



2019 SENATE BILL 577

November 22, 2019 - Introduced by Senators RISSER, LARSON, L. TAYLOR and MILLER, cosponsored by Representatives STUBBS, CROWLEY, CONSIDINE, VRUWINK, BROSTOFF, GRUSZYNSKI, OHNSTAD, SHANKLAND, BILLINGS, SINICKI, SPREITZER, ZAMARRIPA, KOLSTE, HESSELBEIN, SUBECK, ANDERSON, POPE and EMERSON. Referred to Committee on Judiciary and Public Safety.

1 **AN ACT** *to renumber* 961.41 (1q); *to renumber and amend* 961.41 (1) (h) 1.;
2 *to amend* 59.54 (25) (a) (intro.), 66.0107 (1) (bm), 961.41 (1m) (h) 1., 961.41 (1r),
3 961.41 (3g) (e) and 961.46; *to repeal and recreate* 961.41 (1q) (title); and *to*
4 *create* 961.41 (1) (h) 1g., 961.41 (1q) (b) and (c) and 973.016 of the statutes;
5 **relating to:** decriminalizing 28 grams or less of marijuana.

Analysis by the Legislative Reference Bureau

Current law prohibits a person from possessing or attempting to possess; possessing with the intent to manufacture, distribute, or deliver; and manufacturing, distributing, or delivering marijuana. The penalties vary based on the amount of marijuana or plants involved or the number of previous controlled-substance convictions the person has. Current law also allows local governments to enact ordinances prohibiting the possession of marijuana.

This bill eliminates 1) the penalty for possession of marijuana if the amount of marijuana involved is no more than 28 grams; 2) the penalty for manufacturing or for possessing with the intent to manufacture, distribute, or deliver if the amount of marijuana involved is no more than 28 grams or the number of plants involved is no more than two; and 3) the penalty for distributing or delivering marijuana if the amount of marijuana involved is no more than 28 grams or the number of plants involved is no more than two. The bill retains the current law penalty for distributing or delivering any amount of marijuana to a minor who is no more than 17 years of age by a person who is at least three years older than the minor. The bill limits local

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governments to enacting ordinances prohibiting only the possession of more than 28 grams of marijuana.

The bill also prohibits establishing probable cause that a person is violating the prohibition against possessing more than 28 grams of marijuana by an odor of marijuana or by the possession of not more than 28 grams of marijuana. Current law requires that, when determining the weight of controlled substances, the weight includes the weight of the controlled substance together with any compound, mixture, or other substance mixed or combined with the controlled substance. Under the bill, when determining the amount of tetrahydrocannabinols, only the weight of the marijuana may be considered. Finally, the bill creates a process for expunging or dismissing convictions involving less than 28 grams of marijuana that occurred before this bill takes effect.

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

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

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

2 59.54 **(25)** (a) (intro.) The board may enact and enforce an ordinance to prohibit
3 the possession of more than 28 grams of marijuana, as defined in s. 961.01 (14),
4 subject to the exceptions in s. 961.41 (3g) (intro.), and provide a forfeiture for a
5 violation of the ordinance; ~~except that if a complaint is issued regarding an allegation~~
6 ~~of alleging possession of more than 25~~ 28 grams of marijuana, ~~or possession of any~~
7 amount of marijuana following a conviction in this state for possession of more than
8 28 grams of marijuana, the subject of the complaint may not be prosecuted under this
9 subsection for the same action that is the subject of the complaint unless all of the
10 following occur:

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

12 66.0107 **(1)** (bm) Enact and enforce an ordinance to prohibit the possession of
13 more than 28 grams of marijuana, as defined in s. 961.01 (14), subject to the
14 exceptions in s. 961.41 (3g) (intro.), and provide a forfeiture for a violation of the

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1 ordinance; except that if a complaint is issued ~~regarding an allegation of alleging~~
2 possession of more than ~~25~~ 28 grams of marijuana, or possession of any amount of
3 marijuana following a conviction in this state for possession of more than 28 grams
4 of marijuana, the subject of the complaint may not be prosecuted under this
5 paragraph for the same action that is the subject of the complaint unless the charges
6 are dismissed or the district attorney declines to prosecute the case.

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

9 961.41 (1) (h) 1r. ~~Two hundred~~ More than 28 grams but not more than 200
10 ~~grams or less, or more than 2 but not more than~~ 4 ~~or fewer~~ plants containing
11 tetrahydrocannabinols, the person is guilty of a Class I felony.

12 **SECTION 4.** 961.41 (1) (h) 1g. of the statutes is created to read:

13 961.41 (1) (h) 1g. Twenty-eight grams or less, or 2 or fewer plants containing
14 tetrahydrocannabinols, the person is guilty of a Class I felony if the person is at least
15 17 years of age and distributes or delivers to a person who is no more than 17 years
16 of age and who is at least 3 years younger than the person distributing or delivering.

17 **SECTION 5.** 961.41 (1m) (h) 1. of the statutes is amended to read:

18 961.41 (1m) (h) 1. ~~Two hundred~~ More than 28 grams but not more than 200
19 ~~grams or less, or more than 2 but not more than~~ 4 ~~or fewer~~ plants containing
20 tetrahydrocannabinols, the person is guilty of a Class I felony.

21 **SECTION 6.** 961.41 (1q) (title) of the statutes is repealed and recreated to read:

22 961.41 (1q) (title) TETRAHYDROCANNABINOLS PENALTY AND PROBABLE CAUSE.

23 **SECTION 7.** 961.41 (1q) of the statutes is renumbered 961.41 (1q) (a).

24 **SECTION 8.** 961.41 (1q) (b) and (c) of the statutes are created to read:

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1 961.41 (1q) (b) The following are not sufficient to establish probable cause that
2 a violation of sub. (1) (h) has occurred:

3 1. Odor of marijuana.

4 2. The possession of not more than 28 grams of marijuana.

5 (c) No individual on parole, probation, extended supervision, supervised
6 release, or any other release may have the release revoked for possessing not more
7 than 28 grams of marijuana.

8 **SECTION 9.** 961.41 (1r) of the statutes is amended to read:

9 961.41 (1r) DETERMINING WEIGHT OF SUBSTANCE. In determining amounts under
10 s. 961.49 (2) (b), 1999 stats., and subs. (1) and (1m), an amount includes the weight
11 of cocaine, cocaine base, heroin, phencyclidine, lysergic acid diethylamide, psilocin,
12 psilocybin, amphetamine, methamphetamine, tetrahydrocannabinols, synthetic
13 cannabinoids, or substituted cathinones, or any controlled substance analog of any
14 of these substances together with any compound, mixture, diluent, plant material
15 or other substance mixed or combined with the controlled substance or controlled
16 substance analog. In addition, in determining amounts under subs. (1) (h) and (1m)
17 (h), and (3g) (e), the amount of tetrahydrocannabinols means anything included
18 under s. 961.14 (4) (t) and includes means the weight of any only marijuana.

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

20 961.41 (3g) (e) *Tetrahydrocannabinols*. If a person possesses or attempts to
21 possess more than 28 grams of tetrahydrocannabinols included under s. 961.14 (4)
22 (t), or a controlled substance analog of tetrahydrocannabinols, the person may be
23 fined not more than \$1,000 or imprisoned for not more than 6 months or both upon
24 a first conviction and is guilty of a Class I felony for a 2nd or subsequent offense. For
25 purposes of this paragraph, an offense is considered a 2nd or subsequent offense if,

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1 prior to the offender's conviction of the offense, the offender has at any time been
2 convicted of any felony or misdemeanor under this chapter or under any statute of
3 the United States or of any state relating to controlled substances, controlled
4 substance analogs, narcotic drugs, marijuana, or depressant, stimulant, or
5 hallucinogenic drugs.

6 **SECTION 11.** 961.46 of the statutes is amended to read:

7 **961.46 Distribution to persons under age 18.** If a person 17 years of age
8 or over violates s. 961.41 (1), except s. 961.41 (1) (h) 1g., by distributing or delivering
9 a controlled substance or a controlled substance analog to a person 17 years of age
10 or under who is at least 3 years his or her junior, the applicable maximum term of
11 imprisonment prescribed under s. 961.41 (1) for the offense may be increased by not
12 more than 5 years.

13 **SECTION 12.** 973.016 of the statutes is created to read:

14 **973.016 Special disposition for marijuana-related crimes. (1)**
15 **DISMISSAL OF CONVICTION FOR PERSONS SERVING A SENTENCE OR PROBATION.** (a) A person
16 serving a sentence or on probation may request dismissal as provided under par. (b)
17 if one of the following applies:

18 1. The sentence or probation period was imposed for a conviction under s.
19 961.41 (1) (h), 2017 stats., or s. 961.41 (1m) (h), 2017 stats., and the person proves
20 to the court by a preponderance of the evidence that the amount of marijuana
21 involved was 28 grams or less, or 2 or fewer plants.

22 2. The sentence or probation period was imposed for a conviction under s.
23 961.41 (3g) (e), 2017 stats., and the person proves to the court by a preponderance
24 of the evidence that the amount of marijuana involved was 28 grams or less.

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1 (b) A person to whom par. (a) applies shall file a petition with the sentencing
2 court to request dismissal of the conviction. If the court receiving a petition under
3 this paragraph determines that par. (a) applies, the court may grant the petition
4 without a hearing or may schedule a hearing to consider the petition. If a hearing
5 is scheduled, unless the person cannot prove the amount of marijuana involved was
6 28 grams or less or the court determines that the dismissal of the conviction presents
7 an unreasonable risk of danger to public safety, the court shall grant the petition.

8 **(2) EXPUNGING AN OFFENSE FOR PERSONS WHO COMPLETED A SENTENCE OR**
9 **PROBATION.** (a) A person who has completed his or her sentence or period of probation
10 may request under par. (b) expungement of the conviction if one of the following
11 applies:

12 1. The sentence or probation period was imposed for a conviction under s.
13 961.41 (1) (h), 2017 stats., or s. 961.41 (1m) (h), 2017 stats., and the person proves
14 to the court by a preponderance of the evidence that the amount of marijuana
15 involved was 28 grams or less, or 2 or fewer plants.

16 2. The sentence or probation period was imposed for a conviction under s.
17 961.41 (3g) (e), 2017 stats., and the person proves to the court by a preponderance
18 of the evidence that the amount of marijuana involved was 28 grams or less.

19 (b) A person to whom par. (a) applies shall file a petition with the sentencing
20 court to request expungement of the conviction. If the court receiving a petition
21 under this paragraph determines that par. (a) applies, the court may grant the
22 petition without a hearing or may schedule a hearing to consider the petition. If a
23 hearing is scheduled, unless the person cannot prove the amount of marijuana
24 involved was 28 grams or less or the court determines that expungement of the

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1 conviction presents an unreasonable risk of danger to public safety, the court shall
2 grant the petition.

3 (3) CRIMES DISMISSED OR EXPUNGED UNDER THIS SECTION. A conviction that has
4 been expunged or dismissed under this section is not considered a conviction for any
5 purpose under state or federal law, including for purposes of s. 941.29 or 18 USC 921.

6 (END)