

2005 ASSEMBLY BILL 45

January 27, 2005 – Introduced by Representatives NASS, GUNDRUM, MUSSER, KESTELL, NISCHKE, TOWNSEND, HINES, STASKUNAS, DAVIS, OTT, HUNDERTMARK, HAHN and ALBERS, cosponsored by Senator KEDZIE. Referred to Committee on Criminal Justice and Homeland Security.

1 **AN ACT to amend** 59.54 (25), 59.54 (25m) and 961.577 of the statutes; **relating**
2 **to:** county ordinances regarding drug paraphernalia or the possession of
3 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 one of 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. More severe penalties may be imposed on both adults and juveniles for the possession or use of drug paraphernalia used to produce or store methamphetamine.

Current law also 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. 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 (as opposed

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to the state statutes governing the possession or use of methamphetamine-related drug paraphernalia).

Under this bill, any county — not just a county with a population of 500,000 or more — may enact and enforce an ordinance prohibiting the possession, manufacture, or delivery of drug paraphernalia.

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, but only if the county has 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.

Under this bill, all such county ordinances apply throughout the county, regardless of the county's population.

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
8 state shall not be prosecuted under this subsection. ~~Any ordinance enacted under~~
9 ~~this subsection by a county with a population of less than 500,000 does not apply in~~
10 ~~any municipality that has enacted an ordinance prohibiting the possession of~~
11 ~~marijuana.~~ Any ordinance enacted under this subsection by a county with a
12 population of 500,000 or more applies in every municipality within the county.

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

