

2001 DRAFTING REQUEST

Bill

Received: 02/07/2001

Received By: mdsida

Wanted: As time permits

Identical to LRB:

For: Frank Boyle (608) 266-0640

By/Representing: himself

This file may be shown to any legislator: NO

Drafter: mdsida

May Contact:

Addl. Drafters:

Subject: **Criminal Law - drugs**
Criminal Law - procedure
Health - miscellaneous

Extra Copies: **rlr**
dak

Submit via email: NO

Pre Topic:

No specific pre topic given

Topic:

Medical use of marijuana

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	mdsida 04/26/2001	gilfokm 05/10/2001		_____			State
/P1		jdyer 11/26/2001	jfrantze 05/11/2001	_____	lrb_docadmin 05/11/2001		S&L
			pgreensl 05/11/2001	_____			
/P2		gilfokm	pgreensl	_____	lrb_docadmin		S&L

for Assen. State
per MGN

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
		12/04/2001	11/29/2001	_____	11/29/2001		
/1			jfrantze	_____	lrb_docadmin	lrb_docadmin	
			12/04/2001	_____	12/04/2001	12/04/2001	
			kfollet	_____			
			12/04/2001	_____			

FE Sent For:

<END>

→ At Intro,

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		<i>1-12/4/king</i>	pgreensl 05/11/2001	_____			
/P2			pgreensl <i>12/14</i>	_____	lrb_docadmin <i>12/14</i>		

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
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/? mdsida

5/11 4/11
pg pg/ch

FE Sent For:

8/29 pg <END>
11/29 pg/1/15/01

How to treat Paraphernalia ?

961.41 (3g) exemption too

Make off. def.

Physician - practice - hospital

Exemption from prosecution ←

~~Pharmacy Board?~~

ID Card - No

Not profit - Yes

968.20

961.55(3)

Require court order for return *

Dsida, Michael

From: Robert D. Kampia [RKampia@mpp.org]
Sent: Monday, April 09, 2001 3:31 PM
To: Michael.Dsida@legis.state.wi.us
Cc: richard@mpp.org
Subject: Re: medical marijuana bill

Dear Michael,

1. The intent is to protect those who physically work at the registered non-profit organization, those who serve on the board of directors, any drivers that are used to transport patients to the site or marijuana to the patients, and so forth. In sum, all of these people should be protected from arrest/prosecution/forfeiture just as the patients themselves would be.

2. The answer to this question depends on what the sponsor of the bill wants, of course, but I seem to remember writing it in such a way that the answer is "no," the non-profit organization would not need to keep records on people.

Do you have an estimate of when you will have a draft to show the sponsor? I am hoping the bill can be introduced on April 27.

> I have two questions regarding paragraph (c) of the optional section of your
> bill relating to distribution of marijuana by a non-profit:

>
> 1. What are you trying to cover with the phrase "appropriate protections
> for people associated with registered organizations"?

>
> 2. Would the registration system require the organization itself to keep
> records of people to whom it distributes marijuana or paraphernalia?

>
> Mike Dsida
> Legislative Reference Bureau
> 608/266-9867
> michael.dsida@legis.state.wi.us

Sincerely,
Robert D. Kampia, Executive Director
Marijuana Policy Project
P.O. Box 77492, Washington, D.C. 20013
202-462-5747 (phone), 202-232-0442 (fax)
RKampia@mpp.org, <http://www.mpp.org>

Dsida, Michael

From: Robert D. Kampia [RKampia@mpp.org]
Sent: Monday, April 09, 2001 3:47 PM
To: Dsida, Michael
Subject: Re: medical marijuana bill

Michael,

That clause contemplates a registration system whereby the state health department would register qualified patients and primary caregivers, who would then proffer their registration cards when they want to do business with the non-profit.

If you have already included the optional "registry identification cards" section in the bill, then the clause below is unnecessary.

Please note that (d)(1) of the non-profit section states that the non-profit would only be permitted to sell marijuana to patients who are registered with the state, assuming you have included the "registry identification cards" section.

> Thanks for your prompt reply. But I am puzzled about 2. If it doesn't
> require the organization to keep records of its clients, what does the
> "registration system for qualifying patients and primary caregivers who use
> the services of registered organizations" language mean? Does it
> contemplate state registration? (If it does, the provision then only makes
> sense if the optional registry section is included.)

Sincerely,
Robert D. Kampia, Executive Director
Marijuana Policy Project
P.O. Box 77492, Washington, D.C. 20013
202-462-5747 (phone), 202-232-0442 (fax)
RKampia@mpp.org, <http://www.mpp.org>

**MPP's model state medical marijuana bill
based on Hawaii law enacted on June 14, 2000**

**Marijuana Policy Project
P.O. Box 77492
Capitol Hill
Washington, D.C. 20013**

**202-462-5747 (phone)
202-232-0442 (fax)
mpp@mpp.org
<http://www.mpp.org>**

TITLE: An Act to Protect Seriously Ill People from Prosecution and Prison for Using Medical Marijuana Under a Medical Doctor's Supervision

SECTION 1: Findings

- (a) Modern medical research has discovered a beneficial use for marijuana in treating or alleviating the pain or other symptoms associated with certain debilitating medical conditions, as found by the National Academy of Sciences' Institute of Medicine in March 1999.
- (b) The legislature admits that it would prefer for the federal government to permit marijuana to be prescribed by physicians and to be dispensed at pharmacies. However, the legislature finds that the federal government has shown no indication that it will change federal policy with regard to medical marijuana, as evidenced by the federal government's reluctance to allow even FDA-approved clinical trials to move forward.
- (c) According to the U.S. Sentencing Commission and the Federal Bureau of Investigation, more than 99 out of every 100 marijuana arrests are made under state law, rather than under federal law. Consequently, the legislature finds that changing state law will have the practical effect of protecting from arrest the vast majority of seriously ill people who have a medical need to use marijuana.
- (d) Although federal law expressly prohibits the use of marijuana, the legislature recognizes that the laws of Alaska, California, Colorado, Hawaii, Maine, Nevada, Oregon, and Washington permit the medical use and cultivation of marijuana. The legislature intends to join in this effort for the health and welfare of its citizens. However, the legislature does not intend to make marijuana legally available for other than medical purposes.
- (e) The legislature finds that the state is not required to enforce federal law or prosecute people for engaging in activities prohibited by federal law. Therefore, compliance with this act does not put the state in violation of federal law.
- (f) The legislature finds that state law should make a distinction between the medical and non-medical use of marijuana. Hence, the purpose of this act is to ensure that physicians are not penalized for discussing marijuana as a treatment option with their patients, and seriously ill people who engage in the medical use of marijuana upon their physicians' advice are not arrested and incarcerated for using marijuana for medical purposes.

SECTION 2: Definitions

- (a) "Adequate supply" means an amount of marijuana collectively possessed between the qualifying patient and the qualifying patient's primary caregivers that is not more than is reasonably necessary to ensure the uninterrupted availability of marijuana for the purpose of alleviating the symptoms or effects of a qualifying patient's debilitating medical condition; [ADDING THE FOLLOWING IS OPTIONAL ... provided that an "adequate supply" shall not exceed three mature marijuana plants, four immature marijuana plants, and one ounce of usable marijuana per each mature plant. "Usable marijuana" means the dried leaves and flowers of marijuana, and any mixture or preparation thereof, that are appropriate for the medical use of marijuana, and does not include the seeds, stalks, and roots of the plant.]
- (b) "Debilitating medical condition" means:
- (1) cancer, glaucoma, positive status for human immunodeficiency virus, acquired immune deficiency syndrome, or the treatment of these conditions;
 - (2) a chronic or debilitating disease or medical condition or its treatment that produces one or more of the following: cachexia or wasting syndrome; severe pain; severe nausea; seizures, including those characteristic of epilepsy; or severe and persistent muscle spasms, including those characteristic of multiple sclerosis or Crohn's disease; or
 - (3) any other medical condition or its treatment approved by the department, as provided for as follows: Not later than 90 days after the effective date of this act, the department shall promulgate regulations governing the manner in which it will consider petitions from the public to add debilitating medical conditions to those included in this act. In considering such petitions, the department shall include public notice of, and an opportunity to comment in a public hearing upon, such petitions. The department shall, after hearing, approve or deny such petitions within 180 days of submission. The approval or denial of such a petition shall be considered a final agency action, subject to judicial review.
- (c) "Department" means state department of health.
- (d) "Marijuana" shall have the same meaning as "marijuana" and "marijuana concentrate" as provided in sections ____ and ____.
- (e) "Medical use" means the acquisition, possession, cultivation, use, transfer, or transportation of marijuana or paraphernalia relating to the administration of marijuana to alleviate the symptoms or effects of a qualifying patient's debilitating medical condition. For the purposes of "medical use," the term "transfer" is limited to the transfer of marijuana and paraphernalia between primary caregivers and qualifying patients.
- (f) "Physician" means a person who is licensed under section ____, and is licensed with authority to prescribe drugs under section ____.

- (g) "Primary caregiver" means a person who is at least 18 years old and who has agreed to undertake responsibility for managing the well-being of a person with respect to the medical use of marijuana.
- (h) "Qualifying patient" means a person who has been diagnosed by a physician as having a debilitating medical condition.
- (i) "Written certification" means the qualifying patient's medical records or a statement signed by a physician, stating that in the physician's professional opinion, after having completed a full assessment of the qualifying patient's medical history and current medical condition made in the course of a bona fide physician-patient relationship, the qualifying patient has a debilitating medical condition and the potential benefits of the medical use of marijuana would likely outweigh the health risks for the qualifying patient.

SECTION 3: Exemption from criminal and civil penalties for the medical use of marijuana

- (a) A qualifying patient who has in his or her possession written certification shall not be subject to arrest, prosecution, or penalty in any manner for the medical use of marijuana, provided the quantity of marijuana does not exceed an adequate supply. *cover possessor marijuana*
- (b) Subsection (a) shall not apply to a qualifying patient under the age of 18 years, unless:
- (1) The qualifying patient's physician has explained the potential risks and benefits of the medical use of marijuana to the qualifying patient and to a parent, guardian, or person having legal custody of the qualifying patient; and
 - (2) A parent, guardian, or person having legal custody consents in writing to:
 - (A) allow the qualifying patient's medical use of marijuana;
 - (B) serve as the qualifying patient's primary caregiver; and
 - (C) control the acquisition of the marijuana, the dosage, and the frequency of the medical use of marijuana by the qualifying patient.
- (c) When the acquisition, possession, cultivation, transportation, or administration of marijuana by a qualifying patient is not practicable, the legal protections established by this act for a qualifying patient shall extend to the qualifying patient's primary caregivers, provided that the primary caregivers' actions are necessary for the qualifying patient's medical use of marijuana.
- (d) A physician shall not be subject to arrest or prosecution, penalized in any manner, or denied any right or privilege for providing written certification for the medical use of marijuana to qualifying patients.

(e) Any property interest that is possessed, owned, or used in connection with the medical use of marijuana, or acts incidental to such use, shall not be harmed, neglected, injured, or destroyed while in the possession of state or local law enforcement officials; provided that law enforcement agencies seizing live plants as evidence shall not be responsible for the care and maintenance of marijuana plants. Any such property interest shall not be forfeited under any provision of state or local law providing for the forfeiture of property other than as a sentence imposed after conviction of a criminal offense or entry of a plea of guilty to a criminal offense. Marijuana, paraphernalia, or other property seized from a qualifying patient or primary caregivers in connection with the claimed medical use of marijuana shall be returned immediately upon the determination by a court or prosecutor that the qualifying patient or primary caregivers are entitled to the protections of this act, as may be evidenced by a decision not to prosecute, the dismissal of charges, or an acquittal.

*Rq. ct.
order for
return
of property*

(f) No person shall be subject to arrest or prosecution for "constructive possession," "conspiracy," or any other offense for simply being in the presence or vicinity of the medical use of marijuana as permitted under this act.

SECTION 4: Prohibitions, restrictions, and limitations regarding the medical use of marijuana

(a) The authorization for the medical use of marijuana in this act shall not apply to:

(1) The medical use of marijuana that endangers the health or well-being of another person, such as driving or operating heavy machinery while under the influence of marijuana;

(2) The smoking of marijuana;

(A) in a school bus, public bus, or other public vehicle;

(B) in the workplace of one's employment;

(C) on any school grounds;

(D) in any correctional facility; or

(E) at any public park, public beach, public recreation center, or youth center; and

(3) The use of marijuana by a qualifying patient, primary caregiver, or any other person for purposes other than medical use permitted by this act.

(b) Insurance companies shall not be required to cover the medical use of marijuana.

(c) Notwithstanding any law to the contrary, fraudulent representation to a law enforcement official of any fact or circumstance relating to the medical use of marijuana to avoid arrest or prosecution shall be a petty misdemeanor and subject

*Keep penalty out of person
can be prosecuted thru way*

to a fine of \$500. This penalty shall be in addition to any other penalties that may apply for the non-medical use of marijuana.

SECTION 5: Establishing a defense in court for patients and primary caregivers

A person and a person's primary caregivers may assert the medical use of marijuana as a defense to any prosecution involving marijuana, and such defense shall be presumed valid where the evidence shows that:

- (a) the person's medical records indicate, or a physician has stated that, in the physician's professional opinion, after having completed a full assessment of the person's medical history and current medical condition made in the course of a bona fide physician-patient relationship, the potential benefits of the medical use of marijuana would likely outweigh the health risks for the person; and
- (b) the person and the person's primary caregivers were collectively in possession of a quantity of marijuana that does not exceed an adequate supply.

[If the OPTIONAL definition of "adequate supply" is used in Section 2(a), then Section 5(b) should instead read "the person and the person's primary caregivers were collectively in possession of a quantity of marijuana that was not more than was reasonably necessary to ensure the uninterrupted availability of marijuana for the purpose of alleviating the symptoms or effects of the person's medical condition."]

SECTION 6: Severability of this act

If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

SECTION 7: Implementation of this act

This act shall take effect upon its approval.

SECTION __: Registry identification cards issued by state health department

[OPTIONAL: This section can be removed without affecting any other section of the bill; a registry identification card section appeared in the Hawaii law.]

- (a) "Registry identification card" means a document issued by the department that identifies a person as a qualifying patient or primary caregiver.
- (b) A qualifying patient or primary caregiver shall qualify for the legal protections of Section 3 only if the qualifying patient or primary caregiver is in possession of a registry identification card.
- (c) Not later than 90 days after the effective date of this act, the department shall promulgate regulations governing the manner in which it will consider applications for registry identification cards, and for renewing registry identification cards, for qualifying patients and primary caregivers.
- (d) The department shall issue registry identification cards to qualifying patients, and to qualifying patients' primary caregivers, if any, who submit the following, in accordance with the department's regulations:
 - (1) written certification that the person is a qualifying patient;
 - (2) registration fee, not to exceed \$25 per qualifying patient;
 - (3) name, address, and date of birth of the qualifying patient;
 - (4) name, address, and telephone number of the qualifying patient's physician; and
 - (5) name, address, and date of birth of the qualifying patient's primary caregivers, if the qualifying patient has designated any primary caregivers at the time of application.
- (e) The department shall verify the information contained in an application submitted pursuant to this section, and shall approve or deny an application within 30 days of receipt of the application. The department may deny an application only if the applicant did not provide the information required pursuant to this section, or if the department determines that the information provided was falsified. Any person whose application has been denied may not reapply for six months from the date of the denial, unless so authorized by the department or a court of competent jurisdiction.
- (f) The department shall issue registry identification cards within five days of approving an application, which shall expire one year after the date of issuance. Registry identification cards shall contain:
 - (1) the name, address, and date of birth of the qualifying patient and primary caregivers, if any;
 - (2) the date of issuance and expiration date of the registry identification card; and

NO

- (3) other information that the department may specify in its regulations.
- (g) A person who possesses a registry identification card shall notify the department of any change in the person's name, address, qualifying patient's physician, qualifying patient's primary caregiver, or change in status of the qualifying patient's debilitating medical condition within 10 days of such change, or the registry identification card shall be deemed null and void.
- (h) Possession of, or application for, a registry identification card shall not alone constitute probable cause to search the person or property of the person possessing or applying for the card, or otherwise subject the person or property of the person possessing the card to inspection by any governmental agency.
- (i) The department shall maintain a confidential list of the persons to whom the department has issued registry identification cards. Individual names on the list shall be confidential and not subject to disclosure, except to:
- (1) authorized employees of the department as necessary to perform official duties of the department; or
 - (2) authorized employees of state or local law enforcement agencies, only for the purpose of verifying that a person who is engaged in the suspected or alleged medical use of marijuana is lawfully in possession of a registry identification card.

=====

SECTION __: State-sanctioned non-profit distribution of medical marijuana

[OPTIONAL: This section can be removed without affecting any other section of the bill; this section does not appear in the Hawaii law.]

- (a) A "registered organization" is a non-profit corporation registered with the state under section _____ and organized for the purpose of lawfully selling, administering, delivering, dispensing, distributing, cultivating, or possessing marijuana, cultivation equipment, related supplies and educational materials, or marijuana seeds for medical use.
- (b) Prior to selling, administering, delivering, dispensing, distributing, cultivating, or possessing marijuana for medical use, a registered organization shall file a registration statement with the department, and thereafter shall file an annual registration statement with the department, in accordance with department regulations which shall provide for the form and content of the registration statement.
- (c) Not later than 90 days after the effective date of this act, the department shall promulgate regulations that include procedures for the oversight of registered organizations, specifications for the membership of the staff and the boards of directors of registered organizations, appropriate protections for people associated with registered organizations, a registration system for qualifying patients and

primary caregivers who use the services of registered organizations, record-keeping and reporting requirements for registered organizations, the potential transference or sale of seized cultivation equipment and related supplies from law enforcement agencies to registered organizations, and procedures for suspending or terminating the registration of registered organizations.

- (d) It shall be lawful to sell, administer, deliver, dispense, distribute, cultivate, or possess marijuana where it is:
- (1) by a registered organization to a qualifying patient or primary caregiver; or
 - (2) by any federal, state, or local law enforcement agency to a registered organization.
- (e) The registered organization is prohibited from:
- (1) obtaining marijuana from outside the state in violation of federal law;
 - (2) employing or utilizing the services of any person who has a criminal record involving a controlled substance offense; and
 - (3) selling, administering, delivering, dispensing, or distributing marijuana to qualifying patients or primary caregivers without first verifying the validity of the qualifying patient's written certification by:
 - (A) contacting the office of the qualifying patient's physician; and
 - (B) contacting the appropriate state medical board or association to determine that the physician is licensed to practice medicine under section _____.

Explanation of MPP's model state medical marijuana bill

OVERVIEW

In order for a state law to provide effective protection for seriously ill people who engage in the medical use of marijuana, a state law must:

1. define what is a legitimate medical use of marijuana, which is accomplished by requiring a person who seeks legal protection to (1) have a medical condition that is sufficiently serious or debilitating, and (2) have the approval of his or her physician;
2. provide legal protection for the primary caregivers of patients who are too ill to provide for their own medical use of marijuana;
3. avoid putting physicians or government employees in violation of federal law;
4. provide a means of obtaining marijuana, which can only be done in the following four ways: permit patients to cultivate their own marijuana; permit primary caregivers to cultivate marijuana on behalf of patients; permit patients or primary caregivers to purchase marijuana on the streets; and/or authorize non-governmental organizations to cultivate and distribute marijuana to patients and their primary caregivers;
5. allow patients and primary caregivers who are arrested anyway to discuss the medical use of marijuana in court; and
6. implement a series of sensible restrictions, such as prohibiting patients and primary caregivers from possessing large quantities of marijuana, prohibiting driving under the influence of marijuana, and so forth.

Because the medical use of marijuana is prohibited by federal law, state medical marijuana legislation must be worded precisely in order to provide patients and primary caregivers with legal protection under state law. Even changing just one or two words in the bill can make it symbolic, rather than truly effective.

Indeed, Proposition 200 in Arizona — which was passed by 65% of the vote in November 1996 — has not effectively protected patients because it did not abide by the above six principles.

On the other hand, the medical marijuana laws that have been passed by voter initiatives in seven other states and by the Hawaii legislature are, in fact, providing legal protection for patients and their primary caregivers because they followed the above six principles. The Marijuana Policy Project was involved in the drafting of these seven state ballot initiatives and the Hawaii law, and MPP is eager to assist state legislators and activists in the bill drafting and amendment process in other states, too.

MPP's model medical marijuana bill is based on the law passed by the Hawaii legislature and signed by the governor on June 14, 2000. This law was chosen as the basis for the model bill because it is the only contemporary medical marijuana law that

received majority support among state legislators, rather than at the ballot box. For the sake of being comprehensive, all of the state medical marijuana initiatives were also reviewed during the development of the model bill.

Contrary to common belief, the pending U.S. Supreme Court opinion on medical marijuana — which is expected to be issued in June 2001 — will rule only on whether federal law permits the distribution (and presumably use) of medical marijuana. The validity or nature of state medical marijuana laws is not in question. Consequently, state legislators should not use the upcoming Court decision as an excuse for inaction during the 2001 legislative session, because the upcoming Court ruling will not impact one way or the other on a state's ability to change state law in order to protect patients and primary caregivers from arrest. (If the Court rules that medical marijuana distribution is legal under federal law, state legislatures will still need to pass bills to protect patients under state law. If, on the other hand, the Court rules that medical marijuana distribution is prohibited under federal law, that is the assumption that the states have been working under all along; so this would not change the need to pass state medical marijuana bills.)

Finally, the model bill was drafted independently of the inactive medical marijuana laws that are currently on the books in more than a dozen states (which were enacted in the late 1970s and early 1980s). Legislators who are from such states are encouraged to introduce the model bill independent of the existing, inactive laws in their states, as it would be extremely difficult to adapt the model bill to an existing law without introducing (possibly fatal) errors.

EXPLANATION OF KEY PROVISIONS OF MODEL BILL

- **"WRITTEN CERTIFICATION" versus "PRESCRIPTION":** The word "prescribe" does not appear anywhere in the bill, because requiring doctors to "prescribe" marijuana would put them in violation of federal law, and the bill would therefore become ineffective. Instead, the bill specifies that the patient's physician must acknowledge that "the potential benefits of the medical use of marijuana would likely outweigh the health risks" for the patient; this kind of recommendation is protected by the First Amendment, and physicians who do so are further protected by Section 3 of the bill.
- **PROTECTION UNDER STATE LAW ONLY:** The bill is intended to — and can only provide — protection against arrest and prosecution by state or local authorities. State-level legislative action cannot offer protection against the possibility of arrest and prosecution by federal authorities. Despite this seeming lack of protection, in reality most arrests of marijuana users are at the state or local level. While 705,000 people were arrested in 1999 for marijuana offenses under state and local law, less than 10,000 were arrested for marijuana offenses under federal law. (And federal marijuana arrests are usually for large-scale importation, distribution, or cultivation offenses — offenses that do not apply to the personal medical use of marijuana.) Consequently, this bill effectively insures that seriously ill people and their primary caregivers will not be arrested for medical marijuana.
- **MEDICAL CONDITIONS COVERED BY THE BILL:** For a patient to be protected from arrest, the patient must have a "debilitating medical condition."

Many medical marijuana advocates object to the notion of limiting the number of conditions that are treatable by marijuana, pointing to the fact that physicians are allowed to prescribe FDA-approved medicines for any condition whatsoever ("off label" uses). The drafters of the Hawaii bill and the state medical marijuana initiatives broadly agree, however, that it would be nearly impossible to persuade a state legislature to pass a bill that would allow physicians to authorize marijuana for virtually any medical condition. Hence, limiting the number of medical conditions in the bill is a political judgment rather than a medical judgment.

- **THE NEED FOR A SEPARATE "DEFENSE" SECTION:** For those patients or primary caregivers who are unlucky enough to be arrested for medical marijuana despite the protections articulated in Section 3 of the bill, Section 5 of the bill makes it explicit that they may argue their defense in court. The wording of Section 5 is intended to give patients with any medical condition an opportunity to raise a medical marijuana defense in court, as it isn't practicable to list conditions like nail patella syndrome, multiple congenital cartilaginous exostosis, Ehlers-Danlos syndrome, and other rare disorders explicitly in the text of the bill. (Two patients who suffer from the first two conditions are among the eight patients who receive monthly shipments of marijuana from the federal government, as part of a compassionate access program that is closed to all new applicants.) Clearly, patients with rare conditions that are legitimately treatable with marijuana should be given a fighting chance in court should they be arrested on marijuana-related charges.

THREE OPTIONAL PROVISIONS IN THE MODEL BILL

1. **DEFINITION OF "ADEQUATE SUPPLY":** The amount of marijuana a patient is permitted to possess is given conceptually ("not more than is reasonably necessary to ensure ...") rather than as a specific numerical amount. This is in part because the treatment of different medical conditions can require widely varying amounts of marijuana. Additionally, this gives police, prosecutors, and judges the discretion to determine if the amount of marijuana found is an appropriate amount for personal use given the circumstances of each patient. Finally, patients may themselves have difficulty determining what amounts of marijuana they need to keep on-hand given the fluctuation of their symptoms or the uncertainties of obtaining a supply of marijuana.

In the Hawaii law, the legislators chose to specify a maximum numerical quantity of marijuana that is permissible (three mature marijuana plants, four immature marijuana plants, and one ounce of usable marijuana per each mature plant"). A similar numerical limit appears in most of the state initiative laws.

Supportive state legislators should decide which of the two definitions of "adequate supply" they are more comfortable with. This decision will then impact upon one clause in the "defense" section, which is also noted in the model bill.

2. **STATE-ISSUED IDENTIFICATION CARDS FOR PATIENTS AND PRIMARY CAREGIVERS:** It is recommended that this section of the bill be omitted when it is first introduced, as the ID card system is the primary offering that the sponsor of the bill can offer to other state legislators who feel the bill needs to be "tightened

up" or "more restrictive." Because the ID card provision in the Hawaii law is inferior, the optional ID card section in the model bill is based on the Alaska and Oregon laws instead.

If the ID card section is included in the model bill, it is important to maintain Section 5 — the defense in court section — in the bill for those patients who are arrested because they do not have an ID card. (Oftentimes, legitimate patients do not have ID cards because they are either too fearful to give their confidential medical information to the state government, they were unaware of the existence of the ID card program, or their medical condition is too rare to qualify for an ID card.)

3. **NON-PROFIT DISTRIBUTION OF MEDICAL MARIJUANA:** One criticism that has been levied against the existing state medical marijuana laws is that they do not provide a way for patients to obtain a supply of marijuana beyond growing their own and/or purchasing marijuana on the streets. It is unlikely that a state government will want to distribute marijuana, however, given that marijuana distribution is prohibited by federal law. (In developing an effective state medical marijuana law, the rule of thumb is to avoid having state government officials or physicians breaking federal law.)

One solution is to authorize non-profit organizations to distribute medical marijuana legally under state law. This optional section of the bill, which did not appear in the Hawaii law, is derived from (1) legislation introduced but not passed in New York State, (2) the initiative that passed in the District of Columbia in 1998, and (3) the task force deliberations in Maine that followed the passage of its medical marijuana initiative in 1999. This whole section of the bill can be deleted without affecting any other part of the bill.

As an alternative, this section could be tightened up to authorize only one non-profit distribution center as a "pilot project" for the state.

If a non-profit distribution section is included in the bill, it is important to maintain the provisions that allow patients and primary caregivers to cultivate their own marijuana and/or to obtain it on the streets. Because no state has ever set up a distribution system for medical marijuana, it is possible that the federal government could use scare tactics to intimidate state executive branch officials from implementing a state law that includes a medical marijuana distribution provision. If this were to happen, the other means of obtaining marijuana legally under state law would serve as a "safety valve" to ensure that the medical marijuana law can still effectively protect patients and their primary caregivers.

2001 DRAFTING REQUEST

Bill

Received: 02/07/2001

Received By: mdsida

Wanted: As time permits

Identical to LRB:

For: Frank Boyle (608) 266-0640

By/Representing: himself

This file may be shown to any legislator: NO

Drafter: mdsida

May Contact:

Addl. Drafters:

Subject: Criminal Law - drugs
Criminal Law - procedure
Health - miscellaneous

Extra Copies: rlr
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Medical use of marijuana

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See Attached

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<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	mdsida 04/26/2001	gilfokm 05/10/2001				for Assembly	State
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11/29
P8

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05/11/2001 _____

FE Sent For:

<END>



State of Wisconsin
2001 - 2002 LEGISLATURE

2442/P1

LRB-1523/P1

MGD:kmg:ch

D-Note

Sen

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

9n 4/26

Due Friday,
May 11

Gen. Cat.

1 AN ACT to renumber 961.01 (1); to renumber and amend 59.54 (25), 968.19
 2 and 968.20 (1); to amend 60.23 (21), 66.0107 (1) (bm), 173.12 (1m), 289.33 (3)
 3 (d), 349.02 (2) (b) 4., 961.56 (1), 968.20 (3) (a) and 968.20 (3) (b); and to create
 4 20.435 (6) (gm), 59.54 (25) (b) 2., 59.54 (25) (b) 3., 146.45, 146.46, 961.01 (1g),
 5 961.01 (5m), 961.01 (11t), 961.01 (14g), 961.01 (19m), 961.01 (20hm), 961.01
 6 (20t), 961.01 (21t), 961.37, 961.436, 961.555 (2m), 961.5755, 968.073, 968.12
 7 (5), 968.19 (2), 968.20 (1d) and 968.20 (1j) of the statutes; relating to: medical
 8 use of marijuana, requiring the exercise of rule-making authority, and making
 9 an appropriation. ^{stet}

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 obtained a valid registry identification card from DHFS (see *Registry for medical users of marijuana* below) or 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.

written certification

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 ~~valid registry identification card~~. 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.

also

to the primary caregiver

The defense provided under the bill and the prohibition on arrest and prosecution contained in the bill apply ~~under certain circumstances~~ 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 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.

~~*Registry for medical users of marijuana*~~

~~The bill requires DHFS to establish a registry for medical users of marijuana. Under the bill, a person claiming to be a qualifying patient may apply for a registry identification card by submitting to DHFS a signed application, accompanied by a written certification and a registration fee of not more than \$25. DHFS must then verify the information. If it is complete and correct, DHFS must issue the person a registry identification card. A qualifying patient and one of his or her primary caregivers may also jointly apply for a registry identification card for the primary caregiver. DHFS may not disclose that it has issued to a person a registry identification card, or information from an application for one, except to a law enforcement agency or to a registered marijuana distribution organization (see *Registered marijuana distribution organizations* below) for the purpose of verifying that a person possesses a valid registry identification card. A registry~~

identification card is valid for one year, unless revoked sooner by DHFS based on a change of circumstances, and may be renewed.

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 ~~contacting DHFS and verifying that the person to whom it intends to deliver or distribute tetrahydrocannabinols or drug paraphernalia has a valid registry identification card.~~ 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.

21
Analysis
INS

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* 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. 20.435 (6) (gm) of the statutes is created to read:~~
2 ~~20.435 (6) (gm) *Medical marijuana registry.* All moneys received from~~
3 ~~applicants, as defined in s. 146.45 (1) (a), as fees under s. 146.45 (2) (a) 4., for the~~
4 ~~purposes of the medical marijuana registry program under s. 146.45.~~

5 SECTION 2. 59.54 (25) of the statutes is renumbered 59.54 (25) (a) and amended
6 to read:

7 59.54 (25) (a) The board may enact and enforce an ordinance to prohibit the
8 possession of 25 grams or less of marijuana, as defined in s. 961.01 (14), subject to
9 par. (b) and the exceptions in s. 961.41 (3g) (intro.), and provide a forfeiture for a

1 violation of the ordinance; ~~except that any person who is charged with possession of~~
2 ~~more than 25 grams of marijuana, or who is charged with possession of any amount~~
3 ~~of marijuana following a conviction for possession of marijuana, in this state shall~~
4 ~~not be prosecuted under this subsection.~~ Any ordinance enacted under this
5 paragraph shall provide a person who is prosecuted under it with the defenses that
6 the person has under s. 961.436 to prosecutions under s. 961.41 (1) (h), (1m) (h), or
7 (3g) (e).

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

11 SECTION 3. 59.54 (25) (b) 2. of the statutes is created to read:

12 59.54 (25) (b) 2. A person may not be prosecuted under an ordinance enacted
13 under par. (a) if, under s. 968.073 (2), the person would not be subject to prosecution
14 under s. 961.41 (3g) (e).

15 SECTION 4. 59.54 (25) (b) 3. of the statutes is created to read:

16 59.54 (25) (b) 3. No person who is charged with possession of more than 25
17 grams of marijuana, or who is charged with possession of any amount of marijuana
18 following a conviction for possession of marijuana, in this state may be prosecuted
19 under an ordinance enacted under par. (a).

20 SECTION 5. 60.23 (21) of the statutes is amended to read:

21 60.23 (21) DRUG PARAPHERNALIA. Adopt an ordinance to prohibit conduct that
22 is the same as that prohibited by s. 961.573 (2), 961.574 (2) or 961.575 (2). A person
23 may not be prosecuted under an ordinance enacted under this subsection if, under
24 s. 968.073 (3), the person would not be subject to prosecution under s. 961.573 (2) or
25 961.574 (2).

INS 5/22

1 **SECTION 6.** 66.0107 (1) (bm) of the statutes is amended to read:

2 66.0107 (1) (bm) Enact and enforce an ordinance to prohibit the possession of
3 25 grams or less of marijuana, as defined in s. 961.01 (14), subject to this paragraph
4 and the exceptions in s. 961.41 (3g) (intro.), and provide a forfeiture for a violation
5 of the ordinance; except that any. Any ordinance enacted under this paragraph shall
6 provide a person prosecuted under it with the defenses that the person has under s.
7 961.436 to prosecutions under s. 961.41 (1) (h), (1m) (h), or (3g) (e). A person may not
8 be prosecuted under an ordinance enacted under this paragraph if, under s. 968.073
9 (2), the person would not be subject to prosecution under s. 961.41 (3g) (e). No person
10 who is charged with possession of more than 25 grams of marijuana, or who is
11 charged with possession of any amount of marijuana following a conviction for
12 possession of marijuana, in this state ~~shall not~~ may be prosecuted under this
13 paragraph.

14 ~~SECTION 7. 146.45 of the statutes is created to read:~~

15 ~~**146.45 Medical marijuana registry program. (1) DEFINITIONS.** In this~~
16 ~~section:~~

17 ~~(a) "Applicant" means a person who is applying for a registry identification card~~
18 ~~under sub. (2) (a).~~

19 ~~(b) "Debilitating medical condition or treatment" has the meaning given in s.~~
20 ~~961.01 (5m).~~

21 ~~(c) "Medical use of tetrahydrocannabinols" has the meaning given in s. 961.01~~
22 ~~(14g).~~

23 ~~(d) "Primary caregiver" has the meaning given in s. 961.01 (19m).~~

24 ~~(e) "Qualifying patient" has the meaning given in s. 961.01 (20hm).~~

1 (f) "Registrant" means a person to whom a registry identification card is issued
2 under sub. (4).

3 (g) "Registry identification card" means a document issued by the department
4 under this section that identifies a person as a qualifying patient or primary
5 caregiver.

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

7 (2) APPLICATION. (a) An adult who is claiming to be a qualifying patient may
8 apply for a registry identification card by submitting a signed application form
9 containing or accompanied by all of the following to the department:

- 10 1. His or her name, address, and date of birth.
- 11 2. A written certification.
- 12 3. The name, address, and telephone number of the person's current physician,
13 as listed in the written certification.
- 14 4. A registration fee in an amount determined by the department, but not to
15 exceed \$25.

16 (b) A qualifying patient who is an adult and who has been issued a registry
17 identification card under sub. (4) or an applicant may jointly apply with another
18 adult to the department for a registry identification card for the other adult,
19 designating him or her as a primary caregiver for the qualifying patient or the
20 applicant. Persons who jointly apply for a registry identification card under this
21 paragraph shall both sign the application form, which shall contain the name,
22 address, and date of birth of the individual applying to be registered as a primary
23 caregiver.

24 (c) The department shall promulgate rules specifying how a parent, guardian,
25 or person having legal custody of a child may apply for a registry identification card

1 for himself or herself and for the child and the circumstances under which the
2 department may approve or deny the application.

3 (3) PROCESSING THE APPLICATION. The department shall verify the information
4 contained in or accompanying an application submitted under sub. (2) and shall
5 approve or deny the application within 30 days after receiving it. The department
6 may deny an application submitted under sub. (2) only if the required information
7 has not been provided or if false information has been provided.

8 (4) ISSUING A REGISTRY IDENTIFICATION CARD. The department shall issue a
9 registry identification card within 5 days after approving an application under sub.
10 (3). Unless voided under sub. (5) (b) or revoked under rules issued by the department
11 under sub. (7) (d), a registry identification card shall expire one year from the date
12 of issuance. A registry identification card shall contain all of the following:

13 (a) The name, address, and date of birth of the registrant and of the primary
14 caregivers, if the registrant is a qualifying patient, or of the qualifying patient if the
15 registrant is a primary caregiver.

16 (b) The date of issuance and expiration date of the registry identification card.

17 (c) A photograph of the registrant.

18 (d) Other information that the department may require by rule.

19 (5) ADDITIONAL INFORMATION TO BE PROVIDED BY REGISTRANT. (a) 1. An adult
20 registrant shall notify the department of any change in the registrant's name and
21 address. An adult registrant who is a qualifying patient shall notify the department
22 of any change in his or her physician, of any significant improvement in his or her
23 health as it relates to his or her debilitating medical condition or treatment, and if
24 a registered primary caregiver no longer assists the registrant with the medical use
25 of tetrahydrocannabinols.

1 2. If a qualifying patient is a child, a primary caregiver for the child shall
2 provide the department with any information that the child, if he or she were an
3 adult, would have to provide under subd. 1. within 10 days after the date of the
4 change to which the information relates.

5 (b) If a registrant fails to notify the department within 10 days after any change
6 for which notification is required under par. (a) 1., his or her registry identification
7 card is void. If a registrant fails to comply with par. (a) 2., the registry identification
8 card for the qualifying patient to whom the information under par. (a) 2. relates is
9 void.

10 (c) If a qualifying patient's registry identification card becomes void under par.
11 (b), the registry identification card for each of the qualifying patient's primary
12 caregivers is void. The department shall send written notice of this fact to each such
13 primary caregiver.

14 (6) RECORDS. (a) The department shall maintain a list of all registrants.

15 (b) Notwithstanding s. 19.35 and except as provided in par. (c), the department
16 may not disclose information from an application submitted or a registry
17 identification card issued under this section.

18 (c) The department may disclose to state or local law enforcement agencies or
19 a registered organization, as defined in s. 961.37 (1) (c), information from an
20 application submitted by, or from a registry identification card issued to, a specific
21 person under this section, for the purpose of verifying that the person possesses a
22 valid registry identification card.

23 (7) RULES. The department shall promulgate rules to implement this section,
24 including the rules required under sub. (2) (c) and rules doing all of the following:

25 (a) Creating forms for applications to be used under sub. (2).

1 (b) Specifying how the department will verify the truthfulness of information
2 submitted on an application under sub. (2).

3 (c) Specifying how and under what circumstances registry identification cards
4 may be renewed.

5 (d) Specifying how and under what changed circumstances a registry
6 identification card may be revoked.

7 (e) Specifying under what circumstances a person whose application for a
8 registry identification card is denied may reapply.

9 SECTION 8. 146.46 of the statutes is created to read:

10 **146.46 Medical use of marijuana; debilitating medical condition or**
11 **treatment.** Notwithstanding s. 227.12 (1), any person may petition the department
12 to promulgate a rule to designate a medical condition or treatment as a debilitating
13 medical condition or treatment, as defined in s. 961.01 (5m). The department shall
14 promulgate rules providing for public notice of and a public hearing regarding any
15 such petition, with the public hearing providing persons an opportunity to comment
16 upon the petition. After the hearing, but no later than 180 days after the submission
17 of the petition, the department shall approve or deny the petition. The department's
18 decision to approve or deny a petition is subject to judicial review under s. 227.52.

19 SECTION 9. 173.12 (1m) of the statutes is amended to read:

20 173.12 (1m) If an animal has been seized because it is alleged that the animal
21 has been used in or constitutes evidence of any crime specified in s. 951.08, the
22 animal may not be returned to the owner by an officer under s. 968.20 (2). In any
23 hearing under s. 968.20 (1) (1f), the court shall determine if the animal is needed as
24 evidence or there is reason to believe that the animal has participated in or been

1 trained for fighting. If the court makes such a finding, the animal shall be retained
2 in custody.

3 **SECTION 10.** 289.33 (3) (d) of the statutes is amended to read:

4 289.33 (3) (d) "Local approval" includes any requirement for a permit, license,
5 authorization, approval, variance or exception or any restriction, condition of
6 approval or other restriction, regulation, requirement or prohibition imposed by a
7 charter ordinance, general ordinance, zoning ordinance, resolution or regulation by
8 a town, city, village, county or special purpose district, including without limitation
9 because of enumeration any ordinance, resolution or regulation adopted under s.
10 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 (11), (12), (13), (15), (16), (17), (18), (19), (20), (21), (22), (23), (24), (25), (26) and (27),
12 59.53 (1), (2), (3), (4), (5), (7), (8), (9), (11), (12), (13), (14), (15), (19), (20) and (23),
13 59.535 (2), (3) and (4), 59.54 (1), (2), (3), (4), (4m), (5), (6), (7), (8), (10), (11), (12), (16),
14 (17), (18), (19), (20), (21), (22), (23), (24), (25) (a) and (26), 59.55 (3), (4), (5) and (6),
15 59.56 (1), (2), (4), (5), (6), (7), (9), (10), (11), (12), (12m), (13) and (16), 59.57 (1), 59.58
16 (1) and (5), 59.62, 59.69, 59.692, 59.693, 59.696, 59.697, 59.698, 59.70 (1), (2), (3), (5),
17 (7), (8), (9), (10), (11), (21), (22) and (23), 59.79 (1), (2), (3), (4), (5), (6), (7), (8), (10) and
18 (11), 59.792 (2) and (3), 59.80, 59.82, 60.10, 60.22, 60.23, 60.54, 60.77, 61.34, 61.35,
19 61.351, 61.354, 62.11, 62.23, 62.231, 62.234, 66.0101, 66.0415, 87.30, 91.73, 196.58,
20 200.11 (8), 236.45, 281.43 or 349.16 or subch. VIII of ch. 60.

21 **SECTION 11.** 349.02 (2) (b) 4. of the statutes is amended to read:

22 349.02 (2) (b) 4. Local ordinances enacted under s. 59.54 (25) (a), 60.23 (21) or
23 66.0107 (1) (bm).

24 **SECTION 12.** 961.01 (1) of the statutes is renumbered 961.01 (1m).

25 **SECTION 13.** 961.01 (1g) of the statutes is created to read:

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

4 **SECTION 14.** 961.01 (5m) of the statutes is created to read:

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

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

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

13 (c) Any other medical condition or any other treatment for a medical condition
14 designated as a debilitating medical condition or treatment in rules promulgated by
15 the department of health and family services under s. ~~146.46~~ 961.436(5) ✓

16 **SECTION 15.** 961.01 (11t) of the statutes is created to read:

17 961.01 (11t) "HIV" means any strain of human immunodeficiency virus, which
18 causes acquired immunodeficiency syndrome.

19 **SECTION 16.** 961.01 (14g) of the statutes is created to read:

20 961.01 (14g) "Medical use of tetrahydrocannabinols" means any of the
21 following:

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

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

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

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

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

15 **SECTION 17.** 961.01 (19m) of the statutes is created to read:

16 **961.01 (19m)** "Primary caregiver" means a person who is at least 18 years of
17 age and who has agreed to help a qualifying patient in his or her medical use of
18 tetrahydrocannabinols.

19 **SECTION 18.** 961.01 (20hm) of the statutes is created to read:

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

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

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

- 6 1. Allow the person's medical use of tetrahydrocannabinols.
- 7 2. Serve as a primary caregiver for the person.
- 8 3. Manage the person's medical use of tetrahydrocannabinols.

9 SECTION 19. 961.01 (20t) of the statutes is created to read:

10 961.01 (20t) "Treatment team" means a qualifying patient and his or her
11 primary caregivers.

12 SECTION 20. 961.01 (21t) of the statutes is created to read:

13 961.01 (21t) "Written certification" means a statement made by a person's
14 physician if all of the following apply:

15 (a) The statement indicates that, in the physician's professional opinion, the
16 person has or is undergoing a debilitating medical condition or treatment and the
17 potential benefits of the ^{person's} ~~medical~~ use of tetrahydrocannabinols ^{under sub. (14g) (a) ✓} would likely outweigh
18 the health risks for the person.

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

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

24 SECTION 21. 961.37 of the statutes is created to read:

25 961.37 Distribution of medical marijuana. (1) In this section:

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

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

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

7 ~~(d) "Registry identification card" has the meaning given in s. 146.45 (1)(g).~~

8 (2) (a) ^{Subject to par. (c), a} ~~registered~~ registered organization may deliver or distribute
9 tetrahydrocannabinols or drug paraphernalia to ^{any of the following} ~~a~~ qualifying patient or a qualifying
10 patient's primary caregiver to facilitate the qualifying patient's medical use of
11 tetrahydrocannabinols ^{by a treatment team:} ~~after contacting the department and verifying that the~~
12 person to whom it intends to deliver or distribute tetrahydrocannabinols or drug
13 paraphernalia has a valid registry identification card.

INS
15/13

14 (b) ^{Subject to par. (c), a} ~~registered~~ registered organization may possess or manufacture
15 tetrahydrocannabinols or drug paraphernalia with the intent to deliver or distribute
16 them under par. (a).

INS
15/16

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

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

23 (4) Before engaging in any conduct authorized under sub. (2), a registered
24 organization shall file with the department a registration statement in a form to be

1 determined by the department. Thereafter, the organization shall annually file a
2 registration statement with the department in accordance with department rules.

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

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

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

9 (c) Establishing record-keeping and reporting requirements for registered
10 organizations.

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

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

14 SECTION 22. 961.436 of the statutes is created to read:

15 **961.436 Medical use defense in cases involving**
16 **tetrahydrocannabinols.** (1) A member of a qualifying patient's treatment team
17 has a defense to prosecution under s. 961.41 (1) (h) or (1m) (h) for manufacturing, or
18 possessing with intent to manufacture, tetrahydrocannabinols if all of the following
19 apply:

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

22 *Does not exceed* (b) ~~The person manufactures, or possesses with intent to manufacture, no more~~
23 ~~than~~ an adequate supply *amount* of tetrahydrocannabinols.

24 (2) A member of a qualifying patient's treatment team has a defense to
25 prosecution under s. 961.41 (1) (h) or (1m) (h) for distributing or delivering, or

1 possessing with intent to distribute or deliver, tetrahydrocannabinols to another
2 member of the treatment team if all of the following apply:

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

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

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

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

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

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

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

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

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

21 a. A school bus or a public transit vehicle.

22 b. The person's place of employment.

23 c. Public or private school premises.

24 d. A juvenile correctional facility.

25 e. A jail or adult correctional facility.

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

2 g. A youth center.

3 (4) For the purposes of a defense raised under sub. (1), (2), or (3) (a), a written
4 certification ~~of a valid registry identification card issued under s. 2146.45 (4)~~ is
5 presumptive evidence that the subject of the written certification ~~or the person~~
6 ~~identified on the card as a qualifying patient~~ is a qualifying patient and that if the
7 person uses tetrahydrocannabinols he or she does so to alleviate the symptoms or
8 effects of his or her debilitating medical condition or treatment.

9 **SECTION 23.** 961.555 (2m) of the statutes is created to read:

10 961.555 (2m) **MEDICAL NECESSITY DEFENSE.** (a) In an action to forfeit property
11 seized under s. 961.55, the person who was in possession of the property when it was
12 seized has a defense to the forfeiture of the property if any of the following applies:

13 1. The person was prosecuted under s. 961.41 (1) (h), (1m) (h), or (3g) (e),
14 961.573 (1), 961.574 (1), or 961.575 (1) in connection with the seized property but had
15 a valid defense under s. 961.436 (1), (2), or (3) (a) or 961.5755 (1) (a) or (2).

16 2. The person was not prosecuted under s. 961.41 (1) (h), (1m) (h), or (3g) (e),
17 961.573 (1), 961.574 (1), or 961.575 (1) in connection with the seized property, but,
18 if the person had been, he or she would have had a valid defense under s. 961.436 (1),
19 (2), or (3) (a) or 961.5755 (1) (a) or (2).

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

25 **SECTION 24.** 961.56 (1) of the statutes is amended to read:

*as provided in s. 961.555
(2m)(b) and except*

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

6 **SECTION 25.** 961.5755 of the statutes is created to read:

7 **961.5755 Medical use of marijuana defense in drug paraphernalia**
8 **cases.** (1) (a) Except as provided in par. (b), a member of a treatment team has a
9 defense to prosecution under s. 961.573 (1) if he or she uses, or possesses with the
10 primary intent to use, drug paraphernalia for the medical use of
11 tetrahydrocannabinols by the treatment team.

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

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

✓ 19 (3) For the purposes of a defense raised under sub. (1) (a) or (2), a written
20 certification ~~or a valid registry identification card issued under s. 2146.45(4)~~ is
21 presumptive evidence that the subject of the written certification ~~or the person~~
22 ~~identified on the card as a qualifying patient~~ is a qualifying patient and that, if the
23 person uses tetrahydrocannabinols, he or she does so to alleviate the symptoms or
24 effects of his or her debilitating medical condition or treatment.

25 **SECTION 26.** 968.073 of the statutes is created to read:

1 **968.073 Medical use of marijuana; arrest and prosecution. (1)**

2 DEFINITIONS. In this section:

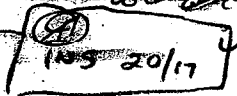
- 3 (a) "Adequate supply" has the meaning given in s. 961.01 (1g).
- 4 (b) "Medical use of tetrahydrocannabinols" has the meaning given in s. 961.01
- 5 (14g).
- 6 (c) "Primary caregiver" has the meaning given in s. 961.01 (19m).
- 7 (d) "Qualifying patient" has the meaning given in s. 961.01 (20hm).
- 8 (e) "Treatment team" has the meaning given in s. 961.01 (20t).
- 9 (f) "Written certification" has the meaning given in s. 961.01 (21t).

10 (2) LIMITATIONS ON ARRESTS AND PROSECUTION; MEDICAL USE OF MARIJUANA. Unless

11 s. 961.436 (3) (b) 1., 2., or 3. applies, a member of a ^{qualifying patient's} treatment team may not be

12 arrested or prosecuted for a violation of s. 961.41 (1) (h), (1m) (h), or (3g) (e) if all of

13 the following apply:

- 14 (a) The person manufactures, distributes, delivers, or possesses
- 15 tetrahydrocannabinols for their medical use by the treatment team.
- 16 (b) The person possesses a ~~registry~~ ^{qualifying patient's} identification card issued to him or her
- 17 under s. 146 ~~(15)(a)~~. 
- 18 (c) The quantity of tetrahydrocannabinols does not exceed an adequate supply.

19 (3) LIMITATIONS ON ARRESTS AND PROSECUTION; DRUG PARAPHERNALIA FOR MEDICAL

20 USE OF MARIJUANA. (a) Unless s. 961.436 (3) (b) 1., 2., or 3. applies, a member of a

21 treatment team may not be arrested or prosecuted for a violation of s. 961.573 (1) if

22 all of the following apply:

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

INS 21/11

1 2. The person possesses a ~~registry identification card issued to him or her under~~
2 ~~s. 146.45 (4).~~

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

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

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

INS 21/12

12 2. The person possesses a ~~registry identification card issued to him or her under~~
13 ~~s. 146.45 (4).~~

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

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

INS 21/19

20 SECTION 27. 968.12 (5) of the statutes is created to read:

21 968.12 (5) MEDICAL USE OF MARIJUANA REGISTRY CARDS. An application for a
22 ~~registry identification card under s. 146.45 (2), the issuance of such a card under s.~~
23 ~~146.45 (4) or a person's possession of such a card~~ shall not, ^(b) ~~(in and of itself,~~ constitute
24 probable cause under sub. (1) or otherwise ~~subject the person or property of the~~

a written certification

1 person who is applying for, issued, or possessing the card to inspection by any
2 governmental agency.

3 **SECTION 28.** 968.19 of the statutes is renumbered 968.19 (1) and amended to
4 read:

5 968.19 (1) Property Except as provided in sub. (2), property seized under a
6 search warrant or validly seized without a warrant shall be safely kept by the officer,
7 who may leave it in the custody of the sheriff and take a receipt therefor, so long as
8 necessary for the purpose of being produced as evidence on any trial.

9 **SECTION 29.** 968.19 (2) of the statutes is created to read:

10 968.19 (2) A law enforcement agency that has seized a live marijuana plant is
11 not responsible for the plant's care and maintenance.

12 **SECTION 30.** 968.20 (1) of the statutes is renumbered 968.20 (1f), and 968.20
13 (1f) (intro.), as renumbered, is amended to read:

14 968.20 (1f) (intro.) Any Except as provided in sub. (1j), any person claiming the
15 right to possession of property seized pursuant to a search warrant or seized without
16 a search warrant may apply for its return to the circuit court for the county in which
17 the property was seized or where the search warrant was returned. The court shall
18 order such notice as it deems adequate to be given the district attorney and all
19 persons who have or may have an interest in the property and shall hold a hearing
20 to hear all claims to its true ownership. If the right to possession is proved to the
21 court's satisfaction, it shall order the property, ~~other than contraband or property~~
22 ~~covered under sub. (1m) or (1r) or s. 173.12 or 173.21 (4),~~ returned if:

23 **SECTION 31.** 968.20 (1d) of the statutes is created to read:

24 968.20 (1d) In this section:

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

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

2 **SECTION 32.** 968.20 (1j) of the statutes is created to read:

3 968.20 (1j) (a) Except as provided in par. (b), sub. (1f) does not apply to
4 contraband or property covered under sub. (1m) or (1r) or s. 173.12 or 173.21 (4).

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

8 1. The person was prosecuted under s. 961.41 (1) (h), (1m) (h), or (3g) (e),
9 961.573 (1), 961.574 (1), or 961.575 (1) in connection with the seized property but had
10 a valid defense under s. 961.436 (1), (2), or (3) (a) or 961.5755 (1) (a) or (2).

11 2. The person was not prosecuted under s. 961.41 (1) (h), (1m) (h), or (3g) (e),
12 961.573 (1), 961.574 (1), or 961.575 (1) in connection with the seized property, but,
13 if the person had been, he or she would have had a valid defense under s. 961.436 (1),
14 (2), or (3) (a) or 961.5755 (1) (a) or (2).

15 **SECTION 33.** 968.20 (3) (a) of the statutes is amended to read:

16 968.20 (3) (a) First class cities shall dispose of dangerous weapons or
17 ammunition seized 12 months after taking possession of them if the owner,
18 authorized under sub. (1m), has not requested their return and if the dangerous
19 weapon or ammunition is not required for evidence or use in further investigation
20 and has not been disposed of pursuant to a court order at the completion of a criminal
21 action or proceeding. Disposition procedures shall be established by ordinance or
22 resolution and may include provisions authorizing an attempt to return to the
23 rightful owner any dangerous weapons or ammunition which appear to be stolen or
24 are reported stolen. If enacted, any such provision shall include a presumption that
25 if the dangerous weapons or ammunition appear to be or are reported stolen an

1 attempt will be made to return the dangerous weapons or ammunition to the
2 authorized rightful owner. If the return of a seized dangerous weapon other than a
3 firearm is not requested by its rightful owner under sub. ~~(1)~~ (1f) and is not returned
4 by the officer under sub. (2), the city shall safely dispose of the dangerous weapon or,
5 if the dangerous weapon is a motor vehicle, as defined in s. 340.01 (35), sell the motor
6 vehicle following the procedure under s. 973.075 (4) or authorize a law enforcement
7 agency to retain and use the motor vehicle. If the return of a seized firearm or
8 ammunition is not requested by its authorized rightful owner under sub. ~~(1)~~ (1f) and
9 is not returned by the officer under sub. (2), the seized firearm or ammunition shall
10 be shipped to and become property of the state crime laboratories. A person
11 designated by the department of justice may destroy any material for which the
12 laboratory has no use or arrange for the exchange of material with other public
13 agencies. In lieu of destruction, shoulder weapons for which the laboratories have
14 no use shall be turned over to the department of natural resources for sale and
15 distribution of proceeds under s. 29.934.

16 SECTION 34. 968.20 (3) (b) of the statutes is amended to read:

17 968.20 (3) (b) Except as provided in par. (a) or sub. (1m) or (4), a city, village,
18 town or county or other custodian of a seized dangerous weapon or ammunition, if
19 the dangerous weapon or ammunition is not required for evidence or use in further
20 investigation and has not been disposed of pursuant to a court order at the
21 completion of a criminal action or proceeding, shall make reasonable efforts to notify
22 all persons who have or may have an authorized rightful interest in the dangerous
23 weapon or ammunition of the application requirements under sub. ~~(1)~~ (1f). If, within
24 30 days after the notice, an application under sub. ~~(1)~~ (1f) is not made and the seized
25 dangerous weapon or ammunition is not returned by the officer under sub. (2), the

1 city, village, town or county or other custodian may retain the dangerous weapon or
2 ammunition and authorize its use by a law enforcement agency, except that a
3 dangerous weapon used in the commission of a homicide or a handgun, as defined
4 in s. 175.35 (1) (b), may not be retained. If a dangerous weapon other than a firearm
5 is not so retained, the city, village, town or county or other custodian shall safely
6 dispose of the dangerous weapon or, if the dangerous weapon is a motor vehicle, as
7 defined in s. 340.01 (35), sell the motor vehicle following the procedure under s.
8 973.075 (4). If a firearm or ammunition is not so retained, the city, village, town or
9 county or other custodian shall ship it to the state crime laboratories and it is then
10 the property of the laboratories. A person designated by the department of justice
11 may destroy any material for which the laboratories have no use or arrange for the
12 exchange of material with other public agencies. In lieu of destruction, shoulder
13 weapons for which the laboratory has no use shall be turned over to the department
14 of natural resources for sale and distribution of proceeds under s. 29.934.

15 **SECTION 35. Effective date.**

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

18 (END)