



2023 SENATE BILL 1113

April 11, 2024 - Introduced by Senators LARSON, L. JOHNSON, SMITH and HESSELBEIN, cosponsored by Representatives STUBBS, J. ANDERSON, EMERSON, OHNSTAD, SHANKLAND, SINICKI and SUBECK. Referred to Committee on Judiciary 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., 961.41 (1q) (b) and (c) and 973.016 of the statutes;
5 **relating to:** decriminalizing 28 grams or less of marijuana.

Analysis by the Legislative Reference Bureau

This bill decriminalizes 28 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, as follows:

1. A person who possesses marijuana is guilty of a misdemeanor and may be fined not more than \$1,000 or imprisoned for not more than six months, or both, for a first conviction and is guilty of a Class I felony and may be fined not more than \$10,000 or imprisoned for not more than three years and six months, or both, for a repeat conviction.

2. A person who manufactures, distributes, or delivers marijuana, or possesses marijuana with the intent to manufacture, distribute, or deliver it, is guilty of a Class I felony if the amount involves not more than 200 grams or not more than four plants; a Class H felony if the amount involves more than 200 grams but not more than 1,000

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grams or more than four plants but not more than 20 plants; a Class G felony if the amount involves more than 1,000 grams but not more than 2,500 grams or more than 20 plants but not more than 50 plants; a Class F felony if the amount involves more than 2,500 grams but not more than 10,000 grams or more than 50 plants but not more than 200 plants; or a Class E felony if the amount involves more than 10,000 grams or more than 200 plants.

This bill eliminates 1) the penalty for possession of marijuana if the amount of marijuana involved is not more than 28 grams; and 2) the penalty for manufacturing, distributing, or delivering, or for possessing with the intent to manufacture, distribute, or deliver, if the amount of marijuana involved is not more than 28 grams or the number of plants involved is not more than two. The bill, however, 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.

Current law also allows local governments to enact ordinances prohibiting the possession of marijuana. The bill limits local governments to enacting ordinances prohibiting the possession of only more than 28 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.

The bill also prohibits establishing probable cause that a person is violating the prohibition against possessing more than 28 grams of marijuana by an odor of marijuana or by the possession of not more than 28 grams of marijuana. Finally, the bill creates a process for expunging or dismissing convictions involving less than 28 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:

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 28 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 alleging possession of more than ~~25~~ 28 grams of ~~marijuana, or possession of any~~

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1 amount of marijuana following a conviction in this state for possession of more than
2 28 grams of marijuana, the subject of the complaint may not be prosecuted under this
3 subsection for the same action that is the subject of the complaint unless all of the
4 following occur:

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

6 66.0107 (1) (bm) Enact and enforce an ordinance to prohibit the possession of
7 more than 28 grams of marijuana, as defined in s. 961.01 (14), subject to the
8 exceptions in s. 961.41 (3g) (intro.), and provide a forfeiture for a violation of the
9 ordinance; except that if a complaint is issued ~~regarding an allegation of alleging~~
10 possession of more than ~~25~~ 28 grams of marijuana, ~~or possession of any amount of~~
11 marijuana following a conviction in this state for possession of more than 28 grams
12 of marijuana, the subject of the complaint may not be prosecuted under this
13 paragraph for the same action that is the subject of the complaint unless the charges
14 are dismissed or the district attorney declines to prosecute the case.

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

17 961.41 (1) (h) 1r. ~~Two hundred~~ More than 28 grams but not more than 200
18 ~~grams or less, or~~ more than 2 but not more than 4 ~~or fewer~~ plants containing
19 tetrahydrocannabinols, the person is guilty of a Class I felony.

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

21 961.41 (1) (h) 1g. Twenty-eight grams or less, or 2 or fewer plants containing
22 tetrahydrocannabinols, the person is guilty of a Class I felony if the person is at least
23 17 years of age and distributes or delivers to a person who is no more than 17 years
24 of age and who is at least 3 years younger than the person distributing or delivering.

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

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1 961.41 (1m) (h) 1. ~~Two hundred~~ More than 28 grams but not more than 200
2 grams ~~or less, or more than 2 but not more than 4 or fewer~~ plants containing
3 tetrahydrocannabinols, the person is guilty of a Class I felony.

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

5 961.41 (1q) (title) TETRAHYDROCANNABINOLS PENALTY AND PROBABLE CAUSE.

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

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

8 961.41 (1q) (b) The following are not sufficient to establish probable cause that
9 a violation of sub. (1) (h) has occurred:

10 1. Odor of marijuana.

11 2. The possession of not more than 28 grams of marijuana.

12 (c) No individual on parole, probation, extended supervision, supervised
13 release, or any other release may have the release revoked for possessing not more
14 than 28 grams of marijuana.

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

16 961.41 (1r) DETERMINING WEIGHT OF SUBSTANCE. In determining amounts under
17 s. 961.49 (2) (b), 1999 stats., and subs. (1) and (1m), an amount includes the weight
18 of cocaine, cocaine base, fentanyl, a fentanyl analog, heroin, phencyclidine, lysergic
19 acid diethylamide, psilocin, psilocybin, amphetamine, methamphetamine,
20 ~~tetrahydrocannabinols~~, synthetic cannabinoids, or substituted cathinones, or any
21 controlled substance analog of any of these substances together with any compound,
22 mixture, diluent, plant material or other substance mixed or combined with the
23 controlled substance or controlled substance analog. In addition, ~~in determining~~
24 amounts under subs. (1) (h) ~~and~~, (1m) (h), and (3g) (e), the amount of

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1 tetrahydrocannabinols means ~~anything included under s. 961.14 (4) (t) and includes~~
2 the weight of any only marijuana.

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

4 961.41 (3g) (e) *Tetrahydrocannabinols.* If a person possesses or attempts to
5 possess more than 28 grams of tetrahydrocannabinols included under s. 961.14 (4)
6 (t), or a controlled substance analog of tetrahydrocannabinols, the person may be
7 fined not more than \$1,000 or imprisoned for not more than 6 months or both upon
8 a first conviction and is guilty of a Class I felony for a 2nd or subsequent offense. For
9 purposes of this paragraph, an offense is considered a 2nd or subsequent offense if,
10 prior to the offender's conviction of the offense, the offender has at any time been
11 convicted of any felony or misdemeanor under this chapter or under any statute of
12 the United States or of any state relating to controlled substances, controlled
13 substance analogs, narcotic drugs, marijuana, or depressant, stimulant, or
14 hallucinogenic drugs.

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

16 **961.46 Distribution to persons under age 18.** If a person 17 years of age
17 or over violates s. 961.41 (1), except s. 961.41 (1) (h) 1g., by distributing or delivering
18 a controlled substance or a controlled substance analog to a person 17 years of age
19 or under who is at least 3 years his or her junior, the applicable maximum term of
20 imprisonment prescribed under s. 961.41 (1) for the offense may be increased by not
21 more than 5 years.

22 **SECTION 12.** 973.016 of the statutes is created to read:

23 **973.016 Special disposition for marijuana-related crimes. (1)**

24 **DISMISSAL OF CONVICTION FOR PERSONS SERVING A SENTENCE OR PROBATION.** (a) A person

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1 serving a sentence or on probation may request dismissal as provided under par. (b)
2 if one of the following applies:

3 1. The sentence or probation period was imposed for a conviction under s.
4 961.41 (1) (h), 2021 stats., or s. 961.41 (1m) (h), 2021 stats., and the person proves
5 to the court by a preponderance of the evidence that the amount of marijuana
6 involved was 28 grams or less, or 2 or fewer plants.

7 2. The sentence or probation period was imposed for a conviction under s.
8 961.41 (3g) (e), 2021 stats., and the person proves to the court by a preponderance
9 of the evidence that the amount of marijuana involved was 28 grams or less.

10 (b) A person to whom par. (a) applies shall file a petition with the sentencing
11 court to request dismissal of the conviction. If the court receiving a petition under
12 this paragraph determines that par. (a) applies, the court may grant the petition
13 without a hearing or may schedule a hearing to consider the petition. If a hearing
14 is scheduled, unless the person cannot prove the amount of marijuana involved was
15 28 grams or less or the court determines that the dismissal of the conviction presents
16 an unreasonable risk of danger to public safety, the court shall grant the petition.

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

21 1. The sentence or probation period was imposed for a conviction under s.
22 961.41 (1) (h), 2021 stats., or s. 961.41 (1m) (h), 2021 stats., and the person proves
23 to the court by a preponderance of the evidence that the amount of marijuana
24 involved was 28 grams or less, or 2 or fewer plants.

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1 2. The sentence or probation period was imposed for a conviction under s.
2 961.41 (3g) (e), 2021 stats., and the person proves to the court by a preponderance
3 of the evidence that the amount of marijuana involved was 28 grams or less.

4 (b) A person to whom par. (a) applies shall file a petition with the sentencing
5 court to request expungement of the conviction. If the court receiving a petition
6 under this paragraph determines that par. (a) applies, the court may grant the
7 petition without a hearing or may schedule a hearing to consider the petition. If a
8 hearing is scheduled, unless the person cannot prove the amount of marijuana
9 involved was 28 grams or less or the court determines that expungement of the
10 conviction presents an unreasonable risk of danger to public safety, the court shall
11 grant the petition.

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

15 **(END)**