

2003 ASSEMBLY BILL 715

January 5, 2004 – Introduced by Representatives HONADEL, STONE, TAYLOR, LADWIG, VRAKAS, PETTIS, OTT, HINES and CULLEN, cosponsored by Senators DARLING, LAZICH and COGGS. Referred to Committee on Criminal Justice.

1 **AN ACT** *to amend* 59.54 (25), 349.02 (2) (b) 4. and 961.577; and *to create* 59.54
2 (25m), 778.25 (1) (a) 1m. and 818.02 (8) of the statutes; **relating to:** ordinances
3 in certain counties regarding drug paraphernalia and the possession of
4 marijuana.

Analysis by the Legislative Reference Bureau

County ordinances regarding drug paraphernalia

Current law prohibits the possession, manufacture, and delivery of drug paraphernalia. If a person 17 years of age or older violates the prohibitions relating to drug paraphernalia, he or she is subject to criminal penalties (a fine or imprisonment or both). If a person under the age of 17 violates the prohibitions relating to drug paraphernalia, he or she is generally subject to suspension or revocation of his or her privilege to operate a motor vehicle for not less than six months nor more than five years and either or both of the following: a forfeiture (civil monetary penalty) of up to \$500 (with the amount depending on how many drug paraphernalia offenses the person committed in the preceding 12 months) and a requirement that he or she participate in community service work. Current law prohibits and provides more severe criminal penalties for the possession or use of drug paraphernalia used to produce or store methamphetamine.

Current law also allows a city, village, or town to enact and enforce ordinances prohibiting the possession, manufacture, or delivery of drug paraphernalia. The ordinances must prohibit the same conduct that is prohibited under the state

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statutes relating to the possession, manufacture, and delivery of drug paraphernalia generally (as opposed to the state statutes governing the possession or use of methamphetamine–related drug paraphernalia). In addition, the ordinances can apply only to the possession, manufacture, and delivery of drug paraphernalia by a person under the age of 17.

This bill allows a county with a population of 500,000 or more (currently only Milwaukee County) to enact and enforce an ordinance prohibiting the possession, manufacture, or delivery of drug paraphernalia (other than methamphetamine–related drug paraphernalia) by persons 17 years of age and older. The ordinance must prohibit the same conduct that is prohibited under the state statutes relating to the possession, manufacture, and delivery of drug paraphernalia generally. A prosecutor could then charge a person aged 17 years or older for violating either the ordinance or the state statutes. A person prosecuted for violating an ordinance enacted under this bill would be subject to a forfeiture in an amount established by the ordinance instead of being subject to the criminal penalties provided under the state statutes.

County ordinances regarding possession of marijuana

Current law prohibits the possession of marijuana. A person who violates this prohibition is subject to criminal penalties. Current law, however, also permits a county or municipality to enact and enforce an ordinance prohibiting the possession of 25 grams or less of marijuana. The penalty for violating such an ordinance is a forfeiture. If a municipality enacts such an ordinance, any comparable ordinance enacted by the county does not apply in that municipality (“reverse preemption”).

This bill specifies that the reverse preemption provision only applies in a county with a population of less than 500,000. If a county has a population of 500,000 or more, any county ordinance prohibiting the possession of 25 grams or less of marijuana applies in every municipality within the county.

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 amended to read:
2 59.54 **(25)** POSSESSION OF MARIJUANA. The board may enact and enforce an
3 ordinance to prohibit the possession of 25 grams or less of marijuana, as defined in
4 s. 961.01 (14), subject to the exceptions in s. 961.41 (3g) (intro.), and provide a
5 forfeiture for a violation of the ordinance; except that any person who is charged with
6 possession of more than 25 grams of marijuana, or who is charged with possession
7 of any amount of marijuana following a conviction for possession of marijuana, in this

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1 state shall not be prosecuted under this subsection. Any ordinance enacted under
2 this subsection by a county with a population of less than 500,000 does not apply in
3 any municipality that has enacted an ordinance prohibiting the possession of
4 marijuana. Any ordinance enacted under this subsection by a county with a
5 population of 500,000 or more applies in every municipality within the county.

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

7 59.54 **(25m)** DRUG PARAPHERNALIA. The board of a county with a population of
8 500,000 or more may enact an ordinance to prohibit conduct that is the same as that
9 prohibited by s. 961.573 (1) or (2), 961.574 (1) or (2), or 961.575 (1) or (2) and provide
10 a forfeiture for violation of the ordinance. The board may enforce an ordinance
11 enacted under this subsection in any municipality within the county.

12 **SECTION 3.** 349.02 (2) (b) 4. of the statutes is amended to read:

13 349.02 **(2)** (b) 4. Local ordinances enacted under s. 59.54 (25) or (25m), 60.23
14 (21), or 66.0107 (1) (bm).

15 **SECTION 4.** 778.25 (1) (a) 1m. of the statutes is created to read:

16 778.25 **(1)** (a) 1m. Under a local ordinance enacted under s. 59.54 (25m) brought
17 against an adult in circuit court or against a minor in the court assigned to exercise
18 jurisdiction under chs. 48 and 938.

19 **SECTION 5.** 818.02 (8) of the statutes is created to read:

20 818.02 **(8)** In an action for a forfeiture under a local ordinance enacted under
21 s. 59.54 (25m).

22 **SECTION 6.** 961.577 of the statutes is amended to read:

23 **961.577 Municipal ordinances.** Nothing in this subchapter precludes a city,
24 village, or town from prohibiting conduct that is the same as that prohibited by s.
25 961.573 (2), 961.574 (2), or 961.575 (2) or a county with a population of 500,000 or

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1 more from prohibiting conduct that is the same as that prohibited by s. 961.573 (1)
2 or (2), 961.574 (1) or (2), or 961.575 (1) or (2).

3 (END)