



State of Wisconsin  
2021 - 2022 LEGISLATURE

LRB-2192/1  
CMH&SWB:amn

## 2021 SENATE BILL 164

March 3, 2021 - Introduced by Senator BERNIER, cosponsored by Representatives SORTWELL, BROOKS, BOWEN, KITCHENS, MILROY and SCHRAA. Referred to Committee on Labor and Regulatory Reform.

1     **AN ACT to renumber and amend** 961.41 (3g) (e); **to amend** 59.54 (25) (a) (intro.)  
2             and 66.0107 (1) (bm); and **to create** 778.25 (1) (a) 2m. of the statutes; **relating**  
3             **to:** possession of not more than 10 grams of marijuana and providing a penalty.

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### *Analysis by the Legislative Reference Bureau*

Current law prohibits a person from possessing or attempting to possess marijuana. A person who violates the prohibition is guilty of a misdemeanor crime 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. This bill reduces to a \$100 civil forfeiture the penalty for possessing or attempting to possess not more than 10 grams of marijuana and eliminates the counting of a conviction involving not more than 10 grams of marijuana when determining if a violation is a repeat conviction.

Current law allows a local government to enact an ordinance prohibiting the possession of marijuana and to impose a forfeiture for a violation of the ordinance. The bill preempts local government from imposing a forfeiture amount for the possession of not more than 10 grams of marijuana that is different from the forfeiture amount imposed by the state for possession of not more than 10 grams of marijuana. The bill does not change the current law that allows local governments discretion in the forfeiture amount imposed for possession of 10 grams or more of marijuana.

The bill also specifies that a citation issued for possession of marijuana must contain provisions for a deposit in lieu of a court appearance. The court may consider

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the deposit as a plea of no contest and enter a judgment without the person appearing in court.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report.

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

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***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 marijuana, as defined in s. 961.01 (14), subject to the exceptions in  
4 s. 961.41 (3g) (intro.), ~~and. The board may provide a forfeiture for a violation of the~~  
5 ~~ordinance; except that if. If the board provides a forfeiture, the amount for the~~  
6 ~~possession of not more than 10 grams must be the maximum amount of the forfeiture~~  
7 ~~in s. 961.41 (3g) (e) 1. If a complaint is issued regarding an allegation of possession~~  
8 ~~of more than 25 grams of marijuana, or possession of any amount more than 10 grams~~  
9 ~~of marijuana following a conviction in this state for possession of more than 10 grams~~  
10 ~~of marijuana, the subject of the complaint may not be prosecuted under this~~  
11 ~~subsection for the same action that is the subject of the complaint unless all of the~~  
12 ~~following occur:~~

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

14           66.0107 **(1)** (bm) Enact and enforce an ordinance to prohibit the possession of  
15 marijuana, as defined in s. 961.01 (14), subject to the exceptions in s. 961.41 (3g)  
16 (intro.), and provide a forfeiture for a violation of the ordinance; ~~except that if. If the~~  
17 ~~board provides a forfeiture, the amount for the possession of not more than 10 grams~~  
18 ~~must be the maximum amount of the forfeiture in s. 961.41 (3g) (e) 1. If a complaint~~

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1 is issued regarding an allegation of possession of more than 25 grams of marijuana,  
2 or possession of ~~any amount~~ more than 10 grams of marijuana following a conviction  
3 in this state for possession of more than 10 grams of marijuana, the subject of the  
4 complaint may not be prosecuted under this paragraph for the same action that is  
5 the subject of the complaint unless the charges are dismissed or the district attorney  
6 declines to prosecute the case.

7 **SECTION 3.** 778.25 (1) (a) 2m. of the statutes is created to read:

8 778.25 (1) (a) 2m. Under s. 961.41 (3g) (e) 1. or a local ordinance under s. 59.54  
9 (25) (a) or 66.0107 (1) (bm).

10 **SECTION 4.** 961.41 (3g) (e) of the statutes is renumbered 961.41 (3g) (e) 1. and  
11 amended to read:

12 961.41 (3g) (e) 1. If a person possesses or attempts to possess not more than  
13 10 grams of tetrahydrocannabinols included under s. 961.14 (4) (t), or a controlled  
14 substance analog of tetrahydrocannabinols, the person may be subject to a forfeiture  
15 of not more than \$100.

16 2. If a person possesses or attempts to possess more than 10 grams of  
17 tetrahydrocannabinols included under s. 961.14 (4) (t), or a controlled substance  
18 analog of tetrahydrocannabinols, the person may be fined not more than \$1,000 or  
19 imprisoned for not more than 6 months or both upon a first conviction and is guilty  
20 of a Class I felony for a 2nd or subsequent offense conviction under this subdivision.  
21 For purposes of this paragraph, ~~an offense~~ subdivision, a conviction is considered a  
22 2nd or subsequent ~~offense~~ conviction if, prior to the offender's conviction ~~of the~~  
23 ~~offense~~, the offender has at any time been convicted of any felony or misdemeanor  
24 under this chapter or under any statute of the United States or of any state relating  
25 to controlled substances, controlled substance analogs, narcotic drugs, marijuana,

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**SECTION 4**

1 or depressant, stimulant, or hallucinogenic drugs except that, for purposes of this  
2 subdivision, a conviction under this paragraph for an action occurring before the  
3 effective date of this subdivision ... [LRB inserts date], may not be counted as a  
4 conviction if it involves not more than 10 grams of tetrahydrocannabinols.

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(END)