 2 years. The court
14 shall immediately take possession of the suspended license if issued under ch. 29 or,
15 if the license is issued under ch. 343, the court may take possession of, and if
16 possession is taken, shall destroy, the license. The court shall forward to the
17 department which issued the license the notice of suspension stating that the
18 suspension is for failure to pay a forfeiture imposed by the court, together with any
19 license issued under ch. 29 of which the court takes possession. If the forfeiture is
20 paid during the period of suspension, the court shall immediately notify the
21 department, which shall, if the license is issued under ch. 29, return the license to
22 the person. Any recovery under this subsection shall be reduced by the amount
23 recovered as a forfeiture for the same act under s. 938.45 (1r) (b).

24 **SECTION 6.** 961.41 (3g) (e) of the statutes is repealed and recreated to read:

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1 961.41 (3g) (e) *Tetrahydrocannabinols*. Any person who possesses or attempts
2 to possess tetrahydrocannabinols included under s. 961.14 (4) (t), or a controlled
3 substance analog of tetrahydrocannabinols:

4 1. Shall forfeit not less than \$150 nor more than \$300, except as provided in
5 subds. 2 to 4.

6 2. Is guilty of a Class C misdemeanor if the number of convictions under this
7 section in the person's lifetime equals 2 and subd. 4.b. does not apply.

8 3. Is guilty of a Class A misdemeanor if the number of convictions under this
9 section in the person's lifetime equals 3 and subd. 4.b. does not apply.

10 4. Is guilty of a Class I felony if either of the following apply:

11 a. The number of convictions under this section in the person's lifetime equals
12 4 or more.

13 b. The person has been convicted of any felony or misdemeanor under this
14 chapter, except a misdemeanor punishable under subd. 2. or 3., or under any statute
15 of the United States or of any state relating to controlled substances, controlled
16 substance analogs, narcotic drugs, or depressant, stimulant, or hallucinogenic
17 drugs.

18 **SECTION 7.** 961.48 (5) of the statutes is amended to read:

19 961.48 (5) This section does not apply if the person is presently charged with
20 an offense punishable under s. 961.41 (3g) (e) or with a felony under s. 961.41 (3g)
21 (c), (d), (e), or (g).

22 **SECTION 8.** 961.495 of the statutes is amended to read:

23 **961.495 Possession or attempted possession of a controlled substance**
24 **on or near certain places.** If any person violates s. 961.41 (3g) by possessing or
25 attempting to possess a controlled substance included in schedule I or II, a controlled

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1 substance analog of a controlled substance included in schedule I or II or ketamine
2 or flunitrazepam while in or on the premises of a scattered-site public housing
3 project, while in or on or otherwise within 1,000 feet of a state, county, city, village,
4 or town park, a jail or correctional facility, a multiunit public housing project, a
5 swimming pool open to members of the public, a youth center or a community center,
6 while in or on or otherwise within 1,000 feet of any private or public school premises
7 or of any premises of a tribal school, as defined in s. 115.001 (15m), or while in or on
8 or otherwise within 1,000 feet of a school bus, as defined in s. 340.01 (56), the court
9 shall, in addition to any other penalties that may apply to the crime, impose 100
10 hours of community service work for a public agency or a nonprofit charitable
11 organization. The court shall ensure that the defendant is provided a written
12 statement of the terms of the community service order and that the community
13 service order is monitored. Any organization or agency acting in good faith to which
14 a defendant is assigned pursuant to an order under this section has immunity from
15 any civil liability in excess of \$25,000 for acts or omissions by or impacting on the
16 defendant. This section does not apply to an offense punishable under s. 961.41 (3g)
17 (e) 1.

SECTION 9. Initial applicability.

18 (1) This act first applies to offenses committed on the effective date of this
19 subsection.
20

21 (END)