

2003 Senate Bill 4

Date of enactment: **August 18, 2003**
Date of publication*: **September 2, 2003**

2003 WISCONSIN ACT 49

AN ACT *to amend* 961.41 (3g) (b), 961.41 (3g) (d), 961.472 (2), 961.55 (1) (d) 3., 971.365 (1) (c) and 971.365 (2); and *to create* 961.41 (3g) (g) and 961.48 (5) of the statutes; **relating to:** possession of methamphetamine and providing a penalty.

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

SECTION 1. 961.41 (3g) (b) of the statutes, as affected by 2001 Wisconsin Act 109, is amended to read:

961.41 (3g) (b) *Other drugs generally.* Except as provided in pars. (c), ~~(d), (e) and (f)~~ (g), if the person possesses or attempts to possess a controlled substance or controlled substance analog, other than a controlled substance included in schedule I or II that is a narcotic drug or a controlled substance analog of a controlled substance included in schedule I or II that is a narcotic drug, the person is guilty of a misdemeanor, punishable under s. 939.61.

SECTION 2. 961.41 (3g) (d) of the statutes, as affected by 2001 Wisconsin Act 109, is amended to read:

961.41 (3g) (d) *Certain hallucinogenic and stimulant drugs.* If a person possesses or attempts to possess lysergic acid diethylamide, phencyclidine, amphetamine, ~~methamphetamine~~, methcathinone, psilocin or psilocybin, or a controlled substance analog of lysergic acid diethylamide, phencyclidine, amphetamine, ~~methamphetamine~~, methcathinone, psilocin or psilocybin, the person may be fined not more than \$5,000 or imprisoned for not more than one year in the county jail or both upon a first conviction and is guilty of a Class I felony for a 2nd or

subsequent offense. For purposes of this paragraph, an offense is considered a 2nd or subsequent offense if, prior to the offender's conviction of the offense, the offender has at any time been convicted of any felony or misdemeanor under this chapter or under any statute of the United States or of any state relating to controlled substances, controlled substance analogs, narcotic drugs, marijuana, or depressant, stimulant, or hallucinogenic drugs.

SECTION 3. 961.41 (3g) (g) of the statutes is created to read:

961.41 (3g) (g) *Methamphetamine.* If a person possesses or attempts to possess methamphetamine or a controlled substance analog of methamphetamine, the person is guilty of a Class I felony.

SECTION 4. 961.472 (2) of the statutes, as affected by 2001 Wisconsin Act 109, is amended to read:

961.472 (2) Except as provided in sub. (5), if a person pleads guilty or is found guilty of possession or attempted possession of a controlled substance or controlled substance analog under s. 961.41 (3g) (am), (c), ~~(d)~~, (g), the court shall order the person to comply with an assessment of the person's use of controlled substances. The court's order shall designate a facility that is operated by or pursuant to a contract with the county department established under s. 51.42 and that is certified by the department of health and family services to provide

* Section 991.11, WISCONSIN STATUTES 2001-02 : Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

assessment services to perform the assessment and, if appropriate, to develop a proposed treatment plan. The court shall notify the person that noncompliance with the order limits the court's ability to determine whether the treatment option under s. 961.475 is appropriate. The court shall also notify the person of the fee provisions under s. 46.03 (18) (fm).

SECTION 5. 961.48 (5) of the statutes is created to read:

961.48 (5) This section does not apply if the person is presently charged with a felony under s. 961.41 (3g) (c), (d), (e), or (g).

SECTION 6. 961.55 (1) (d) 3. of the statutes, as affected by 2001 Wisconsin Act 109, is amended to read:

961.55 (1) (d) 3. A vehicle is not subject to forfeiture for a violation of s. 961.41 (3g) (b), ~~(c), (d), (e) or (f)~~ (g); and

SECTION 7. 971.365 (1) (c) of the statutes, as affected by 2001 Wisconsin Act 109, is amended to read:

971.365 (1) (c) In any case under s. 961.41 (3g) (a) 2., 1999 stats., or s. 961.41 (3g) (dm), 1999 stats., or s. 961.41 (3g) (am), (c), (d), ~~or (e)~~, or (g) involving more than one violation, all violations may be prosecuted as a single crime if the violations were pursuant to a single intent and design.

SECTION 8. 971.365 (2) of the statutes, as affected by 2001 Wisconsin Act 109, is amended to read:

971.365 (2) An acquittal or conviction under sub. (1) does not bar a subsequent prosecution for any acts in violation of s. 961.41 (1) (em), 1999 stats., s. 961.41 (1m) (em), 1999 stats., s. 961.41 (3g) (a) 2., 1999 stats., or s. 961.41 (3g) (dm), 1999 stats., or s. 961.41 (1) (cm), (d), (e), (f), (g), or (h), (1m) (cm), (d), (e), (f), (g), or (h) or (3g) (am), (c), (d), ~~or (e)~~, or (g) on which no evidence was received at the trial on the original charge.

SECTION 9. Effective date.

(1) This act takes effect on February 1, 2003, or on the day after publication, whichever is later.