

## 1999 ASSEMBLY BILL 318

May 6, 1999 – Introduced by Representatives KREIBICH, RHOADES, BRANDEMUEHL, URBAN, SUDER, KLUSMAN, FREESE, LADWIG, AINSWORTH, NASS, MUSSER, SERATTI, M. LEHMAN, STONE, ALBERS, PETTIS, GUNDERSON, KELSO, SKINDRUD, KEDZIE, OLSEN, HUEBSCH, PETROWSKI, GRONEMUS, VRAKAS, KESTELL, MONTGOMERY and WARD, cosponsored by Senators CLAUSING, MOEN, ZIEN, PANZER, ROESSLER, DARLING, HUELSMAN, SCHULTZ, RUDE and FARROW. Referred to Committee on Criminal Justice.

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

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### ***Analysis by the Legislative Reference Bureau***

Current law provides penalties for the possession, manufacture, delivery and distribution of methamphetamine, a dangerous drug. This bill changes those penalties as follows:

#### ***Possession of methamphetamine***

Currently, a person who is convicted of possession of methamphetamine may be fined not more than \$5,000 or imprisoned for not more than one year in a county jail or both. Under the bill, a person who is convicted of possession of methamphetamine may be fined not more than \$5,000 or imprisoned for not more than two years in state prison or both.

#### ***Manufacture, delivery or distribution of methamphetamine, and possession of methamphetamine with intent to manufacture, deliver or distribute***

Under current law, the penalties for manufacture, delivery or distribution of methamphetamine and for possession of methamphetamine with intent to

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manufacture, deliver or distribute depend on the amount of the drug involved in the offense and the date of the offense. In addition to prescribing a maximum penalty for these offenses, current law provides in some cases for a minimum fine or a minimum period of imprisonment or both. These are presumptive minimum sentences. A judge may decide to impose no fine or imprisonment or a fine or period of imprisonment that is less than the specified minimum if he or she finds that the best interests of the community will be served and the public will not be harmed by doing so.

The current penalties and the changes made by the bill are as follows:

1. If the offense involves three grams or less of methamphetamine and the offense occurs before December 31, 1999, the person must currently be fined not less than \$1,000 nor more than \$200,000 and may be imprisoned for not more than five years. If the offense occurs on or after December 31, 1999, the maximum imprisonment provided under current law is seven years and six months. The bill increases the maximum imprisonment for this offense to 22 years and six months, regardless of the date on which the offense occurs. The bill does not change the minimum and maximum fines for the offense.

2. If the offense involves more than three grams but not more than ten grams of methamphetamine and the offense occurs before December 31, 1999, the person must currently be fined not less than \$1,000 nor more than \$250,000 and must be imprisoned for not less than six months nor more than five years. If the offense occurs on or after December 31, 1999, the maximum imprisonment provided under current law is seven years and six months. The bill increases the maximum imprisonment for this offense to 22 years and six months, regardless of the date on which the offense occurs. The bill does not change the minimum period of imprisonment or the minimum and maximum fines for the offense.

3. If the offense involves more than ten grams but not more than 50 grams of methamphetamine and the offense occurs before December 31, 1999, the person must currently be fined not less than \$1,000 nor more than \$500,000 and must be imprisoned for not less than one year nor more than 15 years. If the offense occurs on or after December 31, 1999, the maximum imprisonment provided under current law is 22 years and six months. The bill provides that the maximum imprisonment for this offense is 22 years and six months, regardless of the date on which the offense occurs. The bill does not change the minimum period of imprisonment or the minimum and maximum fines for the offense.

4. If the offense involves more than 50 grams but not more than 200 grams of methamphetamine and the offense occurs before December 31, 1999, the person must currently be fined not less than \$1,000 nor more than \$500,000 and must be imprisoned for not less than three years nor more than 15 years. If the offense occurs on or after December 31, 1999, the maximum imprisonment provided under current law is 22 years and six months. The bill provides that the maximum imprisonment for this offense is 22 years and six months, regardless of the date on which the offense occurs. The bill does not change the minimum period of imprisonment or the minimum and maximum fines for the offense.

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5. If the offense involves more than 200 grams but not more than 400 grams of methamphetamine and the offense occurs before December 31, 1999, the person must currently be fined not less than \$1,000 nor more than \$500,000 and must be imprisoned for not less than five years nor more than 15 years. If the offense occurs on or after December 31, 1999, the maximum imprisonment provided under current law is 22 years and six months. The bill provides that the maximum imprisonment for this offense is 22 years and six months, regardless of the date on which the offense occurs. The bill does not change the minimum period of imprisonment or the minimum and maximum fines for the offense.

6. If the offense involves more than 400 grams of methamphetamine and the offense occurs before December 31, 1999, the person must currently be fined not less than \$1,000 nor more than \$1,000,000 and must be imprisoned for not less than ten years nor more than 30 years. If the offense occurs on or after December 31, 1999, the maximum imprisonment provided under current law is 45 years. The bill provides that the maximum imprisonment for this offense is 45 years, regardless of the date on which the offense occurs. The bill does not change the minimum period of imprisonment or the minimum and maximum fines for the offense.

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

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

2           961.41 **(1)** (e) (intro.) Phencyclidine, amphetamine, ~~methamphetamine~~ or  
3           methcathinone, or a controlled substance analog of phencyclidine, amphetamine,  
4           ~~methamphetamine~~ or methcathinone, is subject to the following penalties if the  
5           amount manufactured, distributed or delivered is:

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

7           961.41 **(1)** (em) Methamphetamine or a controlled substance analog of  
8           methamphetamine is subject to the following penalties if the amount manufactured,  
9           distributed or delivered is:

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

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

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

7           4. More than 50 grams but not more than 200 grams, the person shall be fined  
8 not less than \$1,000 nor more than \$500,000 and shall be imprisoned for not less than  
9 3 years nor more than 22 years and 6 months.

10          5. More than 200 grams but not more than 400 grams, the person shall be fined  
11 not less than \$1,000 nor more than \$500,000 and shall be imprisoned for not less than  
12 5 years nor more than 22 years and 6 months.

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

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

17           961.41 **(1m)** (e) (intro.) Phencyclidine, amphetamine, ~~methamphetamine~~ or  
18 methcathinone, or a controlled substance analog of phencyclidine, amphetamine,  
19 ~~methamphetamine~~ or methcathinone, is subject to the following penalties if the  
20 amount possessed, with intent to manufacture, distribute or deliver, is:

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

22           961.41 **(1m)** (em) Methamphetamine or a controlled substance analog of  
23 methamphetamine is subject to the following penalties if the amount possessed, with  
24 intent to manufacture, distribute or deliver, is:

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

3           2. More than 3 grams but not more than 10 grams, the person shall be fined  
4 not less than \$1,000 nor more than \$250,000 and shall be imprisoned for not less than  
5 6 months nor more than 22 years and 6 months.

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

9           4. More than 50 grams but not more than 200 grams, the person shall be fined  
10 not less than \$1,000 nor more than \$500,000 and shall be imprisoned for not less than  
11 3 years nor more than 22 years and 6 months.

12           5. More than 200 grams but not more than 400 grams, the person shall be fined  
13 not less than \$1,000 nor more than \$500,000 and shall be imprisoned for not less than  
14 5 years nor more than 22 years and 6 months.

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

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

19           961.41 **(3g)** (b) Except as provided in pars. (c), (d), (dm), (e) and (f), if the person  
20 possesses or attempts to possess a controlled substance or controlled substance  
21 analog, other than a controlled substance included in schedule I or II that is a  
22 narcotic drug or a controlled substance analog of a controlled substance included in  
23 schedule I or II that is a narcotic drug, the person is guilty of a misdemeanor,  
24 punishable under s. 939.61.

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

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1           961.41 **(3g)** (d) If a person possesses or attempts to possess lysergic acid  
2 diethylamide, phencyclidine, amphetamine, ~~methamphetamine~~, methcathinone,  
3 psilocin or psilocybin, or a controlled substance analog of lysergic acid diethylamide,  
4 phencyclidine, amphetamine, ~~methamphetamine~~, methcathinone, psilocin or  
5 psilocybin, the person may be fined not more than \$5,000 or imprisoned for not more  
6 than one year in the county jail or both.

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

8           961.41 **(3g)** (dm) If a person possesses or attempts to possess  
9 methamphetamine or a controlled substance analog of methamphetamine, the  
10 person may be fined not more than \$5,000 or imprisoned for not more than 2 years  
11 or both.

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

13           961.46 **(3)** If any person 17 years of age or over violates s. 961.41 (1) (cm), (d),  
14 (e), (em), (f), (g) or (h) by distributing or delivering cocaine, cocaine base, heroin,  
15 phencyclidine, lysergic acid diethylamide, psilocin, psilocybin, amphetamine,  
16 methamphetamine, methcathinone or any form of tetrahydrocannabinols or a  
17 controlled substance analog of any of these substances to a person 17 years of age or  
18 under who is at least 3 years his or her junior, any applicable minimum and  
19 maximum fines and minimum and maximum periods of imprisonment under s.  
20 961.41 (1) (cm), (d), (e), (em), (f), (g) or (h) are doubled.

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

22           961.465 **(2)** If a person violates s. 961.41 (1) (cm), (d), (e), (em), (f), (g) or (h) or  
23 (1m) (cm), (d), (e), (em), (f), (g) or (h) by delivering, distributing or possessing with  
24 intent to deliver or distribute cocaine, cocaine base, heroin, phencyclidine, lysergic  
25 acid diethylamide, psilocin, psilocybin, amphetamine, methamphetamine,

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1 methcathinone or any form of tetrahydrocannabinols, or a controlled substance  
2 analog of any of these substances, to a prisoner within the precincts of any prison,  
3 jail or house of correction, any applicable minimum and maximum fines and  
4 minimum and maximum periods of imprisonment under s. 961.41 (1) (cm), (d), (e),  
5 (em), (f), (g) or (h) or (1m) (cm), (d), (e), (em), (f), (g) or (h) are doubled.

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

7 961.472 (2) Except as provided in sub. (5), if a person pleads guilty or is found  
8 guilty of possession or attempted possession of a controlled substance or controlled  
9 substance analog under s. 961.41 (3g) (a) 2., (c) ~~or~~, (d) or (dm), the court shall order  
10 the person to comply with an assessment of the person's use of controlled substances.  
11 The court's order shall designate a facility that is operated by or pursuant to a  
12 contract with the county department established under s. 51.42 and that is certified  
13 by the department of health and family services to provide assessment services to  
14 perform the assessment and, if appropriate, to develop a proposed treatment plan.  
15 The court shall notify the person that noncompliance with the order limits the court's  
16 ability to determine whether the treatment option under s. 961.475 is appropriate.  
17 The court shall also notify the person of the fee provisions under s. 46.03 (18) (fm).

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

19 961.48 (2) If any person is charged under sub. (2m) with a 2nd or subsequent  
20 offense under this chapter that is specified in s. 961.41 (1) (cm), (d), (e), (em), (f), (g)  
21 or (h), (1m) (cm), (d), (e), (em), (f), (g) or (h) or (3g) (a) 2., (c), (d), (dm) or (e), and he  
22 or she is convicted of that 2nd or subsequent offense, any applicable minimum and  
23 maximum fines and minimum and maximum periods of imprisonment under s.  
24 961.41 (1) (cm), (d), (e), (em), (f), (g) or (h), (1m) (cm), (d), (e), (em), (f), (g) or (h) or (3g)  
25 (a) 2., (c), (d), (dm) or (e) are doubled. A person convicted of a 2nd or subsequent

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1 offense under s. 961.41 (3g) (c), (d) or (e) is guilty of a felony and the person may be  
2 imprisoned in state prison.

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

4 961.49 (1) (intro.) If any person violates s. 961.41 (1) (cm), (d), (e), (em), (f), (g)  
5 or (h) by delivering or distributing, or violates s. 961.41 (1m) (cm), (d), (e), (em), (f),  
6 (g) or (h) by possessing with intent to deliver or distribute, cocaine, cocaine base,  
7 heroin, phencyclidine, lysergic acid diethylamide, psilocin, psilocybin,  
8 amphetamine, methamphetamine, methcathinone or any form of  
9 tetrahydrocannabinols or a controlled substance analog of any of these substances  
10 and the delivery, distribution or possession takes place under any of the following  
11 circumstances, the maximum term of imprisonment prescribed by law for that crime  
12 may be increased by 5 years:

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

14 961.55 (1) (d) 3. A vehicle is not subject to forfeiture for a violation of s. 961.41  
15 (3g) (b), (c), (d), (dm), (e) or (f); and

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

17 971.365 (1) (a) In any case under s. 961.41 (1) (cm), (d), (e), (em), (f), (g) or (h)  
18 involving more than one violation, all violations may be prosecuted as a single crime  
19 if the violations were pursuant to a single intent and design.

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

21 971.365 (1) (b) In any case under s. 961.41 (1m) (cm), (d), (e), (em), (f), (g) or (h)  
22 involving more than one violation, all violations may be prosecuted as a single crime  
23 if the violations were pursuant to a single intent and design.

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



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

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

5           971.365 **(2)** An acquittal or conviction under sub. (1) does not bar a subsequent  
6 prosecution for any acts in violation of s. 961.41 (1) (cm), (d), (e), (em), (f), (g) or (h),  
7 (1m) (cm), (d), (e), (em), (f), (g) or (h) or (3g) (a) 2., (c), (d), (dm) or (e) on which no  
8 evidence was received at the trial on the original charge.

9           **SECTION 18. Initial applicability.**

10           (1) This act first applies to offenses committed on the effective date of this  
11 subsection.

12

(END)