

2001-2002 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2442/Plins
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Analysis INSERT

~~No P~~ the validity of the qualifying patient's written certification

INSERT 5/22

~~No P~~ Any ordinance enacted under this subsection shall provide a person prosecuted under it with the defenses that the person has under s. 961.5755 to prosecutions under s. 961.573 (1), 961.574 (1), or 961.575 (1).

INSERT 15/13

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

registered
registered

INSERT 15/16

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

1. Contacting the office of the qualifying patient's physician to verify the validity of the qualifying patient's written certification.
2. Contacting the medical examining board to verify that the physician is licensed to practice medicine and surgery under ch. 448.

INSERT 18/8

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

1 (b) Notwithstanding s. 227.12 (1), any person may petition the department to
 2 promulgate a rule to designate a medical condition or treatment as a debilitating
 3 medical condition or treatment. The department shall promulgate rules providing
 4 for public notice of and a public hearing regarding any such petition, with the public
 5 hearing providing persons an opportunity to comment upon the petition. After the
 6 hearing, but no later than 180 days after the submission of the petition, the
 7 department shall approve or deny the petition. The department's decision to approve
 8 or deny a petition is subject to judicial review under s. 227.52.

9 SECTION 1. 961.55 (8) of the statutes is renumbered 961.55 (8) (intro.) and
 10 amended to read:

11 961.55 (8) (intro.) The failure, upon demand by any officer or employee
 12 designated in s. 961.51 (1) or (2), of the person in occupancy or in control of land or
 13 premises upon which the species of plants are growing or being stored, to produce an
 14 any of the following constitutes authority for the seizure and forfeiture of the plants:

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

History: 1971 c. 219, 307; 1981 c. 267; 1985 a. 245, 328; 1987 a. 339; 1989 a. 121; 1993 a. 118, 482; 1995 a. 448 ss. 297 to 305; Stats. 1995 s. 961.55; 1997 a. 220; 1999 a. 48, 57, 110.

17 SECTION 2. 961.55 (8) (b) of the statutes is created to read:

18 961.55 (8) (b) The person's written certification, if the person is a qualifying
 19 patient.

20 SECTION 3. 961.55 (8) (c) of the statutes is created to read:

21 961.55 (8) (c) A written certification for a qualifying patient for whom the
 22 person is a primary caregiver.

23 SECTION 4. 961.555 (2) (a) of the statutes is amended to read:

on a...
 01 0 7 2 0 0 0

1 961.555 (2) (a) The Except as provided in par. (e), the district attorney of the
 2 county within which the property was seized shall commence the forfeiture action
 3 within 30 days after the seizure of the property, ~~except that the defendant may~~
 4 ~~request that the forfeiture proceedings be adjourned until after adjudication of any~~
 5 ~~charge concerning a crime which was the basis for the seizure of the property. The~~
 6 ~~request shall be granted.~~ The forfeiture action shall be commenced by filing a
 7 summons, complaint and affidavit of the person who seized the property with the
 8 clerk of circuit court, provided service of authenticated copies of those papers is made
 9 in accordance with ch. 801 within 90 days after filing upon the person from whom
 10 the property was seized and upon any person known to have a bona fide perfected
 11 security interest in the property.

History: 1971 c. 219; Sup. Ct. Order, 67 Wis. 2d 585, 752 (1975); 1981 c. 113, 267; Sup. Ct. Order, 120 Wis. 2d xiii; 1985 a. 245; 1989 a. 121; 1993 a. 321; 1995 a. 448 s. 306; Stats. 1995 s. 961.555; 1997 a. 187.

12 **SECTION 5.** 961.555 (2) (e) of the statutes is created to read:

13 961.555 (2) (e) The court shall adjourn forfeiture proceedings until after
 14 adjudication of any charge concerning a crime that was the basis for the seizure of
 15 the property if any of the following ~~apply~~: *applies*

- 16 1. The defendant requests an adjournment.
- 17 2. The defendant invokes a defense to the crime under s. 961.436 or 961.5755.

18 **INSERT 20/17**

19 *No 17* copy of the qualifying patient's written certification

20 **INSERT 21/1**

21 *No 11* copy of the qualifying patient's written certification

22 **INSERT 21/12**

23 *No 11* copy of the qualifying patient's written certification

24 **INSERT 21/19**

1 (5) PENALTY FOR FALSE STATEMENTS. Whoever intentionally provides false
2 information to a law enforcement officer in an attempt to avoid arrest or prosecution
3 under this section for a violation of s. 961.41 (1) (h), (1m) (h), or (3g) (e), 961.573 (1),
4 961.574 (1), or 961.575 (1) may be fined not more than \$500.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2442/1dn ^{PI}

MCD:.....
mcg

Mary Lou:

This bill is based in large part on the Marijuana Policy Project (MPP) model statute, but it differs from the MPP draft in certain respects. Here are some questions that relate to the MPP draft and the differences between it and this bill:

1. The MPP draft includes optional language specifying the maximum amount of marijuana that may be considered an "adequate supply." Do you want the bill to include that language?

2. Under the MPP bill, a qualifying patient and his or her primary caregivers have a medical marijuana defense only if they collectively have no more than an adequate supply. But in practice, whether the treatment team's marijuana can be pooled may depend on the circumstances of the arrest. For example, when a putative qualifying patient is arrested, the primary caretakers may have ample opportunity to dispose of any marijuana in excess of an adequate supply. In addition, under this provision, a qualifying patient would not have a medical necessity defense if: 1) without the patient's knowledge, a primary caregiver acquires a large quantity of marijuana; or 2) without intending to acquire collectively more than an adequate supply, members of a treatment team each acquire an amount of marijuana that is less than an adequate supply but that, when aggregated, exceeds an adequate supply (which might occur if they simply fail to communicate with each other). This bill addresses these problems by limiting the adequate supply inquiry to the marijuana distributed, manufactured, delivered, or possessed by the individual charged. The downside to this change is that it could allow a treatment team to possess collectively more than an adequate supply. Consequently, it makes it easier for a qualifying patient to shield from prosecution people who possess or acquire marijuana for non-medical uses.

One alternative — albeit a complicated one — that might avoid some of these problems would be requiring the court to consider the total amount of marijuana possessed by the treatment team (*i.e.*, pooling), but permitting an individual defendant, in a case in which the treatment team possessed more than an adequate amount, to prove that he or she did not intend for that to occur. In this context, you may also want to consider directing a person using marijuana for medical purposes to tell his or her physician the name of anyone serving as his or her primary caregiver. The qualifying patient has an incentive to identify them (to increase the likelihood that the court will view the person

them
from
of the
treatment
team

... simply by making members

as a primary caregiver) but not to name unnecessary or illegitimate primary caregivers (since the marijuana they possess will be attributed to the qualifying patient). Advocates might object to that directive in the same way that they would to MPP's proposed state registry of users, but patient-physician confidentiality may make that information more secure with physicians than with a state agency. In any event, please let me know how you want to address this issue.

3. The MPP draft requires that a child's parent, guardian, or custodian consent in writing to be the child's primary caregiver in order for the child to be considered a qualifying patient. But the draft does not indicate whether the parent, guardian, or custodian needs to submit the written consent to anyone. This bill requires that ~~it~~ be provided to the qualifying patient's physician. Is that okay?

the written consent

4. The MPP draft includes a provision specifying that insurers are not required to cover the medical use of marijuana. This bill does not. There is nothing in current law that would otherwise require an insurer to cover it, and our insurance law drafter has informed me that, unless they are legally required to do so, insurers will not include such coverage in their policies.

5. The forfeiture provisions in the MPP draft do not work very well. Under that draft, marijuana or drug paraphernalia used for medical reasons is not subject to forfeiture until after a person is convicted. But in many cases a law enforcement agency that seizes marijuana or drug paraphernalia may have no way of knowing ~~if~~ the seized property was being used for medical reasons until after a criminal trial (assuming there is one). Consequently, this ~~draft~~ permits the state to bring a forfeiture action at any time, but it also: 1) requires the court to adjourn the forfeiture proceedings if the defendant asserts a medical use defense in a companion criminal case; and 2) permits a person from whom the property is seized to raise a medical use defense in a forfeiture case. Is that okay?

whether

draft

that I had

6. The MPP ~~bill~~ requires nonprofit organizations that are authorized to distribute marijuana to keep a record of qualifying patients and primary caregivers who use its services. Based on an exchange of e-mails with Robert Kampia, Executive Director of MPP, it appears that this requirement makes sense only if the bill contains the optional state registration provisions, which this bill does not. Therefore, the bill omits this record-keeping requirement.

In addition, please note the following:

7. The U.S. Supreme Court is expected to rule before the end of June on the question of whether a state may authorize an organization to distribute marijuana for medical use. *U.S. v. Oakland Cannabis Buyers' Cooperative*, 190 F. 3d. 1109 (9th Cir. 1999), cert. granted, 121 S. Ct. 563 (U.S. Nov. 27, 2000) (No. 00-151). Depending on how the court rules, we may need to modify — or even remove — the provisions of the bill relating to distribution of marijuana by nonprofit organizations.

8. The bill would still permit a child who is a qualifying patient to acquire marijuana on his or own. Is that your intent? In addition, the bill requires that a primary caregiver be at least 18 years old. Cases of this type may be extremely rare, but this

requirement, combined with the requirement referred to in item 3 above, precludes a child whose parent, guardian, or custodian is under 18 from using marijuana for medical purposes. Is that okay?

9. Under current s. 968.20 (4), a law enforcement agency may dispose of property that "poses a danger to life" in its use. I have not found any court case interpreting that provision, but some law enforcement officials might argue that marijuana is covered by that description. Do you want the bill to specify that marijuana is not covered by s. 968.20 (4)?

Michael Dsida
Legislative Attorney
Phone: (608) 266-9867

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2442/P1dn
MCD:kmg:pg

May 11, 2001

Mary Lou:

This bill is based in large part on the Marijuana Policy Project (MPP) model statute, but it differs from the MPP draft in certain respects. Here are some questions that relate to the MPP draft and the differences between it and this bill:

1. The MPP draft includes optional language specifying the maximum amount of marijuana that may be considered an "adequate supply." Do you want the bill to include that language?
2. Under the MPP bill, a qualifying patient and his or her primary caregivers have a medical marijuana defense only if they collectively have no more than an adequate supply. But in practice, whether the treatment team's marijuana can be pooled may depend on the circumstances of the arrest. For example, when a putative qualifying patient is arrested, the primary caretakers may have ample opportunity to dispose of any marijuana in excess of an adequate supply. In addition, under this provision, a qualifying patient would not have a medical necessity defense if: 1) without the patient's knowledge, a primary caregiver acquires a large quantity of marijuana; or 2) without intending to acquire collectively more than an adequate supply, members of a treatment team each acquire an amount of marijuana that is less than an adequate supply but that, when aggregated, exceeds an adequate supply (which might occur if they simply fail to communicate with each other). This bill addresses these problems by limiting the adequate supply inquiry to the marijuana distributed, manufactured, delivered, or possessed by the individual charged. The downside to this change is that it could allow a treatment team to possess collectively more than an adequate supply. Consequently, it makes it easier for a qualifying patient to shield from prosecution people who possess or acquire marijuana for nonmedical uses, simply by making them members of the treatment team.

One alternative — albeit a complicated one — that might avoid some of these problems would be requiring the court to consider the total amount of marijuana possessed by the treatment team (*i.e.*, pooling), but permitting an individual defendant, in a case in which the treatment team possessed more than an adequate amount, to prove that he or she did not intend for that to occur. In this context, you may also want to consider directing a person using marijuana for medical purposes to tell his or her physician the name of anyone serving as his or her primary caregiver. The qualifying patient has an

incentive to identify them (to increase the likelihood that the court will view the person as a primary caregiver) but not to name unnecessary or illegitimate primary caregivers (since the marijuana that they possess will be attributed to the qualifying patient). Advocates might object to that directive in the same way that they would to MPP's proposed state registry of users, but patient-physician confidentiality may make that information more secure with physicians than with a state agency. In any event, please let me know how you want to address this issue.

3. The MPP draft requires that a child's parent, guardian, or custodian consent in writing to be the child's primary caregiver in order for the child to be considered a qualifying patient. But the draft does not indicate whether the parent, guardian, or custodian needs to submit the written consent to anyone. This bill requires that the written consent be provided to the qualifying patient's physician. Is that okay?

4. The MPP draft includes a provision specifying that insurers are not required to cover the medical use of marijuana. This bill does not. There is nothing in current law that would otherwise require an insurer to cover it, and our insurance law drafter has informed me that, unless they are legally required to do so, insurers will not include such coverage in their policies.

5. The forfeiture provisions in the MPP draft do not work very well. Under that draft, marijuana or drug paraphernalia used for medical reasons is not subject to forfeiture until after a person is convicted. But in many cases a law enforcement agency that seizes marijuana or drug paraphernalia may have no way of knowing whether the seized property was being used for medical reasons until after a criminal trial (assuming there is one). Consequently, this bill permits the state to bring a forfeiture action at any time, but it also: 1) requires the court to adjourn the forfeiture proceedings if the defendant asserts a medical use defense in a companion criminal case; and 2) permits a person from whom the property is seized to raise a medical use defense in a forfeiture case. Is that okay?

6. The MPP draft requires nonprofit organizations that are authorized to distribute marijuana to keep a record of qualifying patients and primary caregivers who use its services. Based on an exchange of e-mails that I had with Robert Kampia, Executive Director of MPP, it appears that this requirement makes sense only if the bill contains the optional state registration provisions, which this bill does not. Therefore, the bill omits this record-keeping requirement.

In addition, please note the following:

7. The U.S. Supreme Court is expected to rule before the end of June on the question of whether a state may authorize an organization to distribute marijuana for medical use. *U.S. v. Oakland Cannabis Buyers' Cooperative*, 190 F. 3d. 1109 (9th Cir. 1999), *cert. granted*, 121 S. Ct. 563 (U.S. Nov. 27, 2000) (No. 00-151). Depending on how the court rules, we may need to modify — or even remove — the provisions of the bill relating to distribution of marijuana by nonprofit organizations.

8. The bill would still permit a child who is a qualifying patient to acquire marijuana on his or own. Is that your intent? In addition, the bill requires that a primary

caregiver be at least 18 years old. Cases of this type may be extremely rare, but this requirement, combined with the requirement referred to in item 3 above, precludes a child whose parent, guardian, or custodian is under 18 from using marijuana for medical purposes. Is that okay?

9. Under current s. 968.20 (4), a law enforcement agency may dispose of property that "poses a danger to life" in its use. I have not found any court case interpreting that provision, but some law enforcement officials might argue that marijuana is covered by that description. Do you want the bill to specify that marijuana is not covered by s. 968.20 (4)?

Michael Dsida
Legislative Attorney
Phone: (608) 266-9867



State of Wisconsin
2001 - 2002 LEGISLATURE

LRB-2442/P1

MGD(kmg)pg

Handwritten initials and marks: a circle around 'MGD(kmg)pg', a circled 'P2', and 'jld' with an arrow pointing to the circled 'P2'.

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

soon

~~revised from bill~~

Regen

1 AN ACT *to renumber* 961.01 (1); *to renumber and amend* 59.54 (25), 961.55
2 (8), 968.19 and 968.20 (1); *to amend* 60.23 (21), 66.0107 (1) (bm), 173.12 (1m),
3 289.33 (3) (d), 349.02 (2) (b) 4., 961.555 (2) (a), 961.56 (1), 968.20 (3) (a) and
4 968.20 (3) (b); and *to create* 59.54 (25) (b) 2., 59.54 (25) (b) 3., 961.01 (1g), 961.01
5 (5m), 961.01 (11t), 961.01 (14g), 961.01 (19m), 961.01 (20hm), 961.01 (20t),
6 961.01 (21t), 961.37, 961.436, 961.55 (8) (b), 961.55 (8) (c), 961.555 (2) (e),
7 961.555 (2m), 961.5755, 968.073, 968.12 (5), 968.19 (2), 968.20 (1d) and 968.20
8 (1j) of the statutes; **relating to:** medical use of marijuana, requiring the
9 exercise of rule-making authority, and providing a penalty.

Analysis by the Legislative Reference Bureau

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

Current prohibitions and penalties

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

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

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

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

Medical necessity defense and immunity from arrest and prosecution

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

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

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

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

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

Registered marijuana distribution organizations

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

Effect on federal law

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

Fix
Component

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

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

1 SECTION 1. 59.54 (25) of the statutes is renumbered 59.54 (25) (a) and amended
2 to read:

3 59.54 (25) (a) The board may enact and enforce an ordinance to prohibit the
4 possession of 25 grams or less of marijuana, as defined in s. 961.01 (14), subject to
5 par. (b) and the exceptions in s. 961.41 (3g) (intro.), and provide a forfeiture for a
6 violation of the ordinance; except that any person who is charged with possession of
7 more than 25 grams of marijuana, or who is charged with possession of any amount
8 of marijuana following a conviction for possession of marijuana, in this state shall
9 not be prosecuted under this subsection. Any ordinance enacted under this
10 paragraph shall provide a person who is prosecuted under it with the defenses that
11 the person has under s. 961.436 to prosecutions under s. 961.41 (1) (h), (1m) (h), or
12 (3g) (e).

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

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

1 59.54 (25) (b) 2. A person may not be prosecuted under an ordinance enacted
2 under par. (a) if, under s. 968.073 (2), the person would not be subject to prosecution
3 under s. 961.41 (3g) (e).

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

5 59.54 (25) (b) 3. No person who is charged with possession of more than 25
6 grams of marijuana, or who is charged with possession of any amount of marijuana
7 following a conviction for possession of marijuana, in this state may be prosecuted
8 under an ordinance enacted under par. (a).

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

10 60.23 (21) DRUG PARAPHERNALIA. Adopt an ordinance to prohibit conduct that
11 is the same as that prohibited by s. 961.573 (2), 961.574 (2) or 961.575 (2). Any
12 ordinance enacted under this subsection shall provide a person prosecuted under it
13 with the defenses that the person has under s. 961.5755 to prosecutions under s.
14 961.573 (1), 961.574 (1), or 961.575 (1). A person may not be prosecuted under an
15 ordinance enacted under this subsection if, under s. 968.073 (3), the person would
16 not be subject to prosecution under s. 961.573 (2) or 961.574 (2).

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

18 66.0107 (1) (bm) Enact and enforce an ordinance to prohibit the possession of
19 25 grams or less of marijuana, as defined in s. 961.01 (14), subject to this paragraph
20 and the exceptions in s. 961.41 (3g) (intro.), and provide a forfeiture for a violation
21 of the ordinance; except that any. Any ordinance enacted under this paragraph shall
22 provide a person prosecuted under it with the defenses that the person has under s.
23 961.436 to prosecutions under s. 961.41 (1) (h), (1m) (h), or (3g) (e). A person may not
24 be prosecuted under an ordinance enacted under this paragraph if, under s. 968.073
25 (2), the person would not be subject to prosecution under s. 961.41 (3g) (e). No person

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

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

6 173.12 (1m) If an animal has been seized because it is alleged that the animal
7 has been used in or constitutes evidence of any crime specified in s. 951.08, the
8 animal may not be returned to the owner by an officer under s. 968.20 (2). In any
9 hearing under s. 968.20 ~~(1)~~ (1f), the court shall determine if the animal is needed as
10 evidence or there is reason to believe that the animal has participated in or been
11 trained for fighting. If the court makes such a finding, the animal shall be retained
12 in custody.

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

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

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

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

7 349.02 (2) (b) 4. Local ordinances enacted under s. 59.54 (25) (a), 60.23 (21) or
8 66.0107 (1) (bm).

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

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

11 961.01 (1g) "Adequate supply" means an amount of tetrahydrocannabinols
12 that is not more than is reasonably necessary to ensure the uninterrupted
13 availability of tetrahydrocannabinols for their medical use by a treatment team.

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

15 961.01 (5m) "Debilitating medical condition or treatment" means any of the
16 following:

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

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

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

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

2 961.01 (11t) “HIV” means any strain of human immunodeficiency virus, which
3 causes acquired immunodeficiency syndrome.

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

5 961.01 (14g) “Medical use of tetrahydrocannabinols” means any of the
6 following:

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

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

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

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

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

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

1 961.01 (19m) “Primary caregiver” means a person who is at least 18 years of
2 age and who has agreed to help a qualifying patient in his or her medical use of
3 tetrahydrocannabinols.

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

5 961.01 (20hm) “Qualifying patient” means a person who has been diagnosed
6 by a physician as having or undergoing a debilitating medical condition or treatment
7 but does not include a person under the age of 18 years unless all of the following
8 apply:

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

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

- 14 1. Allow the person’s medical use of tetrahydrocannabinols.
- 15 2. Serve as a primary caregiver for the person.
- 16 3. Manage the person’s medical use of tetrahydrocannabinols.

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

18 961.01 (20t) “Treatment team” means a qualifying patient and his or her
19 primary caregivers.

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

21 961.01 (21t) “Written certification” means a statement made by a person’s
22 physician if all of the following apply:

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

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

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

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

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

9 **961.37 Distribution of medical marijuana.** (1) In this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 (c) Establishing record-keeping and reporting requirements for registered
25 organizations.

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

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

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

5 **961.436 Medical use defense in cases involving**
6 **tetrahydrocannabinols.** (1) A member of a qualifying patient's treatment team
7 has a defense to prosecution under s. 961.41 (1) (h) or (1m) (h) for manufacturing, or
8 possessing with intent to manufacture, tetrahydrocannabinols if all of the following
9 apply:

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

12 (b) The amount of tetrahydrocannabinols does not exceed an adequate supply.
13

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

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

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

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

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

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

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

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

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

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

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

12 b. The person's place of employment.

13 c. Public or private school premises.

14 d. A juvenile correctional facility.

15 e. A jail or adult correctional facility.

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

17 g. A youth center.

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

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

1 (b) Notwithstanding s. 227.12 (1), any person may petition the department to
2 promulgate a rule to designate a medical condition or treatment as a debilitating
3 medical condition or treatment. The department shall promulgate rules providing
4 for public notice of and a public hearing regarding any such petition, with the public
5 hearing providing persons an opportunity to comment upon the petition. After the
6 hearing, but no later than 180 days after the submission of the petition, the
7 department shall approve or deny the petition. The department's decision to approve
8 or deny a petition is subject to judicial review under s. 227.52.

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

11 961.55 (8) (intro.) The failure, upon demand by any officer or employee
12 designated in s. 961.51 (1) or (2), of the person in occupancy or in control of land or
13 premises upon which the species of plants are growing or being stored, to produce ~~an~~
14 any of the following constitutes authority for the seizure and forfeiture of the plants:

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

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

18 961.55 (8) (b) The person's written certification, if the person is a qualifying
19 patient.

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

21 961.55 (8) (c) A written certification for a qualifying patient for whom the
22 person is a primary caregiver.

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

24 961.555 (2) (a) The Except as provided in par. (e), the district attorney of the
25 county within which the property was seized shall commence the forfeiture action

1 within 30 days after the seizure of the property, ~~except that the defendant may~~
2 ~~request that the forfeiture proceedings be adjourned until after adjudication of any~~
3 ~~charge concerning a crime which was the basis for the seizure of the property. The~~
4 ~~request shall be granted.~~ The forfeiture action shall be commenced by filing a
5 summons, complaint and affidavit of the person who seized the property with the
6 clerk of circuit court, provided service of authenticated copies of those papers is made
7 in accordance with ch. 801 within 90 days after filing upon the person from whom
8 the property was seized and upon any person known to have a bona fide perfected
9 security interest in the property.

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

11 961.555 (2) (e) The court shall adjourn forfeiture proceedings until after
12 adjudication of any charge concerning a crime that was the basis for the seizure of
13 the property if any of the following applies:

- 14 1. The defendant requests an adjournment.
- 15 2. The defendant invokes a defense to the crime under s. 961.436 or 961.5755.

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

17 961.555 (2m) **MEDICAL NECESSITY DEFENSE.** (a) In an action to forfeit property
18 seized under s. 961.55, the person who was in possession of the property when it was
19 seized has a defense to the forfeiture of the property if any of the following applies:

- 20 1. The person was prosecuted under s. 961.41 (1) (h), (1m) (h), or (3g) (e),
21 961.573 (1), 961.574 (1), or 961.575 (1) in connection with the seized property but had
22 a valid defense under s. 961.436 (1), (2), or (3) (a) or 961.5755 (1) (a) or (2).

- 23 2. The person was not prosecuted under s. 961.41 (1) (h), (1m) (h), or (3g) (e),
24 961.573 (1), 961.574 (1), or 961.575 (1) in connection with the seized property, but,

1 if the person had been, he or she would have had a valid defense under s. 961.436 (1),
2 (2), or (3) (a) or 961.5755 (1) (a) or (2).

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

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

9 961.56 (1) ~~It~~ Except as provided in s. 961.555 (2m) (b) and except for any
10 presumption arising under s. 961.436 (4) or 961.5755 (3), it is not necessary for the
11 state to negate any exemption or exception in this chapter in any complaint,
12 information, indictment or other pleading or in any trial, hearing or other proceeding
13 under this chapter. ~~The, and the~~ burden of proof of any exemption or exception is
14 upon the person claiming it.

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

16 **961.5755 Medical use of marijuana defense in drug paraphernalia**
17 **cases.** (1) (a) Except as provided in par. (b), a member of a treatment team has a
18 defense to prosecution under s. 961.573 (1) if he or she uses, or possesses with the
19 primary intent to use, drug paraphernalia for the medical use of
20 tetrahydrocannabinols by the treatment team.

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

23 (2) A member of a treatment team has a defense to prosecution under s. 961.574
24 (1) or 961.575 (1) if he or she delivers, possesses with intent to deliver, or
25 manufactures with intent to deliver to another member of his or her treatment team

1 drug paraphernalia, knowing that it will be primarily used for the medical use of
2 tetrahydrocannabinols by the treatment team.

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

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

9 **968.073 Medical use of marijuana; arrest and prosecution. (1)**

10 DEFINITIONS. In this section:

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

12 (b) "Medical use of tetrahydrocannabinols" has the meaning given in s. 961.01
13 (14g).

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

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

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

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

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

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

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

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

1 **(3) LIMITATIONS ON ARRESTS AND PROSECUTION; DRUG PARAPHERNALIA FOR MEDICAL**
2 **USE OF MARIJUANA.** (a) Unless s. 961.436 (3) (b) 1., 2., or 3. applies, a member of a
3 treatment team may not be arrested or prosecuted for a violation of s. 961.573 (1) if
4 all of the following apply:

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

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

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

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

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

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

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

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

24 **(5) PENALTY FOR FALSE STATEMENTS.** Whoever intentionally provides false
25 information to a law enforcement officer in an attempt to avoid arrest or prosecution

1 under this section for a violation of s. 961.41 (1) (h), (1m) (h), or (3g) (e), 961.573 (1),
2 961.574 (1), or 961.575 (1) may be fined not more than \$500.

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

4 968.12 (5) **MEDICAL USE OF MARIJUANA.** A person's possession of a written
5 certification shall not, by itself, constitute probable cause under sub. (1) or otherwise
6 subject the person or property of the person to inspection by any governmental
7 agency.

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

10 968.19 (1) **Property** Except as provided in sub. (2), property seized under a
11 search warrant or validly seized without a warrant shall be safely kept by the officer,
12 who may leave it in the custody of the sheriff and take a receipt therefor, so long as
13 necessary for the purpose of being produced as evidence on any trial.

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

15 968.19 (2) A law enforcement agency that has seized a live marijuana plant is
16 not responsible for the plant's care and maintenance. *as affected by 2001 Wisconsin Act 16,*

17 **SECTION 32.** 968.20 (1) of the statutes *is* renumbered 968.20 (1f), and 968.20
18 (1f) (intro.), as renumbered, is amended to read:

19 968.20 (1f) (intro.) **Any** Except as provided in sub. (1j), any person claiming the
20 right to possession of property seized pursuant to a search warrant or seized without
21 a search warrant may apply for its return to the circuit court for the county in which
22 the property was seized or where the search warrant was returned. The court shall
23 order such notice as it deems adequate to be given the district attorney and all
24 persons who have or may have an interest in the property and shall hold a hearing
25 to hear all claims to its true ownership. If the right to possession is proved to the

Handwritten notes: "Strike" with arrows pointing to a circled "1" and a circled "968.205".

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

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

4 968.20 (1d) In this section:

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

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

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

8 968.20 (1j) (a) Except as provided in par. (b), sub. (1f) does not apply to
9 contraband or property covered under sub. (1m) or (1r) or s. 173.12 ~~or~~ 173.21 (4). or
968.205

10 (b) Under sub. (1f), the court may return drug paraphernalia or
11 tetrahydrocannabinols that have been seized to the person from whom they were
12 seized 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 SECTION 35. 968.20 (3) (a) of the statutes is amended to read:

21 968.20 (3) (a) First class cities shall dispose of dangerous weapons or
22 ammunition seized 12 months after taking possession of them if the owner,
23 authorized under sub. (1m), has not requested their return and if the dangerous
24 weapon or ammunition is not required for evidence or use in further investigation
25 and has not been disposed of pursuant to a court order at the completion of a criminal

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

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

22 968.20 (3) (b) Except as provided in par. (a) or sub. (1m) or (4), a city, village,
23 town or county or other custodian of a seized dangerous weapon or ammunition, if
24 the dangerous weapon or ammunition is not required for evidence or use in further
25 investigation and has not been disposed of pursuant to a court order at the

1 completion of a criminal action or proceeding, shall make reasonable efforts to notify
2 all persons who have or may have an authorized rightful interest in the dangerous
3 weapon or ammunition of the application requirements under sub. ~~(1)~~ (1f). If, within
4 30 days after the notice, an application under sub. ~~(1)~~ (1f) is not made and the seized
5 dangerous weapon or ammunition is not returned by the officer under sub. (2), the
6 city, village, town or county or other custodian may retain the dangerous weapon or
7 ammunition and authorize its use by a law enforcement agency, except that a
8 dangerous weapon used in the commission of a homicide or a handgun, as defined
9 in s. 175.35 (1) (b), may not be retained. If a dangerous weapon other than a firearm
10 is not so retained, the city, village, town or county or other custodian shall safely
11 dispose of the dangerous weapon or, if the dangerous weapon is a motor vehicle, as
12 defined in s. 340.01 (35), sell the motor vehicle following the procedure under s.
13 973.075 (4). If a firearm or ammunition is not so retained, the city, village, town or
14 county or other custodian shall ship it to the state crime laboratories and it is then
15 the property of the laboratories. A person designated by the department of justice
16 may destroy any material for which the laboratories have no use or arrange for the
17 exchange of material with other public agencies. In lieu of destruction, shoulder
18 weapons for which the laboratory has no use shall be turned over to the department
19 of natural resources for sale and distribution of proceeds under s. 29.934.

20 **SECTION 37. Effective date.**

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

23 (END)



PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

p. 4 change + pp. 19-20
~~*No change*~~

retrieve from hold

TODAY

Sen. Cost

1 **AN ACT** *to renumber* 961.01 (1); *to renumber and amend* 59.54 (25), 961.55
2 (8), 968.19 and 968.20 (1); *to amend* 60.23 (21), 66.0107 (1) (bm), 173.12 (1m),
3 289.33 (3) (d), 349.02 (2) (b) 4., 961.555 (2) (a), 961.56 (1), 968.20 (3) (a) and
4 968.20 (3) (b); and *to create* 59.54 (25) (b) 2., 59.54 (25) (b) 3., 961.01 (1g), 961.01
5 (5m), 961.01 (11t), 961.01 (14g), 961.01 (19m), 961.01 (20hm), 961.01 (20t),
6 961.01 (21t), 961.37, 961.436, 961.55 (8) (b), 961.55 (8) (c), 961.555 (2) (e),
7 961.555 (2m), 961.5755, 968.073, 968.12 (5), 968.19 (2), 968.20 (1d) and 968.20
8 (1j) of the statutes; **relating to:** medical use of marijuana, requiring the
9 exercise of rule-making authority, and providing a penalty.

Analysis by the Legislative Reference Bureau

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

Current prohibitions and penalties

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

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

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

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

Medical necessity defense and immunity from arrest and prosecution

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

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

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

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

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

Registered marijuana distribution organizations

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

Effect on federal law

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

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

LPS: add "anal:space" component.

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

1 **SECTION 1.** 59.54 (25) of the statutes is renumbered 59.54 (25) (a) and amended
2 to read:

3 59.54 (25) (a) The board may enact and enforce an ordinance to prohibit the
4 possession of 25 grams or less of marijuana, as defined in s. 961.01 (14), subject to
5 par. (b) and the exceptions in s. 961.41 (3g) (intro.), and provide a forfeiture for a
6 violation of the ordinance; except that any person who is charged with possession of
7 more than 25 grams of marijuana, or who is charged with possession of any amount
8 of marijuana following a conviction for possession of marijuana, in this state shall
9 not be prosecuted under this subsection. Any ordinance enacted under this
10 paragraph shall provide a person who is prosecuted under it with the defenses that
11 the person has under s. 961.436 to prosecutions under s. 961.41 (1) (h), (1m) (h), or
12 (3g) (e).

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

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

17 59.54 (25) (b) 2. A person may not be prosecuted under an ordinance enacted
18 under par. (a) if, under s. 968.073 (2), the person would not be subject to prosecution
19 under s. 961.41 (3g) (e).

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

2 59.54 (25) (b) 3. No person who is charged with possession of more than 25
3 grams of marijuana, or who is charged with possession of any amount of marijuana
4 following a conviction for possession of marijuana, in this state may be prosecuted
5 under an ordinance enacted under par. (a).

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

7 60.23 (21) DRUG PARAPHERNALIA. Adopt an ordinance to prohibit conduct that
8 is the same as that prohibited by s. 961.573 (2), 961.574 (2) or 961.575 (2). Any
9 ordinance enacted under this subsection shall provide a person prosecuted under it
10 with the defenses that the person has under s. 961.5755 to prosecutions under s.
11 961.573 (1), 961.574 (1), or 961.575 (1). A person may not be prosecuted under an
12 ordinance enacted under this subsection if, under s. 968.073 (3), the person would
13 not be subject to prosecution under s. 961.573 (2) or 961.574 (2).

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

15 66.0107 (1) (bm) Enact and enforce an ordinance to prohibit the possession of
16 25 grams or less of marijuana, as defined in s. 961.01 (14), subject to this paragraph
17 and the exceptions in s. 961.41 (3g) (intro.), and provide a forfeiture for a violation
18 of the ordinance; except that any. Any ordinance enacted under this paragraph shall
19 provide a person prosecuted under it with the defenses that the person has under s.
20 961.436 to prosecutions under s. 961.41 (1) (h), (1m) (h), or (3g) (e). A person may not
21 be prosecuted under an ordinance enacted under this paragraph if, under s. 968.073
22 (2), the person would not be subject to prosecution under s. 961.41 (3g) (e). No person
23 who is charged with possession of more than 25 grams of marijuana, or who is
24 charged with possession of any amount of marijuana following a conviction for

1 possession of marijuana, in this state ~~shall not~~ may be prosecuted under this
2 paragraph.

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

4 173.12 (1m) If an animal has been seized because it is alleged that the animal
5 has been used in or constitutes evidence of any crime specified in s. 951.08, the
6 animal may not be returned to the owner by an officer under s. 968.20 (2). In any
7 hearing under s. 968.20 ~~(1)~~ (1f), the court shall determine if the animal is needed as
8 evidence or there is reason to believe that the animal has participated in or been
9 trained for fighting. If the court makes such a finding, the animal shall be retained
10 in custody.

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

12 289.33 (3) (d) "Local approval" includes any requirement for a permit, license,
13 authorization, approval, variance or exception or any restriction, condition of
14 approval or other restriction, regulation, requirement or prohibition imposed by a
15 charter ordinance, general ordinance, zoning ordinance, resolution or regulation by
16 a town, city, village, county or special purpose district, including without limitation
17 because of enumeration any ordinance, resolution or regulation adopted under s.
18 59.03 (2), 59.11 (5), 59.42 (1), 59.48, 59.51 (1) and (2), 59.52 (2), (5), (6), (7), (8), (9),
19 (11), (12), (13), (15), (16), (17), (18), (19), (20), (21), (22), (23), (24), (25), (26) and (27),
20 59.53 (1), (2); (3), (4), (5), (7), (8), (9), (11), (12), (13), (14), (15), (19), (20) and (23),
21 59.535 (2), (3) and (4), 59.54 (1), (2), (3), (4), (4m), (5), (6), (7), (8), (10), (11), (12), (16),
22 (17), (18), (19), (20), (21), (22), (23), (24), (25) (a), and (26), 59.55 (3), (4), (5) and (6),
23 59.56 (1), (2), (4), (5), (6), (7), (9), (10), (11), (12), (12m), (13) and (16), 59.57 (1), 59.58
24 (1) and (5), 59.62, 59.69, 59.692, 59.693, 59.696, 59.697, 59.698, 59.70 (1), (2), (3), (5),
25 (7), (8), (9), (10), (11), (21), (22) and (23), 59.79 (1), (2), (3), (4), (5), (6), (7), (8), (10) and

1 (11), 59.792 (2) and (3), 59.80, 59.82, 60.10, 60.22, 60.23, 60.54, 60.77, 61.34, 61.35,
2 61.351, 61.354, 62.11, 62.23, 62.231, 62.234, 66.0101, 66.0415, 87.30, 91.73, 196.58,
3 200.11 (8), 236.45, 281.43 or 349.16 or subch. VIII of ch. 60.

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

5 349.02 (2) (b) 4. Local ordinances enacted under s. 59.54 (25) (a), 60.23 (21) or
6 66.0107 (1) (bm).

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

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

9 961.01 (1g) "Adequate supply" means an amount of tetrahydrocannabinols
10 that is not more than is reasonably necessary to ensure the uninterrupted
11 availability of tetrahydrocannabinols for their medical use by a treatment team.

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

13 961.01 (5m) "Debilitating medical condition or treatment" means any of the
14 following:

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

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

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

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

1 961.01 (11t) "HIV" means any strain of human immunodeficiency virus, which
2 causes acquired immunodeficiency syndrome.

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

4 961.01 (14g) "Medical use of tetrahydrocannabinols" means any of the
5 following:

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

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

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

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

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

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

23 961.01 (19m) "Primary caregiver" means a person who is at least 18 years of
24 age and who has agreed to help a qualifying patient in his or her medical use of
25 tetrahydrocannabinols.

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

2 961.01 (20hm) “Qualifying patient” means a person who has been diagnosed
3 by a physician as having or undergoing a debilitating medical condition or treatment
4 but does not include a person under the age of 18 years unless all of the following
5 apply:

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

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

- 11 1. Allow the person’s medical use of tetrahydrocannabinols.
- 12 2. Serve as a primary caregiver for the person.
- 13 3. Manage the person’s medical use of tetrahydrocannabinols.

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

15 961.01 (20t) “Treatment team” means a qualifying patient and his or her
16 primary caregivers.

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

18 961.01 (21t) “Written certification” means a statement made by a person’s
19 physician if all of the following apply:

20 (a) The statement indicates that, in the physician’s professional opinion, the
21 person has or is undergoing a debilitating medical condition or treatment and the
22 potential benefits of the person’s use of tetrahydrocannabinols under sub. (14g) (a)
23 would likely outweigh the health risks for the person.

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

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

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

7 **961.37 Distribution of medical marijuana.** (1) In this section:

8 (a) “Department” means the department of health and family services.

9 (b) “Drug paraphernalia” has the meaning given in s. 961.571 (1).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 (c) Establishing record-keeping and reporting requirements for registered
25 organizations.

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

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

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

5 **961.436 Medical use defense in cases involving**
6 **tetrahydrocannabinols.** (1) A member of a qualifying patient's treatment team
7 has a defense to prosecution under s. 961.41 (1) (h) or (1m) (h) for manufacturing, or
8 possessing with intent to manufacture, tetrahydrocannabinols if all of the following
9 apply:

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

12 (b) The amount of tetrahydrocannabinols does not exceed an adequate supply.
13 .

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

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

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

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

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

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

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

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

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

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

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

12 b. The person's place of employment.

13 c. Public or private school premises.

14 d. A juvenile correctional facility.

15 e. A jail or adult correctional facility.

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

17 g. A youth center.

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

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

1 (b) Notwithstanding s. 227.12 (1), any person may petition the department to
2 promulgate a rule to designate a medical condition or treatment as a debilitating
3 medical condition or treatment. The department shall promulgate rules providing
4 for public notice of and a public hearing regarding any such petition, with the public
5 hearing providing persons an opportunity to comment upon the petition. After the
6 hearing, but no later than 180 days after the submission of the petition, the
7 department shall approve or deny the petition. The department's decision to approve
8 or deny a petition is subject to judicial review under s. 227.52.

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

11 961.55 (8) (intro.) The failure, upon demand by any officer or employee
12 designated in s. 961.51 (1) or (2), of the person in occupancy or in control of land or
13 premises upon which the species of plants are growing or being stored, to produce ~~an~~
14 any of the following constitutes authority for the seizure and forfeiture of the plants:

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

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

18 961.55 (8) (b) The person's written certification, if the person is a qualifying
19 patient.

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

21 961.55 (8) (c) A written certification for a qualifying patient for whom the
22 person is a primary caregiver.

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

24 961.555 (2) (a) The Except as provided in par. (e), the district attorney of the
25 county within which the property was seized shall commence the forfeiture action

1 within 30 days after the seizure of the property, ~~except that the defendant may~~
2 ~~request that the forfeiture proceedings be adjourned until after adjudication of any~~
3 ~~charge concerning a crime which was the basis for the seizure of the property. The~~
4 ~~request shall be granted.~~ The forfeiture action shall be commenced by filing a
5 summons, complaint and affidavit of the person who seized the property with the
6 clerk of circuit court, provided service of authenticated copies of those papers is made
7 in accordance with ch. 801 within 90 days after filing upon the person from whom
8 the property was seized and upon any person known to have a bona fide perfected
9 security interest in the property.

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

11 961.555 (2) (e) The court shall adjourn forfeiture proceedings until after
12 adjudication of any charge concerning a crime that was the basis for the seizure of
13 the property if any of the following applies:

- 14 1. The defendant requests an adjournment.
- 15 2. The defendant invokes a defense to the crime under s. 961.436 or 961.5755.

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

17 961.555 (2m) **MEDICAL NECESSITY DEFENSE.** (a) In an action to forfeit property
18 seized under s. 961.55, the person who was in possession of the property when it was
19 seized has a defense to the forfeiture of the property if any of the following applies:

20 1. The person was prosecuted under s. 961.41 (1) (h), (1m) (h), or (3g) (e),
21 961.573 (1), 961.574 (1), or 961.575 (1) in connection with the seized property but had
22 a valid defense under s. 961.436 (1), (2), or (3) (a) or 961.5755 (1) (a) or (2).

23 2. The person was not prosecuted under s. 961.41 (1) (h), (1m) (h), or (3g) (e),
24 961.573 (1), 961.574 (1), or 961.575 (1) in connection with the seized property, but,

1 if the person had been, he or she would have had a valid defense under s. 961.436 (1),
2 (2), or (3) (a) or 961.5755 (1) (a) or (2).

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

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

9 961.56 (1) ~~It~~ Except as provided in s. 961.555 (2m) (b) and except for any
10 presumption arising under s. 961.436 (4) or 961.5755 (3), it is not necessary for the
11 state to negate any exemption or exception in this chapter in any complaint,
12 information, indictment or other pleading or in any trial, hearing or other proceeding
13 under this chapter. ~~The, and the~~ burden of proof of any exemption or exception is
14 upon the person claiming it.

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

16 **961.5755 Medical use of marijuana defense in drug paraphernalia**
17 **cases.** (1) (a) Except as provided in par. (b), a member of a treatment team has a
18 defense to prosecution under s. 961.573 (1) if he or she uses, or possesses with the
19 primary intent to use, drug paraphernalia for the medical use of
20 tetrahydrocannabinols by the treatment team.

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

23 (2) A member of a treatment team has a defense to prosecution under s. 961.574
24 (1) or 961.575 (1) if he or she delivers, possesses with intent to deliver, or
25 manufactures with intent to deliver to another member of his or her treatment team

1 drug paraphernalia, knowing that it will be primarily used for the medical use of
2 tetrahydrocannabinols by the treatment team.

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

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

9 **968.073 Medical use of marijuana; arrest and prosecution. (1)**

10 DEFINITIONS. In this section:

- 11 (a) “Adequate supply” has the meaning given in s. 961.01 (1g).
12 (b) “Medical use of tetrahydrocannabinols” has the meaning given in s. 961.01
13 (14g).
14 (c) “Primary caregiver” has the meaning given in s. 961.01 (19m).
15 (d) “Qualifying patient” has the meaning given in s. 961.01 (20hm).
16 (e) “Treatment team” has the meaning given in s. 961.01 (20t).
17 (f) “Written certification” has the meaning given in s. 961.01 (21t).

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

- 22 (a) The person manufactures, distributes, delivers, or possesses
23 tetrahydrocannabinols for their medical use by the treatment team.
24 (b) The person possesses a copy of the qualifying patient’s written certification.
25 (c) The quantity of tetrahydrocannabinols does not exceed an adequate supply.

1 **(3) LIMITATIONS ON ARRESTS AND PROSECUTION; DRUG PARAPHERNALIA FOR MEDICAL**
2 **USE OF MARIJUANA.** (a) Unless s. 961.436 (3) (b) 1., 2., or 3. applies, a member of a
3 treatment team may not be arrested or prosecuted for a violation of s. 961.573 (1) if
4 all of the following apply:

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

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

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

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

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

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

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

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

24 **(5) PENALTY FOR FALSE STATEMENTS.** Whoever intentionally provides false
25 information to a law enforcement officer in an attempt to avoid arrest or prosecution

1 under this section for a violation of s. 961.41 (1) (h), (1m) (h), or (3g) (e), 961.573 (1),
2 961.574 (1), or 961.575 (1) may be fined not more than \$500.

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

4 968.12 (5) MEDICAL USE OF MARIJUANA. A person's possession of a written
5 certification shall not, by itself, constitute probable cause under sub. (1) or otherwise
6 subject the person or property of the person to inspection by any governmental
7 agency.

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

10 968.19 (1) Property Except as provided in sub. (2), property seized under a
11 search warrant or validly seized without a warrant shall be safely kept by the officer,
12 who may leave it in the custody of the sheriff and take a receipt therefor, so long as
13 necessary for the purpose of being produced as evidence on any trial.

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

15 968.19 (2) A law enforcement agency that has seized a live marijuana plant is
16 not responsible for the plant's care and maintenance.

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

20 968.20 (1f) (intro.) Any Except as provided in sub. (1j), any person claiming the
21 right to possession of property seized pursuant to a search warrant or seized without
22 a search warrant may apply for its return to the circuit court for the county in which
23 the property was seized or where the search warrant was returned. The court shall
24 order such notice as it deems adequate to be given the district attorney and all
25 persons who have or may have an interest in the property and shall hold a hearing

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1 to hear all claims to its true ownership. If the right to possession is proved to the
2 court's satisfaction, it shall order the property, ~~other than contraband or property~~
3 ~~covered under sub. (1m) or (1r) or s. 173.12, 173.21 (4), or 968.205~~, returned if:

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

5 968.20 (1d) In this section:

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

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

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

9 968.20 (1j) (a) Except as provided in par. (b), sub. (1f) does not apply to
10 contraband or property covered under sub. (1m) or (1r) or s. 173.12, 173.21 (4), or
11 968.205.

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

15 1. The person was prosecuted under s. 961.41 (1) (h), (1m) (h), or (3g) (e),
16 961.573 (1), 961.574 (1), or 961.575 (1) in connection with the seized property but had
17 a valid defense under s. 961.436 (1), (2), or (3) (a) or 961.5755 (1) (a) or (2).

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

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

23 968.20 (3) (a) First class cities shall dispose of dangerous weapons or
24 ammunition seized 12 months after taking possession of them if the owner,
25 authorized under sub. (1m), has not requested their return and if the dangerous

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

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

24 968.20 (3) (b) Except as provided in par. (a) or sub. (1m) or (4), a city, village,
25 town or county or other custodian of a seized dangerous weapon or ammunition, if

1 the dangerous weapon or ammunition is not required for evidence or use in further
2 investigation and has not been disposed of pursuant to a court order at the
3 completion of a criminal action or proceeding, shall make reasonable efforts to notify
4 all persons who have or may have an authorized rightful interest in the dangerous
5 weapon or ammunition of the application requirements under sub. ~~(1)~~ (1f). If, within
6 30 days after the notice, an application under sub. ~~(1)~~ (1f) is not made and the seized
7 dangerous weapon or ammunition is not returned by the officer under sub. (2), the
8 city, village, town or county or other custodian may retain the dangerous weapon or
9 ammunition and authorize its use by a law enforcement agency, except that a
10 dangerous weapon used in the commission of a homicide or a handgun, as defined
11 in s. 175.35 (1) (b), may not be retained. If a dangerous weapon other than a firearm
12 is not so retained, the city, village, town or county or other custodian shall safely
13 dispose of the dangerous weapon or, if the dangerous weapon is a motor vehicle, as
14 defined in s. 340.01 (35), sell the motor vehicle following the procedure under s.
15 973.075 (4). If a firearm or ammunition is not so retained, the city, village, town or
16 county or other custodian shall ship it to the state crime laboratories and it is then
17 the property of the laboratories. A person designated by the department of justice
18 may destroy any material for which the laboratories have no use or arrange for the
19 exchange of material with other public agencies. In lieu of destruction, shoulder
20 weapons for which the laboratory has no use shall be turned over to the department
21 of natural resources for sale and distribution of proceeds under s. 29.934.

22 **SECTION 37. Effective date.**

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

25 (END)