

## 1999 ASSEMBLY BILL 155

March 4, 1999 – Introduced by Representatives FOTI, KESTELL, TRAVIS, AINSWORTH, ALBERS, BRANDEMUEHL, HANDRICK, JESKEWITZ, KEDZIE, KELSO, KLUSMAN, KREIBICH, LADWIG, J. LEHMAN, M. LEHMAN, MONTGOMERY, MUSSER, NASS, OLSEN, SERATTI, SPILLNER, STASKUNAS, STEINBRINK, STONE, WARD, LA FAVE and GUNDERSON, cosponsored by Senators ERPENBACH, FITZGERALD, SCHULTZ, FARROW, WELCH, LAZICH, ROESSLER, ZIEN, DRZEWIECKI and DARLING. Referred to Committee on Urban and Local Affairs.

1     **AN ACT to repeal** 60.23 (21) (title); **to renumber and amend** 60.23 (21); **to**  
 2             **amend** 66.051 (1) (a), 66.051 (1) (b), 66.051 (1) (bm), 349.02 (2) (b) 2., 349.02 (2)  
 3             (b) 4., 778.25 (1) (a) 1., 818.02 (7) and 961.577; and **to create** 778.25 (1) (a) 1m.  
 4             of the statutes; **relating to:** local ordinances governing drug paraphernalia.

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### ***Analysis by the Legislative Reference Bureau***

Current law prohibits the possession, manufacture and delivery of drug paraphernalia. If a person 17 years of age or older violates the prohibitions relating to drug paraphernalia, he or she is subject to criminal penalties (a fine or imprisonment or both). If a person under the age of 17 violates the prohibitions relating to drug paraphernalia, he or she is subject to the following penalties: 1) suspension or revocation of his or her privilege to operate a motor vehicle for not less than six months nor more than five years; 2) a forfeiture (civil monetary penalty) of up to \$500, depending on whether the person has previous drug paraphernalia offenses; and 3) a requirement that he or she participate in community service work.

Current law also allows a city, village or town to enact and enforce ordinances prohibiting the possession, manufacture or delivery of drug paraphernalia. The ordinances must prohibit the same conduct that is prohibited under the state statutes relating to the possession, manufacture and delivery of drug paraphernalia. In addition, the ordinances can apply only to the possession, manufacture and delivery of drug paraphernalia by a person under the age of 17.

This bill allows a city, village or town to enact and enforce ordinances prohibiting the possession, manufacture or delivery of drug paraphernalia by

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persons 17 years of age and older. The ordinances must prohibit the same conduct that is prohibited under the state statutes relating to the possession, manufacture and delivery of drug paraphernalia. Under the bill, a prosecutor could charge a person aged 17 years or older for violating either an ordinance enacted under this bill or the state statutes. A person prosecuted for violating an ordinance enacted under this bill would be subject to a forfeiture in an amount established by the ordinance instead of being subject to the criminal penalties provided under the state statutes.

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

1           **SECTION 1.** 60.23 (21) (title) of the statutes is repealed.

2           **SECTION 2.** 60.23 (21) of the statutes is renumbered 66.051 (1) (bp) and  
3 amended to read:

4           66.051 (1) (bp) ~~Adopt~~ Enact and enforce an ordinance to prohibit conduct that  
5 is the same as that prohibited by s. 961.573 ~~(2)~~, 961.574 ~~(2)~~ or 961.575 ~~(2)~~ and provide  
6 a forfeiture for violation of the ordinance.

7           **SECTION 3.** 66.051 (1) (a) of the statutes is amended to read:

8           66.051 (1) (a) Prohibit all forms of gambling and fraudulent devices and  
9 practices;

10          **SECTION 4.** 66.051 (1) (b) of the statutes is amended to read:

11          66.051 (1) (b) Cause the seizure of anything devised solely for gambling or  
12 found in actual use for gambling and cause the destruction of any such thing after  
13 a judicial determination that it was used solely for gambling or found in actual use  
14 for gambling;

15          **SECTION 5.** 66.051 (1) (bm) of the statutes is amended to read:

16          66.051 (1) (bm) Enact and enforce an ordinance to prohibit the possession of  
17 25 grams or less of marijuana, as defined in s. 961.01 (14), subject to the exceptions  
18 in s. 961.41 (3g) (intro.), and provide a forfeiture for a violation of the ordinance;

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1 except that any person who is charged with possession of more than 25 grams of  
2 marijuana, or who is charged with possession of any amount of marijuana following  
3 a conviction for possession of marijuana, in this state shall not be prosecuted under  
4 this paragraph; and.

5 **SECTION 6.** 349.02 (2) (b) 2. of the statutes is amended to read:

6 349.02 **(2)** (b) 2. Chapter 961 and local ordinances that strictly conform to s.  
7 961.573 ~~(2)~~, 961.574 ~~(2)~~ or 961.575 ~~(2)~~.

8 **SECTION 7.** 349.02 (2) (b) 4. of the statutes is amended to read:

9 349.02 **(2)** (b) 4. Local ordinances enacted under s. 59.54 (25), ~~60.23 (21)~~ or  
10 66.051 (1) (bm).

11 **SECTION 8.** 778.25 (1) (a) 1. of the statutes is amended to read:

12 778.25 **(1)** (a) 1. Under s. 125.07 (4) (a) or (b), 125.085 (3) (b), or 125.09 (2),  
13 ~~961.573 (2), 961.574 (2) or 961.575 (2)~~ or under a local ordinance strictly conforming  
14 to one of those statutes brought against an adult in circuit court or against a minor  
15 in the court assigned to exercise jurisdiction under chs. 48 and 938.

16 **SECTION 9.** 778.25 (1) (a) 1m. of the statutes is created to read:

17 778.25 **(1)** (a) 1m. Under s. 961.573 (2), 961.574 (2) or 961.575 (2) brought  
18 against a minor in the court assigned to exercise jurisdiction under chs. 48 and 938  
19 or under a local ordinance strictly conforming to s. 961.573, 961.574 or 961.575  
20 brought against an adult in circuit court or against a minor in the court assigned to  
21 exercise jurisdiction under ch. 48 and 938.

22 **SECTION 10.** 818.02 (7) of the statutes is amended to read:

23 818.02 **(7)** In an action for a forfeiture under s. 961.573 (2), 961.574 (2) or  
24 961.575 (2), or under a local ordinance strictly conforming to ~~one of those statutes s.~~  
25 961.573, 961.574 or 961.575.

