



State of Wisconsin
2019 - 2020 LEGISLATURE

LRB-1996/P3
CMH:cdc&cjs

DOA:.....Potts, BB0355 - Decriminalize less than 25 grams of marijuana
FOR 2019-2021 BUDGET -- NOT READY FOR INTRODUCTION

AN ACT ...; **relating to:** the budget.

Analysis by the Legislative Reference Bureau

CRIMES

1. Decriminalizing 25 grams or less of marijuana

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

This bill eliminates 1) the penalty for possession of marijuana if the amount of marijuana involved is no more than 25 grams; 2) the penalty for manufacturing or for possessing with the intent to manufacture, distribute, or deliver if the amount of marijuana involved is no more than 25 grams or the number of plants involved is no more than two; and 3) the penalty for distributing or delivering marijuana if the amount of marijuana involved is no more than 25 grams or the number of plants involved is no more than two. The bill retains the current law penalty for distributing or delivering any amount of marijuana to a minor who is no more than 17 years of age by a person who is at least three years older than the minor. The bill limits local governments to enacting ordinances prohibiting only the possession of more than 25 grams of marijuana.

The bill also prohibits establishing probable cause that a person is violating the prohibition against possessing more than 25 grams of marijuana by an odor of

marijuana or by the possession of not more than 25 grams of marijuana. Current law requires that, when determining the weight of controlled substances, the weight includes the weight of the controlled substance together with any compound, mixture, or other substance mixed or combined with the controlled substance. Under the bill, when determining the amount of tetrahydrocannabinols, only the weight of the marijuana may be considered. Finally, the bill creates a process for expunging or dismissing convictions involving less than 25 grams of marijuana that occurred before this bill takes effect.

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

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

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

961.41 (1) (h) 1r. ~~Two hundred~~ More than 25 grams but not more than 200 grams ~~or less, or more than 2 but not more than 4 or fewer~~ plants containing tetrahydrocannabinols, the person is guilty of a Class I felony.

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

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

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

961.41 (1m) (h) 1. ~~Two hundred~~ More than 25 grams but not more than 200 grams ~~or less, or more than 2 but not more than 4 or fewer~~ plants containing tetrahydrocannabinols, the person is guilty of a Class I felony.

SECTION 4. 961.41 (1q) (title) of the statutes is repealed and recreated to read:

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

SECTION 5. 961.41 (1q) of the statutes is renumbered 961.41 (1q) (a).

SECTION 6. 961.41 (1q) (b) and (c) of the statutes are created to read:

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

1. Odor of marijuana.
2. The possession of not more than 25 grams of marijuana.

(c) No individual on parole, probation, extended supervision, supervised release, or any other release may have the release revoked for possessing not more than 25 grams of marijuana.

SECTION 7. 961.41 (1r) of the statutes is amended to read:

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

SECTION 8. 961.41 (3g) (e) of the statutes is amended to read:

961.41 (3g) (e) *Tetrahydrocannabinols*. If a person possesses or attempts to possess more than 25 grams of tetrahydrocannabinols included under s. 961.14 (4) (t), or a controlled substance analog of tetrahydrocannabinols, the person may be fined not more than \$1,000 or imprisoned for not more than 6 months 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 9. 961.46 of the statutes is amended to read:

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

SECTION 10. 973.016 of the statutes is created to read:

973.016 Special disposition for marijuana-related crimes. (1)

DISMISSAL OF CONVICTION FOR PERSONS SERVING A SENTENCE OR PROBATION. (a) A person serving a sentence or on probation may request dismissal as provided under par. (b) if one of the following applies:

1. The sentence or probation period was imposed for a conviction under s. 961.41 (1) (h), 2017 stats., or s. 961.41 (1m) (h), 2017 stats., and the person proves to the court by a preponderance of the evidence that the amount of marijuana involved was 25 grams or less, or 2 or fewer plants.

2. The sentence or probation period was imposed for a conviction under s. 961.41 (3g) (e), 2017 stats., and the person proves to the court by a preponderance of the evidence that the amount of marijuana involved was 25 grams or less.

(b) A person to whom par. (a) applies shall file a petition with the sentencing court to request dismissal of the conviction. If the court receiving a petition under this paragraph determines that par. (a) applies, the court may grant the petition without a hearing or may schedule a hearing to consider the petition. If a hearing is scheduled, unless the person cannot prove the amount of marijuana involved was 25 grams or less or the court determines that the dismissal of the conviction presents an unreasonable risk of danger to public safety, the court shall grant the petition.

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

1. The sentence or probation period was imposed for a conviction under s. 961.41 (1) (h), 2017 stats., or s. 961.41 (1m) (h), 2017 stats., and the person proves to the court by a preponderance of the evidence that the amount of marijuana involved was 25 grams or less, or 2 or fewer plants.

2. The sentence or probation period was imposed for a conviction under s. 961.41 (3g) (e), 2017 stats., and the person proves to the court by a preponderance of the evidence that the amount of marijuana involved was 25 grams or less.

(b) A person to whom par. (a) applies shall file a petition with the sentencing court to request expungement of the conviction. If the court receiving a petition under this paragraph determines that par. (a) applies, the court may grant the petition without a hearing or may schedule a hearing to consider the petition. If a hearing is scheduled, unless the person cannot prove the amount of marijuana involved was 25 grams or less or the court determines that expungement of the

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

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

(END)