

2005 ASSEMBLY BILL 307

April 12, 2005 – Introduced by Representatives GRIGSBY, GUNDRUM, FIELDS, GARD, ALBERS, BALLWEG, BERCEAU, COLON, CULLEN, HINES, JESKEWITZ, KESSLER, LOTHIAN, MURSAU, PETROWSKI, RICHARDS, SHERIDAN, TOLES, TURNER, A. WILLIAMS, YOUNG and ZEPNICK, cosponsored by Senators DARLING, TAYLOR, A. LASEE, COGGS, ERPENBACH, LEIBHAM, OLSEN and ROESSLER. Referred to Committee on Judiciary.

1 **AN ACT** *to repeal* 60.23 (21) (title); *to renumber and amend* 60.23 (21); and *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., 778.25 (1) (a) 1m., 818.02 (7) and 961.577 of the statutes; **relating to:**
 4 municipal ordinances regarding drug paraphernalia.

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 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 one of 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 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 penalties for both adults and juveniles 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 by a person under the age of 17. 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

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the possession, manufacture, and delivery of methamphetamine-related drug paraphernalia). Current law allows a county with a population of 500,000 or more (currently only Milwaukee County) to enact the same type of ordinance prohibiting the possession, manufacture, and delivery of drug paraphernalia by a person, regardless of the person's age.

This bill allows a city, village, or town 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 17 years of age or older with violating either the ordinance or one of 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.** 60.23 (21) (title) of the statutes is repealed.

2 **SECTION 2.** 60.23 (21) of the statutes is renumbered 66.0107 (1) (bp) and
3 amended to read:

4 66.0107 (1) (bp) ~~Adopt~~ Enact and enforce an ordinance to prohibit conduct that
5 is the same as that prohibited by s. 961.573 (1) or (2), 961.574 (1) or (2), or 961.575
6 (1) or (2) and provide a forfeiture for violation of the ordinance.

7 **SECTION 3.** 66.0107 (1) (a) of the statutes is amended to read:

8 66.0107 (1) (a) Prohibit all forms of gambling and fraudulent devices and
9 practices;_

10 **SECTION 4.** 66.0107 (1) (b) of the statutes is amended to read:

11 66.0107 (1) (b) Seize anything devised solely for gambling or found in actual
12 use for gambling and destroy the device after a judicial determination that it was
13 used solely for gambling or found in actual use for gambling; ~~and.~~

14 **SECTION 5.** 349.02 (2) (b) 2. of the statutes is amended to read:

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

3 **SECTION 6.** 349.02 (2) (b) 4. of the statutes is amended to read:

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

6 **SECTION 7.** 778.25 (1) (a) 1. of the statutes is amended to read:

7 778.25 (1) (a) 1. Under s. 125.07 (4) (a) or (b), 125.085 (3) (b), or 125.09 (2),
8 ~~961.573 (2), 961.574 (2) or 961.575 (2)~~ or under a local ordinance strictly conforming
9 to one of those statutes brought against an adult in circuit court or against a minor
10 in the court assigned to exercise jurisdiction under chs. 48 and 938.

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

12 778.25 (1) (a) 1m. Under s. 961.573 (2), 961.574 (2), or 961.575 (2) brought
13 against a minor in the court assigned to exercise jurisdiction under chs. 48 and 938
14 or under a local ordinance enacted under s. 59.54 (25m) or 66.0107 (1) (bp) brought
15 against an adult in circuit court or against a minor in the court assigned to exercise
16 jurisdiction under chs. 48 and 938.

17 **SECTION 9.** 818.02 (7) of the statutes is amended to read:

18 818.02 (7) In an action for a forfeiture under s. 961.573 (2), 961.574 (2) or
19 961.575 (2), or under a local ordinance strictly conforming to one of those statutes s.
20 961.573 (1) or (2), 961.574 (1) or (2), or 961.575 (1) or (2).

21 **SECTION 10.** 961.577 of the statutes is amended to read:

22 **961.577 Municipal ordinances.** Nothing in this subchapter precludes a city,
23 village, or town from prohibiting conduct that is the same as that prohibited by s.
24 961.573 (1) or (2), 961.574 (1) or (2), or 961.575 (1) or (2) or a county with a population

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1 of 500,000 or more from prohibiting conduct that is the same as that prohibited by
2 s. 961.573 (1) or (2), 961.574 (1) or (2), or 961.575 (1) or (2).

3 (END)