



2015 ASSEMBLY BILL 246

May 27, 2015 – Introduced by Representatives BARNES, JOHNSON, SARGENT, GOYKE, ZAMARRIPA, POPE, BROSTOFF, C. TAYLOR, BERCEAU, DANOU, HESSELBEIN, OHNSTAD, SINICKI and BOWEN, cosponsored by Senators C. LARSON and HARRIS DODD. Referred to Committee on Criminal Justice and Public Safety.

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

Analysis by the Legislative Reference Bureau

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

This bill eliminates 1) the penalty for possession of marijuana if the amount of marijuana involved is no more than 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

ASSEMBLY BILL 246

distributing or delivering any amount of marijuana to a person who is no more than 17 years of age (minor) by a person who is at least three years older than the minor. This 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 this bill, when determining the amount of tetrahydrocannabinols, only the weight of the marijuana may be considered.

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

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

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

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

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

12 66.0107 **(1)** (bm) Enact and enforce an ordinance to prohibit the possession of
13 more than 25 grams of marijuana, as defined in s. 961.01 (14), subject to the
14 exceptions in s. 961.41 (3g) (intro.), and provide a forfeiture for a violation of the

ASSEMBLY BILL 246

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

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

9 961.41 (1) (h) 1r. ~~Two hundred~~ More than 25 grams but not more than 200
10 ~~grams or less, or more than 2 but not more than 4 or fewer~~ plants containing
11 tetrahydrocannabinols, the person is guilty of a Class I felony.

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

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

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

18 961.41 (1m) (h) 1. ~~Two hundred~~ More than 25 grams but not more than 200
19 ~~grams or less, or more than 2 but not more than 4 or fewer~~ plants containing
20 tetrahydrocannabinols, the person is guilty of a Class I felony.

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

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

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

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

ASSEMBLY BILL 246**SECTION 8**

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

3 1. Odor of marijuana.

4 2. The possession of not more than 25 grams of marijuana.

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

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

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

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

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

ASSEMBLY BILL 246

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

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

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

13

(END)