

1999 Assembly Bill 318

Date of enactment: **April 11, 2000**
Date of publication*: **April 25, 2000**

1999 WISCONSIN ACT 48

AN ACT to amend 961.41 (1) (e) (intro.), 961.41 (1m) (e) (intro.), 961.41 (3g) (b), 961.41 (3g) (d), 961.41 (3g) (dm), 961.46 (3), 961.465 (2), 961.472 (2), 961.48 (2), 961.49 (1) (intro.), 961.55 (1) (d) 3., 971.365 (1) (a), 971.365 (1) (b), 971.365 (1) (c) and 971.365 (2); **to repeal and recreate** 961.41 (1) (e) (intro.), 961.41 (1) (em), 961.41 (1m) (e) (intro.), 961.41 (1m) (em) and 961.41 (3g) (d); and **to create** 961.41 (1) (em), 961.41 (1m) (em) and 961.41 (3g) (dm) of the statutes; **relating to:** the controlled substance methamphetamine and providing penalties.

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

SECTION 1. 961.41 (1) (e) (intro.) of the statutes is amended to read:

961.41 (1) (e) (intro.) Phencyclidine, amphetamine, ~~methamphetamine~~ or methcathinone, or a controlled substance analog of phencyclidine, amphetamine, ~~methamphetamine~~ or methcathinone, is subject to the following penalties if the amount manufactured, distributed or delivered is:

SECTION 1r. 961.41 (1) (e) (intro.) of the statutes, as affected by 1999 Wisconsin Acts (Assembly Bill 465) and (this act), is repealed and recreated to read:

961.41 (1) (e) *Phencyclidine, amphetamine and methcathinone.* (intro.) If the person violates this subsection with respect to phencyclidine, amphetamine or methcathinone, or a controlled substance analog of phencyclidine, amphetamine or methcathinone, and the amount manufactured, distributed or delivered is:

SECTION 2. 961.41 (1) (em) of the statutes is created to read:

961.41 (1) (em) Methamphetamine or a controlled substance analog of methamphetamine is subject to the

following penalties if the amount manufactured, distributed or delivered is:

1. Three grams or less, the person shall be fined not less than \$1,000 nor more than \$200,000 and may be imprisoned for not more than 22 years and 6 months.

2. More than 3 grams but not more than 10 grams, the person shall be fined not less than \$1,000 nor more than \$250,000 and shall be imprisoned for not less than 6 months nor more than 22 years and 6 months.

3. More than 10 grams but not more than 50 grams, the person shall be fined not less than \$1,000 nor more than \$500,000 and shall be imprisoned for not less than one year nor more than 22 years and 6 months.

4. More than 50 grams but not more than 200 grams, the person shall be fined not less than \$1,000 nor more than \$500,000 and shall be imprisoned for not less than 3 years nor more than 22 years and 6 months.

5. More than 200 grams but not more than 400 grams, the person shall be fined not less than \$1,000 nor more than \$500,000 and shall be imprisoned for not less than 5 years nor more than 22 years and 6 months.

6. More than 400 grams, the person shall be fined not less than \$1,000 nor more than \$1,000,000 and shall be

* Section 991.11, WISCONSIN STATUTES 1997-98: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

imprisoned for not less than 10 years nor more than 45 years.

SECTION 2r. 961.41 (1) (em) of the statutes, as created by 1999 Wisconsin Act (this act), is repealed and recreated to read:

961.41 (1) (em) *Methamphetamine*. If the person violates this subsection with respect to methamphetamine or a controlled substance analog of methamphetamine and the amount manufactured, distributed or delivered is:

1. Three grams or less, the person is guilty of a Class F felony.
2. More than 3 grams but not more than 10 grams, the person is guilty of a Class E felony.
3. More than 10 grams but not more than 50 grams, the person is guilty of a Class D felony.
4. More than 50 grams, the person is guilty of a Class C felony.

SECTION 3. 961.41 (1m) (e) (intro.) of the statutes is amended to read:

961.41 (1m) (e) (intro.) Phencyclidine, amphetamine, ~~methamphetamine~~ or methcathinone, or a controlled substance analog of phencyclidine, amphetamine, ~~methamphetamine~~ or methcathinone, is subject to the following penalties if the amount possessed, with intent to manufacture, distribute or deliver, is:

SECTION 3r. 961.41 (1m) (e) (intro.) of the statutes, as affected by 1999 Wisconsin Acts (Assembly Bill 465) and (this act), is repealed and recreated to read:

961.41 (1m) (e) *Phencyclidine, amphetamine and methcathinone*. (intro.) If a person violates this subsection with respect to phencyclidine, amphetamine or methcathinone, or a controlled substance analog of phencyclidine, amphetamine or methcathinone, and the amount possessed, with intent to manufacture, distribute or deliver, is:

SECTION 4. 961.41 (1m) (em) of the statutes is created to read:

961.41 (1m) (em) Methamphetamine or a controlled substance analog of methamphetamine is subject to the following penalties if the amount possessed, with intent to manufacture, distribute or deliver, is:

1. Three grams or less, the person shall be fined not less than \$1,000 nor more than \$200,000 and may be imprisoned for not more than 22 years and 6 months.
2. More than 3 grams but not more than 10 grams, the person shall be fined not less than \$1,000 nor more than \$250,000 and shall be imprisoned for not less than 6 months nor more than 22 years and 6 months.
3. More than 10 grams but not more than 50 grams, the person shall be fined not less than \$1,000 nor more than \$500,000 and shall be imprisoned for not less than one year nor more than 22 years and 6 months.
4. More than 50 grams but not more than 200 grams, the person shall be fined not less than \$1,000 nor more

than \$500,000 and shall be imprisoned for not less than 3 years nor more than 22 years and 6 months.

5. More than 200 grams but not more than 400 grams, the person shall be fined not less than \$1,000 nor more than \$500,000 and shall be imprisoned for not less than 5 years nor more than 22 years and 6 months.

6. More than 400 grams, the person shall be fined not less than \$1,000 nor more than \$1,000,000 and shall be imprisoned for not less than 10 years nor more than 45 years.

SECTION 4r. 961.41 (1m) (em) of the statutes, as created by 1999 Wisconsin Act (this act), is repealed and recreated to read:

961.41 (1m) (em) *Methamphetamine*. If the person violates this subsection with respect to methamphetamine or a controlled substance analog of methamphetamine and the amount possessed, with intent to manufacture, distribute or deliver, is:

1. Three grams or less, the person is guilty of a Class F felony.
2. More than 3 grams but not more than 10 grams, the person is guilty of a Class E felony.
3. More than 10 grams but not more than 50 grams, the person is guilty of a Class D felony.
4. More than 50 grams, the person is guilty of a Class C felony.

SECTION 5. 961.41 (3g) (b) of the statutes is amended to read:

961.41 (3g) (b) Except as provided in pars. (c), (d), ~~(dm)~~, (e) and (f), if the person possesses or attempts to possess a controlled substance or controlled substance analog, other than a controlled substance included in schedule I or II that is a narcotic drug or a controlled substance analog of a controlled substance included in schedule I or II that is a narcotic drug, the person is guilty of a misdemeanor, punishable under s. 939.61.

SECTION 6. 961.41 (3g) (d) of the statutes is amended to read:

961.41 (3g) (d) If a person possesses or attempts to possess lysergic acid diethylamide, phencyclidine, amphetamine, ~~methamphetamine~~, methcathinone, psilocin or psilocybin, or a controlled substance analog of lysergic acid diethylamide, phencyclidine, amphetamine, ~~methamphetamine~~, methcathinone, psilocin or psilocybin, the person may be fined not more than \$5,000 or imprisoned for not more than one year in the county jail or both.

SECTION 6r. 961.41 (3g) (d) of the statutes, as affected by 1999 Wisconsin Acts (Assembly Bill 465) and (this act), is repealed and recreated to read:

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

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

SECTION 7. 961.41 (3g) (dm) of the statutes is created to read:

961.41 (3g) (dm) If a person possesses or attempts to possess methamphetamine or a controlled substance analog of methamphetamine, the person may be fined not more than \$5,000 or imprisoned for not more than 2 years or both.

SECTION 7r. 961.41 (3g) (dm) of the statutes, as created by 1999 Wisconsin Act (this act), is amended to read:

961.41 (3g) (dm) Methamphetamine. If a person possesses or attempts to possess methamphetamine or a controlled substance analog of methamphetamine, the person may be fined not more than \$5,000 or imprisoned for not more than 2 years one year in the county jail or both upon a first conviction and is guilty of a Class I felony for a 2nd or subsequent offense. For purposes of this paragraph, an offense is considered a 2nd or subsequent offense if, prior to the offender's conviction of the offense, the offender has at any time been convicted of any felony or misdemeanor under this chapter or under any statute of the United States or of any state relating to controlled substances, controlled substance analogs, narcotic drugs, marijuana or depressant, stimulant or hallucinogenic drugs.

SECTION 8. 961.46 (3) of the statutes is amended to read:

961.46 (3) If any person 17 years of age or over violates s. 961.41 (1) (cm), (d), (e), (em), (f), (g) or (h) by distributing or delivering cocaine, cocaine base, heroin, phencyclidine, lysergic acid diethylamide, psilocin, psilocybin, amphetamine, methamphetamine, methcathinone or any form of tetrahydrocannabinols or a controlled substance analog of any of these substances to a person 17 years of age or under who is at least 3 years his or her junior, any applicable minimum and maximum fines and minimum and maximum periods of imprisonment under s. 961.41 (1) (cm), (d), (e), (em), (f), (g) or (h) are doubled.

SECTION 9. 961.465 (2) of the statutes is amended to read:

961.465 (2) If a person violates s. 961.41 (1) (cm), (d), (e), (em), (f), (g) or (h) or (1m) (cm), (d), (e), (em),

(f), (g) or (h) by delivering, distributing or possessing with intent to deliver or distribute cocaine, cocaine base, heroin, phencyclidine, lysergic acid diethylamide, psilocin, psilocybin, amphetamine, methamphetamine, methcathinone or any form of tetrahydrocannabinols, or a controlled substance analog of any of these substances, to a prisoner within the precincts of any prison, jail or house of correction, any applicable minimum and maximum fines and minimum and maximum periods of imprisonment under s. 961.41 (1) (cm), (d), (e), (em), (f), (g) or (h) or (1m) (cm), (d), (e), (em), (f), (g) or (h) are doubled.

SECTION 10. 961.472 (2) of the statutes is amended to read:

961.472 (2) Except as provided in sub. (5), if a person pleads guilty or is found guilty of possession or attempted possession of a controlled substance or controlled substance analog under s. 961.41 (3g) (a) 2., (c) ~~or~~ (d) or (dm), the court shall order the person to comply with an assessment of the person's use of controlled substances. The court's order shall designate a facility that is operated by or pursuant to a contract with the county department established under s. 51.42 and that is certified by the department of health and family services to provide assessment services to perform the assessment and, if appropriate, to develop a proposed treatment plan. The court shall notify the person that noncompliance with the order limits the court's ability to determine whether the treatment option under s. 961.475 is appropriate. The court shall also notify the person of the fee provisions under s. 46.03 (18) (fm).

SECTION 11. 961.48 (2) of the statutes is amended to read:

961.48 (2) If any person is charged under sub. (2m) with a 2nd or subsequent offense under this chapter that is specified in s. 961.41 (1) (cm), (d), (e), (em), (f), (g) or (h), (1m) (cm), (d), (e), (em), (f), (g) or (h) or (3g) (a) 2., (c), (d), (dm) or (e), and he or she is convicted of that 2nd or subsequent offense, any applicable minimum and maximum fines and minimum and maximum periods of imprisonment under s. 961.41 (1) (cm), (d), (e), (em), (f), (g) or (h), (1m) (cm), (d), (e), (em), (f), (g) or (h) or (3g) (a) 2., (c), (d), (dm) or (e) are doubled. A person convicted of a 2nd or subsequent offense under s. 961.41 (3g) (c), (d) or (e) is guilty of a felony and the person may be imprisoned in state prison.

SECTION 12. 961.49 (1) (intro.) of the statutes is amended to read:

961.49 (1) (intro.) If any person violates s. 961.41 (1) (cm), (d), (e), (em), (f), (g) or (h) by delivering or distributing, or violates s. 961.41 (1m) (cm), (d), (e), (em), (f), (g) or (h) by possessing with intent to deliver or distribute, cocaine, cocaine base, heroin, phencyclidine, lysergic acid diethylamide, psilocin, psilocybin, amphetamine, methamphetamine, methcathinone or any form of tetrahydrocannabinols or a controlled substance analog

of any of these substances and the delivery, distribution or possession takes place under any of the following circumstances, the maximum term of imprisonment prescribed by law for that crime may be increased by 5 years:

SECTION 13. 961.55 (1) (d) 3. of the statutes is amended to read:

961.55 (1) (d) 3. A vehicle is not subject to forfeiture for a violation of s. 961.41 (3g) (b), (c), (d), (dm), (e) or (f); and

SECTION 14. 971.365 (1) (a) of the statutes is amended to read:

971.365 (1) (a) In any case under s. 961.41 (1) (cm), (d), (e), (em), (f), (g) or (h) involving more than one violation, all violations may be prosecuted as a single crime if the violations were pursuant to a single intent and design.

SECTION 15. 971.365 (1) (b) of the statutes is amended to read:

971.365 (1) (b) In any case under s. 961.41 (1m) (cm), (d), (e), (em), (f), (g) or (h) involving more than one violation, all violations may be prosecuted as a single crime if the violations were pursuant to a single intent and design.

SECTION 16. 971.365 (1) (c) of the statutes is amended to read:

971.365 (1) (c) In any case under s. 961.41 (3g) (a) 2., (c), (d), (dm) or (e) involving more than one violation, all violations may be prosecuted as a single crime if the violations were pursuant to a single intent and design.

SECTION 17. 971.365 (2) of the statutes is amended to read:

971.365 (2) An acquittal or conviction under sub. (1) does not bar a subsequent prosecution for any acts in violation of s. 961.41 (1) (cm), (d), (e), (em), (f), (g) or (h), (1m) (cm), (d), (e), (em), (f), (g) or (h) or (3g) (a) 2., (c), (d), (dm) or (e) on which no evidence was received at the trial on the original charge.

SECTION 17m. Nonstatutory provisions.

(1q) RECONCILIATION PROVISION. The amendment of section 961.41 (3g) (dm) of the statutes, as created by this act, the repeal and recreation of section 961.41 (1) (e) (intro.) and (em), (1m) (e) (intro.) and (em) and (3g) (d) of the statutes and SECTION 19s (1g), (2h) and (3i) of this act are void unless 1999 Assembly Bill 465 is enacted into law before July 1, 2000, and unless 1999 Assembly Bill 465 affects section 961.41 (1) (e) (intro.), (1m) (e) (intro.) and (3g) (d) of the statutes in exactly the same

form as shown in 1999 Assembly Bill 465, as passed by the assembly.

SECTION 18. Initial applicability.

(1) The treatment of sections 961.41 (3g) (b), 961.46 (3), 961.465 (2), 961.472 (2), 961.48 (2), 961.49 (1) (intro.), 961.55 (1) (d) 3. and 971.365 (1) (a), (b) and (c) and (2) of the statutes, the amendment of section 961.41 (1) (e) (intro.), (1m) (e) (intro.) and (3g) (d) of the statutes and the creation of section 961.41 (1) (em), (1m) (em) and (3g) (dm) of the statutes first apply to offenses committed on the effective date of this subsection.

(2r) The amendment of section 961.41 (3g) (dm) of the statutes, as created by this act, and the repeal and recreation of section 961.41 (1) (e) (intro.) and (em), (1m) (e) (intro.) and (em) and (3g) (d) of the statutes first apply to offenses committed on the effective date of this subsection.

SECTION 19s. Effective dates. This act takes effect on the day after publication, except as follows:

(1g) If 1999 Assembly Bill 465 has been enacted on or before the day after publication of this act and the day after publication of this act is on or before December 31, 1999, the amendment of section 961.41 (3g) (dm) of the statutes, as created by this act, the repeal and recreation of section 961.41 (1) (e) (intro.) and (em), (1m) (e) (intro.) and (em) and (3g) (d) of the statutes and SECTION 18 (2r) of this act take effect on December 31, 1999.

(2h) If 1999 Assembly Bill 465 has been enacted on or before the day after publication of this act and the day after publication of this act is after December 31, 1999, the amendment of section 961.41 (3g) (dm) of the statutes, as created by this act, the repeal and recreation of section 961.41 (1) (e) (intro.) and (em), (1m) (e) (intro.) and (em) and (3g) (d) of the statutes and SECTION 18 (2r) of this act take effect on the day after publication of this act.

(3i) If 1999 Assembly Bill 465 is enacted after the day after publication of this act but before July 1, 2000, the amendment of section 961.41 (3g) (dm) of the statutes, as created by this act, the repeal and recreation of section 961.41 (1) (e) (intro.) and (em), (1m) (e) (intro.) and (em) and (3g) (d) of the statutes and SECTION 18 (2r) of this act take effect on December 31, 1999, or on the date that the treatment of section 961.41 (1) (e) (intro.), (1m) (e) (intro.) and (3g) (d) of the statutes by 1999 Assembly Bill 465 takes effect, whichever is later.