

2003 SENATE BILL 4

January 10, 2003 – Introduced by Senators HARS DORF, A. LASEE, KEDZIE and SCHULTZ, cosponsored by Representatives RHOADES, GRONEMUS, PETTIS, LADWIG, JESKEWITZ, MUSSER, KREIBICH, FREESE, SUDER, WARD, KAUFERT, HINES, BIES, HAHN, KRAWCZYK, OTT, SHILLING and LEMAHIEU. Referred to Committee on Judiciary, Corrections and Privacy.

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

Analysis by the Legislative Reference Bureau

Current law prohibits the possession or the attempted possession of the controlled substance methamphetamine. A person who violates this prohibition on or after February 1, 2003, is guilty of a misdemeanor and may be fined not more than \$5,000 or imprisoned for not more than one year in the county jail or both, unless, before committing the offense, the person had been convicted of any crime under any federal or state law relating to controlled substances. In that case, the person is guilty of a Class I felony, for which he or she may be fined not more than \$10,000 or imprisoned for not more than three and one-half years (with the term of confinement being served in a state prison, if the sentence imposed is for more than one year) or both. Under this bill, a person who possesses or attempts to possess methamphetamine on or after February 1, 2003, is guilty of a Class I felony, regardless of whether the person has any prior controlled substance offenses.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

SENATE BILL 4

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

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

9 **SECTION 2.** 961.41 (3g) (d) of the statutes, as affected by 2001 Wisconsin Act
10 109, is amended to read:

11 961.41 **(3g)** (d) *Certain hallucinogenic and stimulant drugs.* If a person
12 possesses or attempts to possess lysergic acid diethylamide, phencyclidine,
13 amphetamine, ~~methamphetamine~~, methcathinone, psilocin or psilocybin, or a
14 controlled substance analog of lysergic acid diethylamide, phencyclidine,
15 amphetamine, ~~methamphetamine~~, methcathinone, psilocin or psilocybin, the person
16 may be fined not more than \$5,000 or imprisoned for not more than one year in the
17 county jail or both upon a first conviction and is guilty of a Class I felony for a 2nd
18 or subsequent offense. For purposes of this paragraph, an offense is considered a 2nd
19 or subsequent offense if, prior to the offender's conviction of the offense, the offender
20 has at any time been convicted of any felony or misdemeanor under this chapter or
21 under any statute of the United States or of any state relating to controlled

SENATE BILL 4

1 substances, controlled substance analogs, narcotic drugs, marijuana, or depressant,
2 stimulant, or hallucinogenic drugs.

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

4 961.41 **(3g)** (g) *Methamphetamine*. If a person possesses or attempts to possess
5 methamphetamine or a controlled substance analog of methamphetamine, the
6 person is guilty of a Class I felony.

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

9 961.472 **(2)** Except as provided in sub. (5), if a person pleads guilty or is found
10 guilty of possession or attempted possession of a controlled substance or controlled
11 substance analog under s. 961.41 (3g) (am), (c), ~~(d)~~, or (g), the court shall order the
12 person to comply with an assessment of the person's use of controlled substances.
13 The court's order shall designate a facility that is operated by or pursuant to a
14 contract with the county department established under s. 51.42 and that is certified
15 by the department of health and family services to provide assessment services to
16 perform the assessment and, if appropriate, to develop a proposed treatment plan.
17 The court shall notify the person that noncompliance with the order limits the court's
18 ability to determine whether the treatment option under s. 961.475 is appropriate.
19 The court shall also notify the person of the fee provisions under s. 46.03 (18) (fm).

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

21 961.48 **(5)** This section does not apply if the person is presently charged with
22 a felony under s. 961.41 (3g) (c), (d), (e), or (g).

23 **SECTION 6.** 961.55 (1) (d) 3. of the statutes, as affected by 2001 Wisconsin Act
24 109, is amended to read:

SENATE BILL 4

1 961.55 **(1)** (d) 3. A vehicle is not subject to forfeiture for a violation of s. 961.41
2 (3g) (b), ~~(c), (d), (e) or (f)~~ to (g); and

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

5 971.365 **(1)** (c) In any case under s. 961.41 (3g) (a) 2., 1999 stats., or s. 961.41
6 (3g) (dm), 1999 stats., or s. 961.41 (3g) (am), (c), (d), ~~or (e)~~, or (g) involving more than
7 one violation, all violations may be prosecuted as a single crime if the violations were
8 pursuant to a single intent and design.

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

11 971.365 **(2)** An acquittal or conviction under sub. (1) does not bar a subsequent
12 prosecution for any acts in violation of s. 961.41 (1) (em), 1999 stats., s. 961.41 (1m)
13 (em), 1999 stats., s. 961.41 (3g) (a) 2., 1999 stats., or s. 961.41 (3g) (dm), 1999 stats.,
14 or s. 961.41 (1) (cm), (d), (e), (f), (g), or (h), (1m) (cm), (d), (e), (f), (g), or (h) or (3g) (am),
15 (c), (d), ~~or (e)~~, or (g) on which no evidence was received at the trial on the original
16 charge.

17 **SECTION 9. Effective date.**

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

20 **(END)**