State of Wisconsin
2001 - 2002 LEGISLATURE

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2001 ASSEMBLY BILL 715

January 14, 2002 - Introduced by Representatives BOYLE, POCAN, SKINDRUD, SHERMAN, SCHNEIDER, BERCEAU, GRONEMUS, CARPENTER, MILLER and PLOUFF. Referred to Committee on Criminal Justice.

AN ACT ***to renumber*** 961.01 (1); ***to renumber and amend*** 59.54 (25), 961.55 (8), 968.19 and 968.20 (1); ***to amend*** 60.23 (21), 66.0107 (1) (bm), 173.12 (1m), 289.33 (3) (d), 349.02 (2) (b) 4., 961.555 (2) (a), 961.56 (1), 968.20 (3) (a) and 968.20 (3) (b); and ***to create*** 59.54 (25) (b) 2., 59.54 (25) (b) 3., 961.01 (1g), 961.01 (5m), 961.01 (11t), 961.01 (14g), 961.01 (19m), 961.01 (20hm), 961.01 (20t), 961.01 (21t), 961.37, 961.436, 961.55 (8) (b), 961.55 (8) (c), 961.555 (2) (e), 961.555 (2m), 961.5755, 968.073, 968.12 (5), 968.19 (2), 968.20 (1d) and 968.20 (1j) of the statutes; **relating to:** medical use of marijuana, requiring the exercise of rule-making authority, and providing a penalty.

Analysis by the Legislative Reference Bureau

This bill makes the following changes to current law with respect to marijuana (also known as tetrahydrocannabinols):

Current prohibitions and penalties

Current law prohibits the manufacture, distribution, and delivery of marijuana and the possession of marijuana with intent to manufacture, distribute, or deliver it. Penalties for violating these prohibitions depend on the amount of marijuana involved. If the crime involves 500 grams or less or ten or fewer marijuana plants,

the person must be fined not less than $500 nor more than $25,000 and may be imprisoned for not more than four years and six months. If the crime involves more than 500 grams but not more than 2,500 grams or more than ten plants but not more than 50 plants, the person must be fined not less than $1,000 nor more than $50,000 and must be imprisoned for not less than three months nor more than seven years and six months. If the crime involves more than 2,500 grams or more than 50 plants, the person must be fined not less than $1,000 nor more than $100,000 and must be imprisoned for not less than one year nor more than 15 years.

Current law also prohibits a person from possessing or attempting to possess marijuana. A person who violates this prohibition may be fined not more than $5,000 or imprisoned for not more than two years or both. In addition, a town, village, city, or county may enact an ordinance that prohibits the possession of 25 grams or less of marijuana. A person who violates the ordinance is subject to a forfeiture.

Current law also contains certain prohibitions regarding drug paraphernalia, which includes equipment, products, and materials used to produce, distribute, and use controlled substances, such as marijuana. Under current law, a person who uses drug paraphernalia or who possesses it with the primary intent to use it to produce, distribute, or use a controlled substance unlawfully may be fined not more than $500 or imprisoned for not more than 30 days or both. A person who delivers drug paraphernalia, possesses it with intent to deliver it, or manufactures it with intent to deliver it, knowing that it will be primarily used to produce, distribute, or use a controlled substance unlawfully, may be fined not more than $1,000 or imprisoned for not more than 90 days or both.

Medical necessity defense and immunity from arrest and prosecution

This bill establishes a medical necessity defense to marijuana–related prosecutions and property seizure (forfeiture) actions. A person may invoke this defense if he or she is a qualifying patient –– that is, someone having or undergoing a debilitating medical condition or treatment. The bill defines a debilitating medical condition to mean any of the following: 1) cancer, glaucoma, AIDS, a positive HIV test, or the treatment of these conditions; 2) a chronic or debilitating disease or medical condition or the treatment of such a disease or condition that causes cachexia (wasting away), severe pain, severe nausea, seizures, or severe and persistent muscle spasms; 3) any other medical condition or any other treatment for a medical condition designated as a debilitating medical condition or treatment in rules promulgated by the department of health and family services (DHFS).

A qualifying patient may invoke this defense if he or she acquires, possesses, cultivates, transports, or uses marijuana to alleviate the symptoms or effects of his or her debilitating medical condition or treatment, but only if no more than a reasonable amount of marijuana is involved. If a person has a statement from his or her physician documenting that the person has or is undergoing a debilitating medical condition or treatment and that the potential benefits to the person of using marijuana outweigh the health risks involved (a "written certification"), the person is presumed to have this defense if no more than a reasonable amount of marijuana is involved.

The bill also prohibits the arrest or prosecution of a qualifying patient who acquires, possesses, cultivates, transports, or uses marijuana to alleviate the symptoms or effects of his or her debilitating medical condition or treatment if the person possesses a written certification. This prohibition, however, only applies if no more than a reasonable amount of marijuana is involved. In addition, the bill prohibits the arrest or prosecution of or the imposition of any penalty on a physician who provides a written certification to a person in good faith.

The defense provided under the bill and the prohibition on arrest and prosecution contained in the bill do not apply if the person possesses or attempts to possess marijuana under the following circumstances: 1) the person drives or operates a motor vehicle while under the influence of marijuana; 2) while under the influence of marijuana, the person operates heavy machinery or engages in any other conduct that endangers the health or well–being of another person; 3) the person smokes marijuana on a bus, at the person's workplace, on school premises, in an adult or juvenile correctional facility or jail, at a public park, beach, or recreation center, or at a youth center. In addition, if the putative qualifying patient is under 18 years of age, the defense provided under the bill and the prohibition on arrest and prosecution contained in the bill apply only if the person's parent, guardian, or legal custodian agrees to serve as a primary caregiver for the person. The bill defines a primary caregiver as a person who is at least 18 years old and who has agreed to be responsible for managing a qualifying patient's medical use of marijuana.

The defense provided under the bill and the prohibition on arrest and prosecution contained in the bill also apply to a primary caregiver for any qualifying patient (regardless of the qualifying patient's age), if the primary caregiver acquires, possesses, cultivates, transfers, or transports marijuana to facilitate the qualifying patient's medical use of it. The defense and the prohibition apply to the primary caregiver only if it is not practicable for the qualifying patient to acquire, possess, cultivate, or transport marijuana independently or if the qualifying patient is under 18. The defense and the prohibition also apply to offenses involving drug paraphernalia if the qualifying patient uses the drug paraphernalia for the medical use of marijuana.

Registered marijuana distribution organizations

The bill authorizes certain nonprofit corporations to deliver or distribute tetrahydrocannabinols or drug paraphernalia or possess or manufacture them with the intent to deliver or distribute them to facilitate the medical use of marijuana. Such an organization may only deliver or distribute marijuana or drug paraphernalia to a qualifying patient or a qualifying patient's primary caregiver to facilitate the qualifying patient's medical use of marijuana, and only after verifying the validity of the qualifying patient's written certification. A nonprofit corporation is eligible to engage in these activities if it is organized for the purpose of manufacturing, delivering, distributing, or possessing marijuana, drug paraphernalia, and educational materials to facilitate the medical use of marijuana. It may not employ or utilize the services of any person who has been convicted of a drug offense or obtain marijuana from outside the state in violation of federal law. The organization must register annually with DHFS.

Effect on federal law

This bill changes only state law regarding marijuana. Federal law generally prohibits persons from manufacturing, delivering, or possessing marijuana and applies to both intrastate and interstate violations.

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. 59.54 (25) of the statutes is renumbered 59.54 (25) (a) and amended to read:

59.54 **(25)** (a) The board may enact and enforce an ordinance to prohibit the possession of 25 grams or less of marijuana, as defined in s. 961.01 (14), subject to par. (b) and the exceptions in s. 961.41 (3g) (intro.), and provide a forfeiture for a violation of the ordinance~~; except that any person who is charged with possession of more than 25 grams of marijuana, or who is charged with possession of any amount of marijuana following a conviction for possession of marijuana, in this state shall not be prosecuted under this subsection~~. Any ordinance enacted under this paragraph shall provide a person who is prosecuted under it with the defenses that the person has under s. 961.436 to prosecutions under s. 961.41 (1) (h), (1m) (h), or (3g) (e).

(b) 1. Any ordinance enacted under ~~this subsection~~ par. (a) does not apply in any municipality that has enacted an ordinance prohibiting the possession of marijuana.

SECTION 2. 59.54 (25) (b) 2. of the statutes is created to read:

59.54 **(25)** (b) 2. A person may not be prosecuted under an ordinance enacted under par. (a) if, under s. 968.073 (2), the person would not be subject to prosecution under s. 961.41 (3g) (e).

SECTION 3. 59.54 (25) (b) 3. of the statutes is created to read:

59.54 **(25)** (b) 3. No person who is charged with possession of more than 25 grams of marijuana, or who is charged with possession of any amount of marijuana following a conviction for possession of marijuana, in this state may be prosecuted under an ordinance enacted under par. (a).

SECTION 4. 60.23 (21) of the statutes is amended to read:

60.23 **(21)** DRUG PARAPHERNALIA. Adopt an ordinance to prohibit conduct that is the same as that prohibited by s. 961.573 (2), 961.574 (2) or 961.575 (2). Any ordinance enacted under this subsection shall provide a person prosecuted under it with the defenses that the person has under s. 961.5755 to prosecutions under s. 961.573 (1), 961.574 (1), or 961.575 (1). A person may not be prosecuted under an ordinance enacted under this subsection if, under s. 968.073 (3), the person would not be subject to prosecution under s. 961.573 (2) or 961.574 (2).

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

66.0107 **(1)** (bm) Enact and enforce an ordinance to prohibit the possession of 25 grams or less of marijuana, as defined in s. 961.01 (14), subject to this paragraph and the exceptions in s. 961.41 (3g) (intro.), and provide a forfeiture for a violation of the ordinance~~; except that any~~. Any ordinance enacted under this paragraph shall provide a person prosecuted under it with the defenses that the person has under s. 961.436 to prosecutions under s. 961.41 (1) (h), (1m) (h), or (3g) (e). A person may not be prosecuted under an ordinance enacted under this paragraph if, under s. 968.073 (2), the person would not be subject to prosecution under s. 961.41 (3g) (e). No person

who is charged with possession of more than 25 grams of marijuana, or who is charged with possession of any amount of marijuana following a conviction for possession of marijuana, in this state ~~shall not~~ may be prosecuted under this paragraph.

SECTION 6. 173.12 (1m) of the statutes is amended to read:

173.12 **(1m)** If an animal has been seized because it is alleged that the animal has been used in or constitutes evidence of any crime specified in s. 951.08, the animal may not be returned to the owner by an officer under s. 968.20 (2). In any hearing under s. 968.20 ~~(1)~~ (1f), the court shall determine if the animal is needed as evidence or there is reason to believe that the animal has participated in or been trained for fighting. If the court makes such a finding, the animal shall be retained in custody.

SECTION 7. 289.33 (3) (d) of the statutes is amended to read:

289.33 **(3)** (d) "Local approval" includes any requirement for a permit, license, authorization, approval, variance or exception or any restriction, condition of approval or other restriction, regulation, requirement or prohibition imposed by a charter ordinance, general ordinance, zoning ordinance, resolution or regulation by a town, city, village, county or special purpose district, including without limitation because of enumeration any ordinance, resolution or regulation adopted under s. 59.03 (2), 59.11 (5), 59.42 (1), 59.48, 59.51 (1) and (2), 59.52 (2), (5), (6), (7), (8), (9), (11), (12), (13), (15), (16), (17), (18), (19), (20), (21), (22), (23), (24), (25), (26) and (27), 59.53 (1), (2), (3), (4), (5), (7), (8), (9), (11), (12), (13), (14), (15), (19), (20) and (23), 59.535 (2), (3) and (4), 59.54 (1), (2), (3), (4), (4m), (5), (6), (7), (8), (10), (11), (12), (16), (17), (18), (19), (20), (21), (22), (23), (24), (25) (a), and (26), 59.55 (3), (4), (5) and (6), 59.56 (1), (2), (4), (5), (6), (7), (9), (10), (11), (12), (12m), (13) and (16), 59.57 (1), 59.58

(1) and (5), 59.62, 59.69, 59.692, 59.693, 59.696, 59.697, 59.698, 59.70 (1), (2), (3), (5), (7), (8), (9), (10), (11), (21), (22) and (23), 59.79 (1), (2), (3), (4), (5), (6), (7), (8), (10) and (11), 59.792 (2) and (3), 59.80, 59.82, 60.10, 60.22, 60.23, 60.54, 60.77, 61.34, 61.35, 61.351, 61.354, 62.11, 62.23, 62.231, 62.234, 66.0101, 66.0415, 87.30, 91.73, 196.58, 200.11 (8), 236.45, 281.43 or 349.16 or subch. VIII of ch. 60.

SECTION 8. 349.02 (2) (b) 4. of the statutes is amended to read:

349.02 **(2)** (b) 4. Local ordinances enacted under s. 59.54 (25) (a), 60.23 (21) or 66.0107 (1) (bm).

SECTION 9. 961.01 (1) of the statutes is renumbered 961.01 (1m).

SECTION 10. 961.01 (1g) of the statutes is created to read:

961.01 **(1g)** "Adequate supply" means an amount of tetrahydrocannabinols that is not more than is reasonably necessary to ensure the uninterrupted availability of tetrahydrocannabinols for their medical use by a treatment team.

SECTION 11. 961.01 (5m) of the statutes is created to read:

961.01 **(5m)** "Debilitating medical condition or treatment" means any of the following:

(a) Cancer, glaucoma, acquired immunodeficiency syndrome, a positive test for the presence of HIV, antigen or nonantigenic products of HIV, or an antibody to HIV, or the treatment of these conditions.

(b) A chronic or debilitating disease or medical condition or the treatment of such a disease or condition that causes cachexia, severe pain, severe nausea, seizures, or severe and persistent muscle spasms.

(c) Any other medical condition or any other treatment for a medical condition designated as a debilitating medical condition or treatment in rules promulgated by the department of health and family services under s. 961.436 (5).

SECTION 12. 961.01 (11t) of the statutes is created to read:

961.01 **(11t)** "HIV" means any strain of human immunodeficiency virus, which causes acquired immunodeficiency syndrome.

SECTION 13. 961.01 (14g) of the statutes is created to read:

961.01 **(14g)** "Medical use of tetrahydrocannabinols" means any of the following:

(a) The use of tetrahydrocannabinols by a qualifying patient to alleviate the symptoms or effects of the patient's debilitating medical condition or treatment.

(b) The acquisition, possession, cultivation, or transportation of tetrahydrocannabinols by a qualifying patient if done to facilitate his or her use of the tetrahydrocannabinols under par. (a).

(c) The acquisition, possession, cultivation, or transportation of tetrahydrocannabinols by a primary caregiver of a qualifying patient, the transfer of tetrahydrocannabinols between a qualifying patient and his or her primary caregivers, or the transfer of tetrahydrocannabinols between persons who are primary caregivers for the same qualifying patient if all of the following apply:

1. The acquisition, possession, cultivation, transportation, or transfer of the tetrahydrocannabinols is done to facilitate the qualifying patient's use of tetrahydrocannabinols under par. (a) or (b).

2. It is not practicable for the qualifying patient to acquire, possess, cultivate, or transport the tetrahydrocannabinols independently or the qualifying patient is under 18 years of age.

SECTION 14. 961.01 (19m) of the statutes is created to read:

961.01 **(19m)** "Primary caregiver" means a person who is at least 18 years of age and who has agreed to help a qualifying patient in his or her medical use of tetrahydrocannabinols.

SECTION 15. 961.01 (20hm) of the statutes is created to read:

961.01 **(20hm)** "Qualifying patient" means a person who has been diagnosed by a physician as having or undergoing a debilitating medical condition or treatment but does not include a person under the age of 18 years unless all of the following apply:

(a) The person's physician has explained the potential risks and benefits of the medical use of tetrahydrocannabinols to the person and to a parent, guardian, or person having legal custody of the person.

(b) The parent, guardian, or person having legal custody provides the physician a written statement consenting to do all of the following:

1. Allow the person's medical use of tetrahydrocannabinols.

2. Serve as a primary caregiver for the person.

3. Manage the person's medical use of tetrahydrocannabinols.

SECTION 16. 961.01 (20t) of the statutes is created to read:

961.01 **(20t)** "Treatment team" means a qualifying patient and his or her primary caregivers.

SECTION 17. 961.01 (21t) of the statutes is created to read:

961.01 **(21t)** "Written certification" means a statement made by a person's physician if all of the following apply:

(a) The statement indicates that, in the physician's professional opinion, the person has or is undergoing a debilitating medical condition or treatment and the

potential benefits of the person's use of tetrahydrocannabinols under sub. (14g) (a) would likely outweigh the health risks for the person.

(b) The statement indicates that the opinion described in par. (a) was formed after a full assessment, made in the course of a bona fide physician–patient relationship, of the person's medical history and current medical condition.

(c) The statement is signed by the physician or is contained in the person's medical records.

SECTION 18. 961.37 of the statutes is created to read:

961.37 Distribution of medical marijuana. (1) In this section:

(a) "Department" means the department of health and family services.

(b) "Drug paraphernalia" has the meaning given in s. 961.571 (1).

(c) "Registered organization" means a nonprofit corporation that is registered under sub. (4) and that is organized for the purpose of manufacturing, delivering, distributing, or possessing tetrahydrocannabinols, drug paraphernalia, and educational materials to facilitate the medical use of tetrahydrocannabinols.

(2) (a) Subject to par. (c), a registered organization may deliver or distribute tetrahydrocannabinols or drug paraphernalia to any of the following to facilitate the medical use of tetrahydrocannabinols by a qualifying patient's treatment team:

1. The qualifying patient, if he or she provides the registered organization a copy of his or her written certification.

2. A primary caregiver for the qualifying patient, if he or she provides the registered organization a copy of the qualifying patient's written certification.

(b) Subject to par. (c), a registered organization may possess or manufacture tetrahydrocannabinols or drug paraphernalia with the intent to deliver or distribute them under par. (a).

(c) A registered organization may not deliver, distribute, possess, or manufacture tetrahydrocannabinols under par. (a) or (b) without first doing all of the following:

1. Contacting the office of the qualifying patient's physician to verify the validity of the qualifying patient's written certification.

2. Contacting the medical examining board to verify that the physician is licensed to practice medicine and surgery under ch. 448.

(d) A federal, state, or local law enforcement agency may deliver or distribute tetrahydrocannabinols or drug paraphernalia to a registered organization.

(3) A registered organization may not employ or utilize the services of any person who has been convicted of a crime under this chapter nor may it, notwithstanding sub. (2), obtain tetrahydrocannabinols from outside the state in violation of federal law.

(4) Before engaging in any conduct authorized under sub. (2), a registered organization shall file with the department a registration statement in a form to be determined by the department. Thereafter, the organization shall annually file a registration statement with the department in accordance with department rules.

(5) The department shall promulgate rules to implement this section, including rules doing all of the following:

(a) Setting specifications for the membership of the staff and the boards of directors of registered organizations.

(b) Managing transfers to registered organizations of tetrahydrocannabinols or drug paraphernalia seized by law enforcement agencies.

(c) Establishing record–keeping and reporting requirements for registered organizations.

(d) Establishing registration requirements under sub. (4).

(e) Establishing procedures for the oversight of registered organizations and for suspending or terminating the registration of registered organizations.

SECTION 19. 961.436 of the statutes is created to read:

961.436 Medical use defense in cases involving tetrahydrocannabinols. (1) A member of a qualifying patient's treatment team has a defense to prosecution under s. 961.41 (1) (h) or (1m) (h) for manufacturing, or possessing with intent to manufacture, tetrahydrocannabinols if all of the following apply:

(a) The manufacture or possession is a medical use of tetrahydrocannabinols by the treatment team.

(b) The amount of tetrahydrocannabinols does not exceed an adequate supply.

(2) A member of a qualifying patient's treatment team has a defense to prosecution under s. 961.41 (1) (h) or (1m) (h) for distributing or delivering, or possessing with intent to distribute or deliver, tetrahydrocannabinols to another member of the treatment team if all of the following apply:

(a) The distribution, delivery, or possession is a medical use of tetrahydrocannabinols by the treatment team.

(b) The amount of tetrahydrocannabinols does not exceed an adequate supply.

(3) (a) Except as provided in par. (b), a member of a qualifying patient's treatment team has a defense to a prosecution under s. 961.41 (3g) (e) if all of the following apply:

1. The possession or attempted possession is a medical use of tetrahydrocannabinols by the treatment team.

2. The amount of tetrahydrocannabinols does not exceed an adequate supply.

(b) A person may not assert the defense described in par. (a) if, while he or she possesses or attempts to possess tetrahydrocannabinols, any of the following applies:

1. The person drives or operates a motor vehicle while under the influence of tetrahydrocannabinols in violation of s. 346.64 (1) or a local ordinance in conformity with s. 346.64 (1).

2. While under the influence of tetrahydrocannabinols, the person operates heavy machinery or engages in any other conduct that endangers the health or well–being of another person.

3. The person smokes marijuana in, on, or at any of the following places:

a. A school bus or a public transit vehicle.

b. The person's place of employment.

c. Public or private school premises.

d. A juvenile correctional facility.

e. A jail or adult correctional facility.

f. A public park, beach, or recreation center.

g. A youth center.

(4) For the purposes of a defense raised under sub. (1), (2), or (3) (a), a written certification is presumptive evidence that the subject of the written certification is a qualifying patient and that if the person uses tetrahydrocannabinols he or she does so to alleviate the symptoms or effects of his or her debilitating medical condition or treatment.

(5) (a) In this subsection, "department" means the department of health and family services.

(b) Notwithstanding s. 227.12 (1), any person may petition the department to promulgate a rule to designate a medical condition or treatment as a debilitating

medical condition or treatment. The department shall promulgate rules providing for public notice of and a public hearing regarding any such petition, with the public hearing providing persons an opportunity to comment upon the petition. After the hearing, but no later than 180 days after the submission of the petition, the department shall approve or deny the petition. The department's decision to approve or deny a petition is subject to judicial review under s. 227.52.

SECTION 20. 961.55 (8) of the statutes is renumbered 961.55 (8) (intro.) and amended to read:

961.55 **(8)** (intro.) The failure, upon demand by any officer or employee designated in s. 961.51 (1) or (2), of the person in occupancy or in control of land or premises upon which the species of plants are growing or being stored, to produce ~~an~~ any of the following constitutes authority for the seizure and forfeiture of the plants:

(a) An appropriate federal registration, or proof that the person is the holder thereof~~, constitutes authority for the seizure and forfeiture of the plants~~.

SECTION 21. 961.55 (8) (b) of the statutes is created to read:

961.55 **(8)** (b) The person's written certification, if the person is a qualifying patient.

SECTION 22. 961.55 (8) (c) of the statutes is created to read:

961.55 **(8)** (c) A written certification for a qualifying patient for whom the person is a primary caregiver.

SECTION 23. 961.555 (2) (a) of the statutes is amended to read:

961.555 **(2)** (a) ~~The~~ Except as provided in par. (e), the district attorney of the county within which the property was seized shall commence the forfeiture action within 30 days after the seizure of the property~~, except that the defendant may request that the forfeiture proceedings be adjourned until after adjudication of any~~

~~charge concerning a crime which was the basis for the seizure of the property. The request shall be granted~~. The forfeiture action shall be commenced by filing a summons, complaint and affidavit of the person who seized the property with the clerk of circuit court, provided service of authenticated copies of those papers is made in accordance with ch. 801 within 90 days after filing upon the person from whom the property was seized and upon any person known to have a bona fide perfected security interest in the property.

SECTION 24. 961.555 (2) (e) of the statutes is created to read:

961.555 **(2)** (e) The court shall adjourn forfeiture proceedings until after adjudication of any charge concerning a crime that was the basis for the seizure of the property if any of the following applies:

1. The defendant requests an adjournment.

2. The defendant invokes a defense to the crime under s. 961.436 or 961.5755.

SECTION 25. 961.555 (2m) of the statutes is created to read:

961.555 **(2m)** MEDICAL NECESSITY DEFENSE. (a) In an action to forfeit property seized under s. 961.55, the person who was in possession of the property when it was seized has a defense to the forfeiture of the property if any of the following applies:

1. The person was prosecuted under s. 961.41 (1) (h), (1m) (h), or (3g) (e), 961.573 (1), 961.574 (1), or 961.575 (1) in connection with the seized property but had a valid defense under s. 961.436 (1), (2), or (3) (a) or 961.5755 (1) (a) or (2).

2. The person was not prosecuted under s. 961.41 (1) (h), (1m) (h), or (3g) (e), 961.573 (1), 961.574 (1), or 961.575 (1) in connection with the seized property, but, if the person had been, he or she would have had a valid defense under s. 961.436 (1), (2), or (3) (a) or 961.5755 (1) (a) or (2).

(b) The owner of property seized under s. 961.55 who is raising a defense under par. (a) shall do so in the answer to the complaint that he or she serves under sub. (2) (b). When a property owner raises such a defense in his or her answer, the state must, as part of the burden of proof specified in sub. (3), prove that the facts constituting the defense do not exist.

SECTION 26. 961.56 (1) of the statutes is amended to read:

961.56 **(1)** ~~It~~ Except as provided in s. 961.555 (2m) (b) and except for any presumption arising under s. 961.436 (4) or 961.5755 (3), it is not necessary for the state to negate any exemption or exception in this chapter in any complaint, information, indictment or other pleading or in any trial, hearing or other proceeding under this chapter. ~~The~~, and the burden of proof of any exemption or exception is upon the person claiming it.

SECTION 27. 961.5755 of the statutes is created to read:

961.5755 Medical use of marijuana defense in drug paraphernalia cases. (1) (a) Except as provided in par. (b), a member of a treatment team has a defense to prosecution under s. 961.573 (1) if he or she uses, or possesses with the primary intent to use, drug paraphernalia for the medical use of tetrahydrocannabinols by the treatment team.

(b) This subsection does not apply if while the person uses, or possesses with the primary intent to use, drug paraphernalia s. 961.436 (3) (b) 1., 2., or 3. applies.

(2) A member of a treatment team has a defense to prosecution under s. 961.574 (1) or 961.575 (1) if he or she delivers, possesses with intent to deliver, or manufactures with intent to deliver to another member of his or her treatment team drug paraphernalia, knowing that it will be primarily used for the medical use of tetrahydrocannabinols by the treatment team.

(3) For the purposes of a defense raised under sub. (1) (a) or (2), a written certification is presumptive evidence that the subject of the written certification is a qualifying patient and that, if the person uses tetrahydrocannabinols, he or she does so to alleviate the symptoms or effects of his or her debilitating medical condition or treatment.

SECTION 28. 968.073 of the statutes is created to read:

968.073 Medical use of marijuana; arrest and prosecution. (1) DEFINITIONS. In this section:

(a) "Adequate supply" has the meaning given in s. 961.01 (1g).

(b) "Medical use of tetrahydrocannabinols" has the meaning given in s. 961.01 (14g).

(c) "Primary caregiver" has the meaning given in s. 961.01 (19m).

(d) "Qualifying patient" has the meaning given in s. 961.01 (20hm).

(e) "Treatment team" has the meaning given in s. 961.01 (20t).

(f) "Written certification" has the meaning given in s. 961.01 (21t).

(2) LIMITATIONS ON ARRESTS AND PROSECUTION; MEDICAL USE OF MARIJUANA. Unless s. 961.436 (3) (b) 1., 2., or 3. applies, a member of a qualifying patient's treatment team may not be arrested or prosecuted for a violation of s. 961.41 (1) (h), (1m) (h), or (3g) (e) if all of the following apply:

(a) The person manufactures, distributes, delivers, or possesses tetrahydrocannabinols for their medical use by the treatment team.

(b) The person possesses a copy of the qualifying patient's written certification.

(c) The quantity of tetrahydrocannabinols does not exceed an adequate supply.

(3) LIMITATIONS ON ARRESTS AND PROSECUTION; DRUG PARAPHERNALIA FOR MEDICAL USE OF MARIJUANA. (a) Unless s. 961.436 (3) (b) 1., 2., or 3. applies, a member of a

treatment team may not be arrested or prosecuted for a violation of s. 961.573 (1) if all of the following apply:

1. The person uses, or possesses with the primary intent to use, drug paraphernalia for the medical use of tetrahydrocannabinols by the treatment team.

2. The person possesses a copy of the qualifying patient's written certification.

3. The person does not possess more than an adequate supply of tetrahydrocannabinols.

(b) Unless s. 961.436 (3) (b) 1., 2., or 3. applies, a member of a treatment team may not be arrested or prosecuted for a violation of s. 961.574 (1) or 961.575 (1) if all of the following apply:

1. The person delivers, possesses with intent to deliver, or manufactures with intent to deliver to another member of his or her treatment team drug paraphernalia, knowing that it will be primarily used for the medical use of tetrahydrocannabinols by the treatment team.

2. The person possesses a copy of the qualifying patient's written certification.

3. The person does not possess more than an adequate supply of tetrahydrocannabinols.

(4) LIMITATIONS ON ARRESTS, PROSECUTION, AND OTHER SANCTIONS; PHYSICIANS. A physician may not be arrested and a physician, hospital, or clinic may not be subject to prosecution, denied any right or privilege, or penalized in any manner for making or providing a written certification in good faith.

(5) PENALTY FOR FALSE STATEMENTS. Whoever intentionally provides false information to a law enforcement officer in an attempt to avoid arrest or prosecution under this section for a violation of s. 961.41 (1) (h), (1m) (h), or (3g) (e), 961.573 (1), 961.574 (1), or 961.575 (1) may be fined not more than $500.

SECTION 29. 968.12 (5) of the statutes is created to read:

968.12 **(5)** MEDICAL USE OF MARIJUANA. A person's possession of a written certification shall not, by itself, constitute probable cause under sub. (1) or otherwise subject the person or property of the person to inspection by any governmental agency.

SECTION 30. 968.19 of the statutes is renumbered 968.19 (1) and amended to read:

968.19 **(1)** ~~Property~~ Except as provided in sub. (2), property seized under a search warrant or validly seized without a warrant shall be safely kept by the officer, who may leave it in the custody of the sheriff and take a receipt therefor, so long as necessary for the purpose of being produced as evidence on any trial.

SECTION 31. 968.19 (2) of the statutes is created to read:

968.19 **(2)** A law enforcement agency that has seized a live marijuana plant is not responsible for the plant's care and maintenance.

SECTION 32. 968.20 (1) of the statutes, as affected by 2001 Wisconsin Act 16, is renumbered 968.20 (1f), and 968.20 (1f) (intro.), as renumbered, is amended to read:

968.20 **(1f)** (intro.) ~~Any~~ Except as provided in sub. (1j), any person claiming the right to possession of property seized pursuant to a search warrant or seized without a search warrant may apply for its return to the circuit court for the county in which the property was seized or where the search warrant was returned. The court shall order such notice as it deems adequate to be given the district attorney and all persons who have or may have an interest in the property and shall hold a hearing to hear all claims to its true ownership. If the right to possession is proved to the

court's satisfaction, it shall order the property~~, other than contraband or property covered under sub. (1m) or (1r) or s. 173.12, 173.21 (4), or 968.205,~~ returned if:

SECTION 33. 968.20 (1d) of the statutes is created to read:

968.20 **(1d)** In this section:

(a) "Drug paraphernalia" has the meaning given in s. 961.571 (1) (a).

(b) "Tetrahydrocannabinols" means a substance included in s. 961.14 (4) (t).

SECTION 34. 968.20 (1j) of the statutes is created to read:

968.20 **(1j)** (a) Except as provided in par. (b), sub. (1f) does not apply to contraband or property covered under sub. (1m) or (1r) or s. 173.12, 173.21 (4), or 968.205.

(b) Under sub. (1f), the court may return drug paraphernalia or tetrahydrocannabinols that have been seized to the person from whom they were seized if any of the following applies:

1. The person was prosecuted under s. 961.41 (1) (h), (1m) (h), or (3g) (e), 961.573 (1), 961.574 (1), or 961.575 (1) in connection with the seized property but had a valid defense under s. 961.436 (1), (2), or (3) (a) or 961.5755 (1) (a) or (2).

2. The person was not prosecuted under s. 961.41 (1) (h), (1m) (h), or (3g) (e), 961.573 (1), 961.574 (1), or 961.575 (1) in connection with the seized property, but, if the person had been, he or she would have had a valid defense under s. 961.436 (1), (2), or (3) (a) or 961.5755 (1) (a) or (2).

SECTION 35. 968.20 (3) (a) of the statutes is amended to read:

968.20 **(3)** (a) First class cities shall dispose of dangerous weapons or ammunition seized 12 months after taking possession of them if the owner, authorized under sub. (1m), has not requested their return and if the dangerous weapon or ammunition is not required for evidence or use in further investigation

and has not been disposed of pursuant to a court order at the completion of a criminal action or proceeding. Disposition procedures shall be established by ordinance or resolution and may include provisions authorizing an attempt to return to the rightful owner any dangerous weapons or ammunition which appear to be stolen or are reported stolen. If enacted, any such provision shall include a presumption that if the dangerous weapons or ammunition appear to be or are reported stolen an attempt will be made to return the dangerous weapons or ammunition to the authorized rightful owner. If the return of a seized dangerous weapon other than a firearm is not requested by its rightful owner under sub. ~~(1)~~ (1f) and is not returned by the officer under sub. (2), the city shall safely dispose of the dangerous weapon or, if the dangerous weapon is a motor vehicle, as defined in s. 340.01 (35), sell the motor vehicle following the procedure under s. 973.075 (4) or authorize a law enforcement agency to retain and use the motor vehicle. If the return of a seized firearm or ammunition is not requested by its authorized rightful owner under sub. ~~(1)~~ (1f) and is not returned by the officer under sub. (2), the seized firearm or ammunition shall be shipped to and become property of the state crime laboratories. A person designated by the department of justice may destroy any material for which the laboratory has no use or arrange for the exchange of material with other public agencies. In lieu of destruction, shoulder weapons for which the laboratories have no use shall be turned over to the department of natural resources for sale and distribution of proceeds under s. 29.934.

SECTION 36. 968.20 (3) (b) of the statutes is amended to read:

968.20 **(3)** (b) Except as provided in par. (a) or sub. (1m) or (4), a city, village, town or county or other custodian of a seized dangerous weapon or ammunition, if the dangerous weapon or ammunition is not required for evidence or use in further

investigation and has not been disposed of pursuant to a court order at the completion of a criminal action or proceeding, shall make reasonable efforts to notify all persons who have or may have an authorized rightful interest in the dangerous weapon or ammunition of the application requirements under sub. ~~(1)~~ (1f). If, within 30 days after the notice, an application under sub. ~~(1)~~ (1f) is not made and the seized dangerous weapon or ammunition is not returned by the officer under sub. (2), the city, village, town or county or other custodian may retain the dangerous weapon or ammunition and authorize its use by a law enforcement agency, except that a dangerous weapon used in the commission of a homicide or a handgun, as defined in s. 175.35 (1) (b), may not be retained. If a dangerous weapon other than a firearm is not so retained, the city, village, town or county or other custodian shall safely dispose of the dangerous weapon or, if the dangerous weapon is a motor vehicle, as defined in s. 340.01 (35), sell the motor vehicle following the procedure under s. 973.075 (4). If a firearm or ammunition is not so retained, the city, village, town or county or other custodian shall ship it to the state crime laboratories and it is then the property of the laboratories. A person designated by the department of justice may destroy any material for which the laboratories have no use or arrange for the exchange of material with other public agencies. In lieu of destruction, shoulder weapons for which the laboratory has no use shall be turned over to the department of natural resources for sale and distribution of proceeds under s. 29.934.

SECTION 37. Effective date.

(1) This act takes effect on the first day of the 6th month beginning after publication.

(END)