



State of Wisconsin
2017 - 2018 LEGISLATURE

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CMH:klm

2017 SENATE BILL 38

February 15, 2017 - Introduced by Senators ERPENBACH, L. TAYLOR, JOHNSON, MILLER, HANSEN, C. LARSON, VINEHOUT and SHILLING, cosponsored by Representatives C. TAYLOR, HINTZ, SHANKLAND, GENRICH, BERCEAU, ANDERSON, POPE, GOYKE, DOYLE, CROWLEY, HEBL, SINICKI, OHNSTAD, SARGENT, SUBECK, ZEPNICK, BROSTOFF, BOWEN, ZAMARRIPA and SPREITZER. Referred to Committee on Health and Human Services.

1 **AN ACT** *to renumber and amend* 961.55 (8) and 968.19; *to amend* 59.54 (25)
2 (a) (intro.), 59.54 (25m), 66.0107 (1) (bm), 66.0107 (1) (bp), 66.1201 (2m),
3 66.1213 (3), 66.1301 (2m), 66.1331 (2m), 66.1333 (3) (e) 2., 106.50 (1m) (h),
4 234.29, 289.33 (3) (d), 349.02 (2) (b) 4., 767.41 (5) (am) (intro.), 767.451 (5m) (a),
5 961.555 (2) (a), 961.56 (1) and 968.20 (1g) (intro.); and **to create** 20.435 (1) (gq),
6 20.435 (1) (jm), subchapter IV of chapter 50 [precedes 50.59], 59.54 (25) (c),
7 66.0414, 146.44, 767.41 (5) (d), 767.451 (5m) (d), 961.01 (3), 961.01 (5m), 961.01
8 (11v), 961.01 (12v), 961.01 (14c), 961.01 (14g), 961.01 (17k), 961.01 (19m),
9 961.01 (20hm), 961.01 (20ht), 961.01 (20t), 961.01 (21f), 961.01 (21t), 961.436,
10 961.55 (8) (b), 961.55 (8) (c), 961.55 (8) (d), 961.555 (2) (e), 961.555 (2m),
11 961.5755, 968.072, 968.12 (6), 968.19 (2) and 968.20 (1j) of the statutes;
12 **relating to:** medical use of marijuana, the regulation of marijuana distribution

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

Analysis by the Legislative Reference Bureau

Current law prohibits a person from manufacturing, distributing, or delivering marijuana; possessing marijuana with the intent to manufacture, distribute, or deliver it; possessing or attempting to possess marijuana; using drug paraphernalia; or possessing drug paraphernalia with the intent to produce, distribute, or use a controlled substance. This bill creates a medical use defense to such marijuana-related prosecutions and forfeiture actions for persons who are registered with the Department of Health Services as having specified debilitating medical conditions or treatments and, if applicable, their primary caregivers. This bill also prohibits the arrest or prosecution of such persons for those offenses. The defense and prohibition do not apply under certain circumstances, such as 1) if the person does not have a valid registry identification card; 2) if the amount of marijuana involved is more than 12 marijuana plants and three ounces of marijuana leaves or flowers; 3) if, while under the influence of marijuana, the person drives a motor vehicle or engages in any other conduct that endangers the health or well being of another person; or 4) if the person smokes marijuana on a school bus or public transit or on school premises.

Under the bill, DHS must establish a registry for persons who use marijuana for medical use. Under the bill, a person may apply to DHS for a registry identification card. DHS must issue a qualified applicant a registry identification card unless, in the previous ten years, the applicant was serving a sentence or on probation for certain felony convictions. Except for law enforcement purposes, DHS must keep registry information and applications confidential.

Under the bill, DHS also must license and regulate dispensaries to facilitate the medical use of marijuana. This bill prohibits dispensaries from being located within 500 feet of a school, prohibits a dispensary from distributing to one person more than an allowable amount of marijuana, and prohibits a dispensary from possessing an excessive quantity of marijuana as determined by the number of persons it serves or by DHS. An applicant for a license must pay an initial application fee of \$250, and a dispensary must pay an annual fee of \$5,000.

This bill requires DHS to promulgate rules to allow entities to grow marijuana and distribute marijuana to dispensaries. This bill also requires DHS to register entities as tetrahydrocannabinols-testing laboratories.

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.

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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.** 20.435 (1) (gq) of the statutes is created to read:
2 20.435 (1) (gq) *Medical marijuana registry*. All moneys received as fees under
3 s. 146.44 (2) (a) 4., for the purposes of the Medical Marijuana Registry Program under
4 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 dispensaries*. All moneys
7 received under s. 50.594 to license and regulate dispensaries, and to register
8 laboratories, under subch. IV of ch. 50.

9 **SECTION 3.** Subchapter IV of chapter 50 [precedes 50.59] of the statutes is
10 created to read:

11 **CHAPTER 50**

12 SUBCHAPTER IV

13 DISTRIBUTION AND TESTING CENTERS

14 **50.59 Definitions.** In this subchapter:

15 (1) “Dispensary” means an entity licensed under s. 50.592 that cultivates,
16 acquires, manufactures, possesses, delivers, transfers, transports, sells, or dispenses
17 marijuana, paraphernalia, or related supplies and educational materials to
18 treatment teams and other dispensaries.

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

20 (3) “Medical use of tetrahydrocannabinols” has the meaning given in s. 961.01
21 (14g).

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

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

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

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

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

6 **50.591 Departmental powers and duties.** (1) The department shall
7 provide licensing, regulation, record keeping, and security for dispensaries.

8 (2) The department shall promulgate rules allowing entities to grow marijuana
9 and distribute marijuana to dispensaries, developing security guidelines for the
10 entities, and regulating such entities. The rules may not include limits on the
11 amount of marijuana the entities grow for, or sell to, dispensaries.

12 **50.592 Licensing.** The department shall issue licenses to operate as a
13 dispensary and shall decide which and how many applicants for a license receive a
14 license based on all of the following:

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

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

18 (3) The experience the applicant has running a nonprofit organization or a
19 business.

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

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

24 (6) The ability of the applicant to abide by the prohibitions under s. 50.593.

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1 **50.593 Prohibitions.** The department may not issue a license to, and must
2 revoke a license of, any entity to which any of the following applies:

3 (1) The entity is located within 500 feet of a public or private elementary or
4 secondary school, including a charter school.

5 (2) The dispensary distributes to a treatment team a number of plants or an
6 amount of usable marijuana that, in the period of distribution, results in the
7 treatment team possessing more than the maximum authorized amount.

8 (3) The dispensary possesses a number of plants or an amount of usable
9 marijuana that exceeds the combined maximum authorized amount for all of the
10 treatment teams that use the dispensary by a number or an amount determined by
11 the department by rule to be unacceptable.

12 **50.594 Licensing procedure.** (1) An application for a license shall be in
13 writing on a form provided by the department and include the licensing application
14 fee under sub. (2) (a).

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

16 (b) The annual fee for a dispensary is \$5,000.

17 (3) A dispensary license is valid unless revoked. Each license shall be issued
18 only for the applicant named in the application and may not be transferred or
19 assigned.

20 **50.595 Distribution of medical marijuana.** (1) A dispensary may deliver
21 or distribute tetrahydrocannabinols or drug paraphernalia to a member of a
22 treatment team if the dispensary receives a copy of the qualifying patient's written
23 certification or registry identification card.

24 (2) A dispensary may possess or manufacture tetrahydrocannabinols or drug
25 paraphernalia with the intent to deliver or distribute under sub. (1).

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1 **(2m)** An entity operating under rules promulgated under s. 50.591 (2) may
2 possess tetrahydrocannabinols, possess or manufacture tetrahydrocannabinols with
3 the intent to deliver or distribute to a dispensary, or deliver or distribute marijuana
4 to a dispensary.

5 **(3)** A dispensary may have 2 locations, one for cultivation and one for
6 distribution.

7 **(4)** A dispensary shall have all tetrahydrocannabinols tested for mold, fungus,
8 pesticides, and other contaminants and may not distribute tetrahydrocannabinols
9 that test positive for mold, fungus, pesticides, or other contaminants if the
10 contaminants, or level of contaminants, are identified by the testing laboratories
11 under s. 50.596 (2) to be potentially unsafe to a qualifying patient's health.

12 **(5)** A dispensary or an entity operating under rules promulgated under s.
13 50.591 (2) may cultivate marijuana, including cultivating marijuana outdoors.

14 **50.596 Testing laboratories.** The department shall register entities as
15 tetrahydrocannabinols-testing laboratories. The laboratories may possess or
16 manufacture tetrahydrocannabinols or drug paraphernalia and shall perform the
17 following services:

18 **(1)** Test marijuana produced for the medical use of tetrahydrocannabinols for
19 potency and for mold, fungus, pesticides, and other contaminants.

20 **(2)** Research findings related to the medical use of tetrahydrocannabinols,
21 including research that identifies potentially unsafe levels of contaminants.

22 **(3)** Provide training to persons who hold registry identification cards,
23 treatment teams, persons employed by dispensaries, and entities that grow and
24 distribute marijuana, as provided by rules promulgated under s. 50.591 (2), on the
25 following:

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1 (a) The safe and efficient cultivation, harvesting, packaging, labeling, and
2 distribution of marijuana for the medical use of tetrahydrocannabinols.

3 (b) Security and inventory accountability procedures.

4 (c) The most recent research on the medical use of tetrahydrocannabinols.

5 **SECTION 4.** 59.54 (25) (a) (intro.) of the statutes is amended to read:

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

17 **SECTION 5.** 59.54 (25) (c) of the statutes is created to read:

18 59.54 (25) (c) 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 6.** 59.54 (25m) of the statutes is amended to read:

22 59.54 (25m) DRUG PARAPHERNALIA. The board may enact an ordinance to
23 prohibit conduct that is the same as that prohibited by s. 961.573 (1) or (2), 961.574
24 (1) or (2), or 961.575 (1) or (2) and provide a forfeiture for violation of the ordinance.
25 Any ordinance enacted under this subsection shall provide a person prosecuted

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1 under it with the defenses that the person has under s. 961.5755 to prosecutions
2 under s. 961.573 (1), 961.574 (1), or 961.575 (1). A person may not be prosecuted
3 under an ordinance enacted under this subsection if, under s. 968.072 (3) or (4) (b),
4 the person would not be subject to prosecution under s. 961.573 (1), 961.574 (1), or
5 961.575 (1). The board may enforce an ordinance enacted under this subsection in
6 any municipality within the county.

7 **SECTION 7.** 66.0107 (1) (bm) of the statutes is amended to read:

8 66.0107 (1) (bm) Enact and enforce an ordinance to prohibit the possession of
9 marijuana, as defined in s. 961.01 (14), subject to the exceptions in s. 961.41 (3g)
10 (intro.), and provide a forfeiture for a violation of the ordinance; ~~except that if.~~ Any
11 ordinance enacted under this paragraph shall provide a person who is prosecuted
12 under it with the defenses that the person has under s. 961.436 to prosecutions under
13 s. 961.41 (1) (h), (1m) (h), or (3g) (e). If a complaint is issued regarding an allegation
14 of possession of more than 25 grams of marijuana, or possession of any amount of
15 marijuana following a conviction in this state for possession of marijuana, the subject
16 of the complaint may not be prosecuted under this paragraph for the same action that
17 is the subject of the complaint unless the charges are dismissed or the district
18 attorney declines to prosecute the case.

19 **SECTION 8.** 66.0107 (1) (bp) of the statutes is amended to read:

20 66.0107 (1) (bp) Enact and enforce an ordinance to prohibit conduct that is the
21 same as that prohibited by s. 961.573 (1) or (2), 961.574 (1) or (2), or 961.575 (1) or
22 (2) and provide a forfeiture for violation of the ordinance. Any ordinance enacted
23 under this paragraph shall provide a person prosecuted under it with the defenses
24 that the person has under s. 961.5755 to prosecutions under s. 961.573 (1), 961.574
25 (1), or 961.575 (1). A person may not be prosecuted under an ordinance enacted

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1 under this paragraph if, under s. 968.072 (3) or (4) (b), the person would not be subject
2 to prosecution under s. 961.573 (1), 961.574 (1), or 961.575 (1).

3 **SECTION 9.** 66.0414 of the statutes is created to read:

4 **66.0414 Cultivation of tetrahydrocannabinols.** No village, town, city, or
5 county may enact or enforce an ordinance or a resolution that prohibits cultivating
6 tetrahydrocannabinols outdoors if the cultivation is by one of the following:

7 (1) A dispensary, as defined in s. 50.59 (1).

8 (2) A person who is cultivating tetrahydrocannabinols for the medical use of
9 tetrahydrocannabinols, as defined in s. 961.01 (14g), if the amount does not exceed
10 the maximum authorized amount, as defined in s. 961.01 (14c).

11 (3) An entity that is growing marijuana for distribution as permitted under
12 rules promulgated under s. 50.591 (2).

13 **SECTION 10.** 66.1201 (2m) of the statutes is amended to read:

14 66.1201 (2m) DISCRIMINATION. Persons otherwise entitled to any right, benefit,
15 facility, or privilege under ss. 66.1201 to 66.1211 may not be denied the right, benefit,
16 facility, or privilege in any manner for any purpose nor be discriminated against
17 because of sex, race, color, creed, or sexual orientation; status as a victim of domestic
18 abuse, sexual assault, or stalking, as defined in s. 106.50 (1m) (u); whether the
19 person holds, or has applied for, a registry identification card, as defined in s. 146.44
20 (1) (g), has been the subject of a written certification, as defined in s. 961.01 (21t), or
21 is or has been a member of a treatment team, as defined in s. 961.01 (20t); or national
22 origin.

23 **SECTION 11.** 66.1213 (3) of the statutes is amended to read:

24 66.1213 (3) DISCRIMINATION. Persons otherwise entitled to any right, benefit,
25 facility, or privilege under this section may not be denied the right, benefit, facility,

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1 or privilege in any manner for any purpose nor be discriminated against because of
2 sex, race, color, creed, or sexual orientation,; status as a victim of domestic abuse,
3 sexual assault, or stalking, as defined in s. 106.50 (1m) (u),; whether the person
4 holds, or has applied for, a registry identification card, as defined in s. 146.44 (1) (g),
5 has been the subject of a written certification, as defined in s. 961.01 (21t), or is or
6 has been a member of a treatment team, as defined in s. 961.01 (20t); or national
7 origin.

8 **SECTION 12.** 66.1301 (2m) of the statutes is amended to read:

9 66.1301 **(2m)** DISCRIMINATION. Persons entitled to any right, benefit, facility,
10 or privilege under ss. 66.1301 to 66.1329 may not be denied the right, benefit, facility,
11 or privilege in any manner for any purpose nor be discriminated against because of
12 sex, race, color, creed, or sexual orientation,; status as a victim of domestic abuse,
13 sexual assault, or stalking, as defined in s. 106.50 (1m) (u),; whether the person
14 holds, or has applied for, a registry identification card, as defined in s. 146.44 (1) (g),
15 has been the subject of a written certification, as defined in s. 961.01 (21t), or is or
16 has been a member of a treatment team, as defined in s. 961.01 (20t); or national
17 origin.

18 **SECTION 13.** 66.1331 (2m) of the statutes is amended to read:

19 66.1331 **(2m)** DISCRIMINATION. Persons otherwise entitled to any right, benefit,
20 facility, or privilege under this section may not be denied the right, benefit, facility,
21 or privilege in any manner for any purpose nor be discriminated against because of
22 sex, race, color, creed, or sexual orientation,; status as a victim of domestic abuse,
23 sexual assault, or stalking, as defined in s. 106.50 (1m) (u),; whether the person
24 holds, or has applied for, a registry identification card, as defined in s. 146.44 (1) (g),
25 has been the subject of a written certification, as defined in s. 961.01 (21t), or is or

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1 has been a member of a treatment team, as defined in s. 961.01 (20t); or national
2 origin.

3 **SECTION 14.** 66.1333 (3) (e) 2. of the statutes is amended to read:

4 66.1333 (3) (e) 2. Persons otherwise entitled to any right, benefit, facility, or
5 privilege under this section may not be denied the right, benefit, facility, or privilege
6 in any manner for any purpose nor be discriminated against because of sex, race,
7 color, creed, or sexual orientation;; status as a victim of domestic abuse, sexual
8 assault, or stalking, as defined in s. 106.50 (1m) (u); whether the person holds, or
9 has applied for, a registry identification card, as defined in s. 146.44 (1) (g), has been
10 the subject of a written certification, as defined in s. 961.01 (21t), or is or has been
11 a member of a treatment team, as defined in s. 961.01 (20t); or national origin.

12 **SECTION 15.** 106.50 (1m) (h) of the statutes is amended to read:

13 106.50 (1m) (h) “Discriminate” means to segregate, separate, exclude, or treat
14 a person or class of persons unequally in a manner described in sub. (2), (2m), or (2r)
15 because of sex, race, color, sexual orientation, disability, religion, national origin,
16 marital status, or family status;; status as a victim of domestic abuse, sexual assault,
17 or stalking; whether the person holds, or has applied for, a registry identification
18 card, as defined in s. 146.44 (1) (g), has been the subject of a written certification, as
19 defined in s. 961.01 (21t), or is or has been a member of a treatment team, as defined
20 in s. 961.01 (20t); lawful source of income;; age;; or ancestry.

21 **SECTION 16.** 146.44 of the statutes is created to read:

22 **146.44 Medical Marijuana Registry Program. (1) DEFINITIONS.** In this
23 section:

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

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1 (b) “Debilitating medical condition or treatment” has the meaning given in s.
2 961.01 (5m).

3 (c) “Medical use of tetrahydrocannabinols” has the meaning given in s. 961.01
4 (14g).

5 (cm) “Out-of-state registry identification card” means a document that is valid
6 under the rule promulgated under sub. (7) (f).

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

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

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

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

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

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

18 1. His or her name, address, and date of birth.

19 2. A written certification.

20 3. The name, address, and telephone number of the person’s current
21 practitioner, as listed in the written certification.

22 4. A registration fee in an amount determined by the department, but not to
23 exceed \$150.

24 5. Any information that the department determines is necessary for a
25 background check under par. (am).

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1 (am) 1. In this paragraph:

2 a. "Background check" means a search of department of justice records to
3 determine whether an applicant for a registry identification card has been convicted
4 of a disqualifying offense.

5 b. "Disqualifying offense" means a violent crime under s. 165.84 (7) (ab) or a
6 violation of ch. 961, or a substantially similar violation of federal law, that is a felony.

7 2. The department shall convey the information provided by the applicant
8 under par. (a) to the department of justice, and the department of justice shall
9 perform a background check on the applicant.

10 3. If the department of justice determines that the applicant has been convicted
11 of a disqualifying offense, the department of health services shall deny the
12 application unless at least 10 years has passed since the completion of any sentence
13 imposed for any disqualifying offense, including any period of incarceration, parole,
14 and extended supervision, and any period of probation imposed for a disqualifying
15 offense.

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

22 (c) The department shall promulgate rules specifying how a parent, guardian,
23 or person having legal custody of a child may apply for a registry identification card
24 for himself or herself and for the child and the circumstances under which the
25 department may approve or deny the application.

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1 **(3) PROCESSING THE APPLICATION.** The department shall verify the information
2 contained in or accompanying an application submitted under sub. (2) and shall
3 approve or deny the application within 30 days after receiving it. The department
4 may deny an application submitted under sub. (2) only if one of the following applies:

5 (a) The required information has not been provided or if false information has
6 been provided.

7 (b) The department is required to deny the application under sub. (2) (am) 3.

8 (c) The department is required to deny the application under the rules
9 promulgated under sub. (2) (c).

10 **(4) ISSUING A REGISTRY IDENTIFICATION CARD.** The department shall issue to the
11 applicant a registry identification card within 5 days after approving an application
12 under sub. (3). Unless voided under sub. (5) (b) or (c) or revoked under rules
13 promulgated by the department under sub. (7) (d), a registry identification card shall
14 expire 2 years from the date of issuance. A registry identification card shall contain
15 all of the following:

16 (a) The name, address, and date of birth of all of the following:

17 1. The registrant.

18 2. Each primary caregiver, if the registrant is a qualifying patient.

19 3. The qualifying patient, if the registrant is a primary caregiver.

20 (b) The date of issuance and expiration date of the registry identification card.

21 (c) A photograph of the registrant.

22 (d) Other information the department may require by rule.

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

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

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

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

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

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

19 (b) Notwithstanding s. 19.35 and except as provided in par. (c) and sub. (2) (am),
20 the department may not disclose information from an application submitted or a
21 registry identification card issued under this section.

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

12 (f) Ensuring that out-of-state registry identification cards are valid only if the
13 following apply:

14 1. The person holding the out-of-state registry identification card has been
15 diagnosed with a debilitating medical condition in the course of a bona fide
16 practitioner-patient relationship, as defined in s. 961.01 (3).

17 2. The out-of-state registry identification card allows for the medical use of
18 tetrahydrocannabinols by the person who holds it, is valid in the jurisdiction in which
19 it was provided, and the person who holds the card is a resident of that jurisdiction.

20 3. The person who holds the card has not been a resident of Wisconsin for a
21 period longer than a period the department determines would allow the person to
22 apply for a registry identification card in Wisconsin.

23 (g) Creating guidelines for issuing registry identification cards, and for
24 obtaining and distributing marijuana for the medical use of tetrahydrocannabinols,

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1 to persons under the care of the department who have a debilitating medical
2 condition or treatment.

3 **SECTION 17.** 234.29 of the statutes is amended to read:

4 **234.29 Equality of occupancy and employment.** The authority shall
5 require that occupancy of housing projects assisted under this chapter be open to all
6 regardless of sex, race, religion, or sexual orientation; status as a victim of domestic
7 abuse, sexual assault, or stalking, as defined in s. 106.50 (1m) (u); whether the
8 person holds, or has applied for, a registry identification card, as defined in s. 146.44
9 (1) (g), has been the subject of a written certification, as defined in s. 961.01 (21t), or
10 is or has been a member of a treatment team, as defined in s. 961.01 (20t); or creed,
11 and that contractors and subcontractors engaged in the construction of economic
12 development or housing projects, shall provide an equal opportunity for
13 employment, without discrimination as to sex, race, religion, sexual orientation, or
14 creed.

15 **SECTION 18.** 289.33 (3) (d) of the statutes is amended to read:

16 289.33 (3) (d) "Local approval" includes any requirement for a permit, license,
17 authorization, approval, variance or exception or any restriction, condition of
18 approval or other restriction, regulation, requirement or prohibition imposed by a
19 charter ordinance, general ordinance, zoning ordinance, resolution or regulation by
20 a town, city, village, county or special purpose district, including without limitation
21 because of enumeration any ordinance, resolution or regulation adopted under s.
22 91.73, 2007 stats., s. 59.03 (2), 59.11 (5), 59.42 (1), 59.48, 59.51 (1) and (2), 59.52 (2),
23 (5), (6), (7), (8), (9), (11), (12), (13), (15), (16), (17), (18), (19), (20), (21), (22), (23), (24),
24 (25), (26) and (27), 59.53 (1), (2), (3), (4), (5), (7), (8), (9), (11), (12), (13), (14), (15), (19),
25 (20) and (23), 59.535 (2), (3) and (4), 59.54 (1), (2), (3), (4), (4m), (5), (6), (7), (8), (10),

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1 (11), (12), (16), (17), (18), (19), (20), (21), (22), (23), (24), (25) (a), and (26), 59.55 (3),
2 (4), (5) and (6), 59.56 (1), (2), (4), (5), (6), (7), (9), (10), (11), (12), (12m), (13) and (16),
3 59.57 (1), 59.58 (1) and (5), 59.62, 59.69, 59.692, 59.693, 59.696, 59.697, 59.698, 59.70
4 (1), (2), (3), (5), (7), (8), (9), (10), (11), (21), (22) and (23), 59.79 (1), (2), (3), (5), (7), (8),
5 and (10), 59.792 (2) and (3), 59.80, 59.82, 60.10, 60.22, 60.23, 60.54, 60.77, 61.34,
6 61.35, 61.351, 61.353, 61.354, 62.11, 62.23, 62.231, 62.233, 62.234, 66.0101, 66.0415,
7 87.30, 196.58, 200.11 (8), 236.45, 281.43 or 349.16, subch. VIII of ch. 60, or subch. III
8 of ch. 91.

9 **SECTION 19.** 349.02 (2) (b) 4. of the statutes is amended to read:

10 349.02 (2) (b) 4. Local ordinances enacted under s. 59.54 (25) (a) or (25m) or
11 66.0107 (1) (bm).

12 **SECTION 20.** 767.41 (5) (am) (intro.) of the statutes is amended to read:

13 767.41 (5) (am) (intro.) Subject to pars. (bm) ~~and~~, (c), and (d), in determining
14 legal custody and periods of physical placement, the court shall consider all facts
15 relevant to the best interest of the child. The court may not prefer one parent or
16 potential custodian over the other on the basis of the sex or race of the parent or
17 potential custodian. Subject to pars. (bm) ~~and~~, (c), and (d), the court shall consider
18 the following factors in making its determination:

19 **SECTION 21.** 767.41 (5) (d) of the statutes is created to read:

20 767.41 (5) (d) The court may not consider as a factor in determining the legal
21 custody of a child whether a parent or potential custodian holds, or has applied for,
22 a registry identification card, as defined in s. 146.44 (1) (g), is or has been the subject
23 of a written certification, as defined in s. 961.01 (21t), or is or has been a qualified
24 patient, as defined in s. 961.01 (20hm), or a primary caregiver, as defined in s. 961.01

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1 (19m), unless the parent or potential custodian's behavior creates an unreasonable
2 danger to the child that can be clearly articulated and substantiated.

3 **SECTION 22.** 767.451 (5m) (a) of the statutes is amended to read:

4 767.451 (5m) (a) Subject to pars. (b) ~~and~~, (c), and (d), in all actions to modify
5 legal custody or physical placement orders, the court shall consider the factors under
6 s. 767.41 (5) (am), subject to s. 767.41 (5) (bm), and shall make its determination in
7 a manner consistent with s. 767.41.

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

9 767.451 (5m) (d) In an action to modify a legal custody order, the court may not
10 consider as a factor in making a determination whether a parent or potential
11 custodian holds, or has applied for, a registry identification card, as defined in s.
12 146.44 (1) (g), is or has been the subject of a written certification, as defined in s.
13 961.01 (21t), or is or has been a qualified patient, as defined in s. 961.01 (20hm), or
14 a primary caregiver, as defined in s. 961.01 (19m), unless the parent or potential
15 custodian's behavior creates an unreasonable danger to the child that can be clearly
16 articulated and substantiated.

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

18 961.01 (3) "Bona fide practitioner-patient relationship" means a relationship
19 between the practitioner and the patient that includes all of the following:

20 (a) An assessment of the patient's medical history and current medical
21 condition by the practitioner, including an in-person physical examination if
22 appropriate.

23 (b) A consultation between the practitioner and the patient with respect to the
24 patient's debilitating medical condition or treatment.

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1 (c) Availability by the practitioner to provide follow-up care and treatment to
2 the patient, including patient examinations.

3 **SECTION 25.** 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 26.** 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 27.** 961.01 (12v) of the statutes is created to read:

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

25 **SECTION 28.** 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 29.** 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 in any form by a qualifying patient to
7 alleviate the symptoms or effects of the qualifying patient’s debilitating medical
8 condition or treatment.

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

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

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

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

24 **SECTION 30.** 961.01 (17k) of the statutes is created to read:

SENATE BILL 38**SECTION 30**

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

3 **SECTION 31.** 961.01 (19m) of the statutes is created to read:

4 961.01 (19m) “Primary caregiver” means a person who is at least 21 years of
5 age, who would not be denied, under s. 146.44 (3), a registry identification card, and
6 who has agreed to help a qualifying patient in his or her medical use of
7 tetrahydrocannabinols.

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

9 961.01 (20hm) “Qualifying patient” means a person who has been diagnosed
10 in the course of a bona fide practitioner-patient relationship as having or undergoing
11 a debilitating medical condition or treatment but does not include a person under the
12 age of 18 years unless all of the following apply:

13 (a) The person’s practitioner has explained the potential risks and benefits of
14 the medical use of tetrahydrocannabinols to the person and to a parent, guardian,
15 or person having legal custody of the person.

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

- 18 1. Allow the person’s medical use of tetrahydrocannabinols.
- 19 2. Serve as a primary caregiver for the person.
- 20 3. Manage the person’s medical use of tetrahydrocannabinols.

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

22 961.01 (20ht) “Registry identification card” has the meaning given in s. 146.44
23 (1) (g).

24 **SECTION 34.** 961.01 (20t) of the statutes is created to read:

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1 961.01 **(20t)** “Treatment team” means a qualifying patient and his or her
2 primary caregivers.

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

4 961.01 **(21f)** “Usable marijuana” means marijuana leaves or flowers but does
5 not include seeds, stalks, or roots or any ingredients combined with the leaves or
6 flowers.

7 **SECTION 36.** 961.01 (21t) of the statutes is created to read:

8 961.01 **(21t)** “Written certification” means a statement made by a person’s
9 practitioner if all of the following apply:

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

14 (b) The statement indicates that the opinion described in par. (a) was made in
15 the course of a bona fide practitioner-patient relationship.

16 (c) The statement is signed by the practitioner or is contained in the person’s
17 medical records.

18 **SECTION 37.** 961.436 of the statutes is created to read:

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

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

SENATE BILL 38**SECTION 37**

1 (b) The amount of tetrahydrocannabinols does not exceed the maximum
2 authorized amount.

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

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

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

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

14 (b) The amount of tetrahydrocannabinols does not exceed the maximum
15 authorized amount.

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

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

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

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

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

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

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

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

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

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

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

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

18 b. The person's place of employment.

19 c. Public or private school premises.

20 d. A juvenile correctional facility.

21 e. A jail or adult correctional facility.

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

23 g. A youth center.

24 (4) For the purposes of a defense raised under sub. (1), (2), or (3) (a), a valid
25 registry identification card, a valid out-of-state registry identification card, or a

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1 written certification is presumptive evidence that the person identified on the card
2 as a qualifying patient or the subject of the written certification is a qualifying
3 patient and that, if the person uses tetrahydrocannabinols, he or she does so to
4 alleviate the symptoms or effects of his or her debilitating medical condition or
5 treatment.

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

15 **SECTION 38.** 961.55 (8) of the statutes is renumbered 961.55 (8) (intro.) and
16 amended to read:

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

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

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

24 961.55 (8) (b) A valid registry identification card or a valid out-of-state
25 registry identification card.

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

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

4 **SECTION 41.** 961.55 (8) (d) of the statutes is created to read:

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

7 **SECTION 42.** 961.555 (2) (a) of the statutes is amended to read:

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

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

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

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

25 **SECTION 44.** 961.555 (2m) of the statutes is created to read:

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1 961.555 **(2m)** MEDICAL USE DEFENSE. (a) In an action to forfeit property seized
2 under s. 961.55, the person who was in possession of the property when it was seized
3 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 45.** 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 46.** 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 47.** 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 member manufactures, distributes, delivers, or possesses
13 tetrahydrocannabinols for the medical use of tetrahydrocannabinols by the
14 treatment team.

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

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

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

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

24 **(3) LIMITATIONS ON ARRESTS AND PROSECUTION; DRUG PARAPHERNALIA FOR MEDICAL**
25 **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 member 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 member possesses a valid registry identification card, a valid
7 out-of-state registry identification card, or a copy of the qualifying patient's written
8 certification.

9 3. The member does not possess more than the maximum authorized amount
10 of tetrahydrocannabinols.

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

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

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

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

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

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1 3. The member does not possess more than the maximum authorized amount
2 of tetrahydrocannabinols.

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

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

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

11 (b) An employee of a dispensary licensed under subch. IV of ch. 50 or of an entity
12 operating under the rules promulgated under s. 50.591 (2) may not be arrested and
13 such employee may not be subject to prosecution, denied any right or privilege, or
14 penalized in any manner for any good faith action under subch. IV of ch. 50.

15 **(5) PENALTY FOR FALSE STATEMENTS.** Whoever intentionally provides false
16 information to a law enforcement officer in an attempt to avoid arrest or prosecution
17 under this section for a violation of s. 961.41 (1) (h), (1m) (h), or (3g) (e), 961.573 (1),
18 961.574 (1), or 961.575 (1) may be fined not more than \$500.

19 **SECTION 48.** 968.12 (6) of the statutes is created to read:

20 968.12 **(6) MEDICAL USE OF MARIJUANA.** A person's possession, use, or submission
21 of or connection with an application for a registry identification card under s. 146.44
22 (2), the issuance of such a card under s. 146.44 (4), or a person's possession of such
23 a card, a valid out-of-state registry identification card, as defined in s. 146.44 (1)
24 (cm), or an original or a copy of a written certification, as defined in s. 961.01 (21t),

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1 may not, by itself, constitute probable cause under sub. (1) or otherwise subject any
2 person or the property of any person to inspection by any governmental agency.

3 **SECTION 49.** 968.19 of the statutes is renumbered 968.19 (1) and amended to
4 read:

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

9 **SECTION 50.** 968.19 (2) of the statutes is created to read:

10 968.19 (2) A law enforcement agency that has seized a live marijuana plant is
11 not responsible for the plant's care and maintenance.

12 **SECTION 51.** 968.20 (1g) (intro.) of the statutes is amended to read:

13 968.20 (1g) (intro.) The court shall order such notice as it deems adequate to
14 be given the district attorney and, unless notice was provided under s. 968.26 (7), to
15 all persons who have or may have an interest in the property. The court shall hold
16 a hearing to hear all claims to its true ownership. If Except as provided in sub. (1j),
17 if the right to possession is proved to the court's satisfaction, it shall order the
18 property, ~~other than contraband or property covered under sub. (1m) or (1r) or s.~~
19 ~~173.21 (4) or 968.205,~~ returned if:

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

21 968.20 (1j) (a) In this subsection:

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

23 2. "Tetrahydrocannabinols" means a substance included in s. 961.14 (4) (t).

24 (b) Except as provided in par. (c), sub. (1g) does not apply to contraband or
25 property covered under sub. (1m) or (1r) or s. 173.12, 173.21 (4), or 968.205.

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1 (c) Under sub. (1g), the court may return drug paraphernalia or
2 tetrahydrocannabinols that have been seized to the person from whom they were
3 seized 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 **SECTION 53. Effective dates.** This act takes effect on the day after publication,
12 except as follows:

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

15 (END)