

2003 DRAFTING REQUEST

Bill

Received: **12/05/2003**

Received By: **mdsida**

Wanted: **As time permits**

Identical to LRB:

For: **Steven Foti (608) 266-2401**

By/Representing: **Adam**

This file may be shown to any legislator: **NO**

Drafter: **mdsida**

May Contact:

Addl. Drafters:

Subject: **Counties - miscellaneous
Munis - miscellaneous
Criminal Law - drugs**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Foti@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Ordinances regarding possession of marijuana and regarding drug paraphernalia

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	mdsida 12/05/2003	wjackson 12/05/2003		_____			
/1			pgreensl 12/05/2003	_____	lemery 12/05/2003	lnorthro 12/08/2003	

2/08/2003 09:10:19 AM

Page 2

FE Sent For:

*none
needed*

<END>

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Table with 8 columns: Vers., Drafted, Reviewed, Typed, Proofed, Submitted, Jacketed, Required. It contains two rows of drafting history entries with names and dates.

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<END>

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/?	mdsida	1 wlj 12/5	<i>[Handwritten initials]</i>	<i>[Handwritten initials]</i>			

FE Sent For:

<END>

Dsida, Michael

From: Raschka, Adam
Sent: Tuesday, August 26, 2003 10:39 AM
To: Dsida, Michael
Subject: LRB 0775/1

Mike,

Earlier this year you drafted LRB 0775/1 based 2001 AB 62 with the addition of two amendments adopted in committee relating to Milwaukee County.

Could you please draft a bill which simply deals with these two Milwaukee County amendments.

Thanks,

Adam

Adam Raschka
Office of Majority Leader Steve Foti
608-264-8516
adam.raschka@legis.state.wi.us

9/22 Plc from Adam

Give Muko City authority to adopt + enforce
throughout the county ordinances re
drug p + marijuana

Don't affect other counties.

2003

2001 ASSEMBLY BILL 62

soon

stays

February 1, 2001 - Introduced by Representatives FOTI, KRAWCZYK, HUNDERTMARK, LA FAVE, AINSWORTH, ALBERS, DUFF, HAIN, JESKEWITZ, LADWIG, M. LEHMAN, LEIBHAM, MUSSER, OTT, OWENS, PETROWSKI, PLOUFF, SERATTI, STONE, URBAN, VRAKAS and WADE, cosponsored by Senators ERPENBACH, FARROW, BURKE, DARLING, S. FITZGERALD, HUELSMAN, ROESSLER and SCHULTZ. Referred to Committee on Urban and Local Affairs.

Regen

1 AN ACT to repeal 60.23 (21) (title); to renumber and amend 60.23 (21); to
2 amend 66.0107 (1) (a), 66.0107 (1) (b), 349.02 (2) (b) 2., 349.02 (2) (b) 4., 778.25
3 (1) (a) 1., 818.02 (7) and 961.577; and to create 59.54 (25m) and 778.25 (1) (a)
4 1m. of the statutes; relating to: ~~local~~ ordinances, ^{regarding} governing drug
5 paraphernalia. in certain counties

Analysis by the Legislative Reference Bureau

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 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, depending on whether the person has ~~previous~~ drug paraphernalia offenses, and a requirement that he or she participate in community service work. In addition, current law prohibits and provides more severe criminal penalties for the possession or use of drug paraphernalia used to produce ~~methamphetamine~~ 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

Semicon

(with the amount

previous
my
committe

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ASSEMBLY BILL 62

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 ~~city, village, or town~~ ^{County with a population of 500,000 or more (currently only Milwaukee County)} to enact and enforce ^{an} ordinances prohibiting the possession, manufacture, or delivery of drug paraphernalia by persons 17 years of age and older. The ordinances must prohibit the same conduct that is prohibited under the state statutes relating to the possession, manufacture, and delivery of drug paraphernalia generally. ~~Under the bill,~~ ^{then} a prosecutor could charge a person aged 17 years or older for violating either ~~an ordinance enacted under this bill~~ ^{an ordinance enacted} 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.

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

1 SECTION 1. 59.54 (25m) of the statutes is created to read:

2 59.54 (25m) DRUG PARAPHERNALIA. The board may enact ~~and enforce~~ an

3 ordinance to prohibit conduct that is the same as that prohibited by s. 961.573 (1) or

4 (2), 961.574 (1) or (2), or 961.575 (1) or (2) and provide a forfeiture for violation of the

5 ordinance. ~~Any~~ ^{The board may enforce an} ordinance enacted under this subsection ~~in any~~

6 municipality ^{within the county} ~~that has enacted an ordinance prohibiting conduct that is the same as~~

7 ~~that prohibited by s. 961.573 (1) or (2), 961.574 (1) or (2), or 961.575 (1) or (2).~~

8 SECTION 2. 60.23 (21) (title) of the statutes is repealed.

9 SECTION 3. 60.23 (21) of the statutes is renumbered 66.0107 (1) (bp) and
10 amended to read:

11 66.0107 (1) (bp) ~~Adopt~~ Enact and enforce an ordinance to prohibit conduct that
12 is the same as that prohibited by s. 961.573 (1) or (2), 961.574 (1) or (2), or 961.575
13 (1) or (2) and provide a forfeiture for violation of the ordinance.

14 SECTION 4. 66.0107 (1) (a) of the statutes is amended to read:

ASSEMBLY BILL 62

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~~66.0107 (1) (a) Prohibit all forms of gambling and fraudulent devices and practices;~~

~~SECTION 5. 66.0107 (1) (b) of the statutes is amended to read:~~

~~66.0107 (1) (b) Seize anything devised solely for gambling or found in actual use for gambling and destroy the device after a judicial determination that it was used solely for gambling or found in actual use for gambling, and~~

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

~~349.02 (2) (b) 2. Chapter 961 and local ordinances that strictly conform to s. 961.573 (1) or (2), 961.574 (1) or (2), or 961.575 (1) or (2).~~

or (25m)

pwf

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~~SECTION 7. 349.02 (2) (b) 4. of the statutes is amended to read:~~

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

PLAIN

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~~SECTION 8. 778.25 (1) (a) 1. of the statutes is amended to read:~~

~~778.25 (1) (a) 1. Under s. 125.07 (4) (a) or (b), 125.085 (3) (b), or 125.09 (2), 961.573 (2), 961.574 (2) or 961.575 (2) or under a local ordinance strictly conforming to one of those statutes brought against an adult in circuit court or against a minor in the court assigned to exercise jurisdiction under chs. 48 and 938.~~

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~~SECTION 9. 778.25 (1) (a) 1m. of the statutes is created to read:~~

~~778.25 (1) (a) 1m. Under s. 961.573 (2), 961.574 (2), or 961.575 (2) brought against a minor in the court assigned to exercise jurisdiction under chs. 48 and 938 or under a local ordinance strictly conforming to s. 961.573 (1) or (2), 961.574 (1) or (2), or 961.575 (1) or (2), brought against an adult in circuit court or against a minor~~

23

~~in the court assigned to exercise jurisdiction under ch. 48 and 938.~~

24

Fix Component

~~SECTION 10. 818.02 (5) of the statutes is amended to read:~~

enacted under s. 59.54 (25m)

created

ASSEMBLY BILL 62

1 818.02 (7) In an action for a forfeiture under s. ~~961.573 (2), 961.574 (2), or~~
2 ~~961.575 (2), or under~~ a local ordinance strictly conforming to one of those statutes s.
3 ~~961.573 (1) or (2), 961.574 (1) or (2), or 961.575 (1) or (2).~~

4 SECTION 11. 961.577 of the statutes is amended to read:

5 **961.577 Municipal ordinances.** Nothing in this subchapter precludes a A
6 county, city, village, or town from prohibiting may prohibit conduct that is the same
7 as that prohibited by s. 961.573 (1) or (2), 961.574 (1) or (2), or 961.575 (1) or (2).

8 (END)

INS 4/3 ✓

enacted under
s. 59.54 (25m) ✓

2003-2004 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3173/1ins
MGD:.....^P

~~analysis INSERT~~

INSERT 1/13 into insert 2/1

Any ordinance enacted under this subsection by a county with a population of 500,000 or more applies in every municipality within the county.

INSERT 4/3

^X
SECTION 1. 961.577 of the statutes is amended to read:

961.577 Municipal ordinances. Nothing in this subchapter precludes a city, village, or town from prohibiting conduct that is the same as that prohibited by s. 961.573 (2), 961.574 (2), or 961.575 (2) ^{precludes} or a county with a population of 500,000 or more from prohibiting conduct that is the same as that prohibited by s. 961.573 (1) or (2), 961.574 (1) or (2), or 961.575 (1) or (2).[✓]

History: 1989 a. 121; 1995 a. 448 s. 320; Stats. 1995 s. 961.577.

(end ins 4/3)



D-Note

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Sub sub
County ordinances regarding drug paraphernalia

and the possession of marijuana

Reger

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

how many

Analysis by the Legislative Reference Bureau

generally

in the preceding 12 months

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 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 whether the person has previously committed drug paraphernalia offenses) and a requirement that he or she participate in community service work. In addition, 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 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.

(other than methamphetamine related drug paraphernalia) ← *hypocrite*

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 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.

INS A ✓

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

INS 2/1 ✓

1 SECTION 1. 59.54 (25m) ✓ of the statutes is created to read:
2 59.54 (25m) DRUG PARAPHERNALIA. The board of a county with a population of
3 500,000 or more may enact an ordinance to prohibit conduct that is the same as that
4 prohibited by s. 961.573 (1) or (2), 961.574 (1) or (2), or 961.575 (1) or (2) and provide
5 a forfeiture for violation of the ordinance. The board may enforce an ordinance
6 enacted under this subsection in any municipality within the county.

7 SECTION 2. 349.02 (2) (b) 4. ✓ of the statutes is amended to read:
8 349.02 (2) (b) 4. Local ordinances enacted under s. 59.54 (25) or (25m), 60.23
9 (21), or 66.0107 (1) (bm).

10 SECTION 3. 778.25 (1) (a) 1m. ✓ of the statutes is created to read:
11 778.25 (1) (a) 1m. Under a local ordinance enacted under s. 59.54 (25m) brought
12 against an adult in circuit court or against a minor in the court assigned to exercise
13 jurisdiction under chs. 48 and 938.

14 SECTION 4. 818.02 (8) ✓ of the statutes is created to read:
15 818.02 (8) In an action for a forfeiture under a local ordinance enacted under
16 s. 59.54 (25m).

17 SECTION 5. 961.577 ✓ of the statutes is amended to read:

For
REP Foti's

~~State Rep Local~~ Have MES review?
relat closure

~~ASSEMBLY AMENDMENT 2,
TO 2001 ASSEMBLY BILL 62~~

INS 2/1

March 15, 2001 - Offered by COMMITTEE ON URBAN AND LOCAL AFFAIRS.

1 At the locations indicated, amend the bill as follows:

2 1. Page 2, line 1: before that line insert:

3 SECTION ~~1m.~~^x 59.54 (25) of the statutes is amended to read:

4 59.54 (25) POSSESSION OF MARIJUANA. The board may enact and enforce an
5 ordinance to prohibit the possession of 25 grams or less of marijuana, as defined in
6 s. 961.01 (14), subject to the exceptions in s. 961.41 (3g) (intro.), and provide a
7 forfeiture for a violation of the ordinance; except that any person who is charged with
8 possession of more than 25 grams of marijuana, or who is charged with possession
9 of any amount of marijuana following a conviction for possession of marijuana, in this
10 state shall not be prosecuted under this subsection. Any ordinance enacted under
11 this subsection by a county with a population of less than 500,000 does not apply in
12 any municipality that has enacted an ordinance prohibiting the possession of
13 marijuana.

INS 1/13 (40 INS 2/1)

end ins 2/1

1

~~Analysis~~ **INSERT A**

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.

2

INSERT 1/13 into insert 2/1

3

Any ordinance enacted under this subsection by ^ga county with a population of 500,000 or more applies in every municipality within the county.

4

2003 BILL

12/9

GEN

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

BILL

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

BILL

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

BILL

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)

Northrop, Lori

From: Raschka, Adam
Sent: Friday, December 05, 2003 4:41 PM
To: LRB.Legal
Subject: Draft review: LRB 03-3830/1 Topic: Ordinances regarding possession of marijuana and regarding drug paraphernalia

It has been requested by <Raschka, Adam> that the following draft be jacketed for the ASSEMBLY:

Draft review: LRB 03-3830/1 Topic: Ordinances regarding possession of marijuana and regarding drug paraphernalia