

2007 ASSEMBLY BILL 550

October 23, 2007 – Introduced by Representatives BOYLE, POCAN, BERCEAU, BLACK, GRIGSBY, GRONEMUS, PARISI, POPE-ROBERTS, SCHNEIDER, SHERMAN, TRAVIS, WOOD and ZEPNICK. Referred to Committee on Health and Healthcare Reform.

1 **AN ACT to renumber and amend** 59.54 (25), 961.55 (8), 968.19 and 968.20 (1);
2 **to amend** 59.54 (25m), 66.0107 (1) (bm), 66.0107 (1) (bp), 173.12 (1m), 289.33
3 (3) (d), 349.02 (2) (b) 4., 961.555 (2) (a), 961.56 (1) and 968.20 (3) (a) and (b); and
4 **to create** 20.435 (6) (gm), 59.54 (25) (b) 2., 59.54 (25) (b) 3., 146.45, 961.01 (5m),
5 961.01 (11v), 961.01 (14c), 961.01 (14g), 961.01 (19m), 961.01 (20hm), 961.01
6 (20ht), 961.01 (20t), 961.01 (21f), 961.01 (21t), 961.436, 961.55 (8) (b), 961.55 (8)
7 (c), 961.55 (8) (d), 961.555 (2) (e), 961.555 (2m), 961.5755, 968.072, 968.12 (5),
8 968.19 (2), 968.20 (1d) and 968.20 (1j) of the statutes; **relating to:** medical use
9 of marijuana, requiring the exercise of rule-making authority, making an
10 appropriation, and providing a penalty.

Analysis by the Legislative Reference Bureau

This bill makes certain changes to current law with respect to marijuana (also known as tetrahydrocannabinols).

Current prohibitions and penalties

Current law prohibits the manufacture, distribution, and delivery of marijuana and the possession of marijuana with intent to manufacture, distribute, or deliver

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it. Penalties for violating these prohibitions depend on the amount of marijuana involved. If the crime involves 200 grams or less or four or fewer marijuana plants, the person is guilty of a felony and may be fined up to \$10,000, sentenced to a term of imprisonment of up to three years and six months (which, if the sentence is for more than one year, includes a term of extended supervision), or both. If the crime involves more than 200 grams but not more than 1,000 grams, or more than four plants but not more than 20 plants, the person is guilty of a felony and may be fined up to \$10,000, sentenced to a term of imprisonment of up to six years (which, if the sentence is for more than one year, includes a term of extended supervision), or both. If the crime involves more than 1,000 grams but not more than 2,500 grams, or more than 20 plants but not more than 50 plants, the person is guilty of a felony and may be fined up to \$25,000, sentenced to a term of imprisonment of up to ten years (which, if the sentence is for more than one year, includes a term of extended supervision), or both. If the crime involves more than 2,500 grams but not more than 10,000 grams, or more than 50 plants but not more than 200 plants, the person is guilty of a felony and may be fined up to \$25,000, sentenced to a term of imprisonment of up to 12 years and 6 months (which, if the sentence is for more than one year, includes a term of extended supervision), or both. If the crime involves more than 10,000 grams or more than 200 plants, the person is guilty of a felony and may be fined up to \$50,000, sentenced to a term of imprisonment of up to 15 years (which, if the sentence is for more than one year, includes a term of extended supervision), or both.

Current law also prohibits a person from possessing or attempting to possess marijuana. A person who violates this prohibition and who has no prior drug convictions is guilty of a misdemeanor and may be fined not more than \$1,000, sentenced to the county jail for up to six months, or both. For a second or subsequent offense, a person is guilty of a Class I felony.

Current law also contains certain prohibitions regarding drug paraphernalia, which includes equipment, products, and materials used to produce, distribute, and use controlled substances, including marijuana. Under current law, a person who uses drug paraphernalia or who possesses it with the primary intent to produce, distribute, or use a controlled substance unlawfully (other than methamphetamine) is guilty of a misdemeanor and may be fined not more than \$500, imprisoned for not more than 30 days, or both. A person who delivers drug paraphernalia, possesses it with intent to deliver it, or manufactures it with intent to deliver it, knowing that it will be primarily used to produce, distribute, or use a controlled substance unlawfully (other than methamphetamine), may be fined not more than \$1,000, imprisoned for not more than 90 days, or both.

Medical necessity defense and immunity from arrest and prosecution

This bill establishes a medical necessity defense to marijuana-related prosecutions and property seizure (forfeiture) actions. A person may invoke this defense if he or she is a qualifying patient — that is, someone having or undergoing a debilitating medical condition or treatment. The bill defines a debilitating medical condition or treatment to mean any of the following: 1) cancer, glaucoma, AIDS, a positive HIV test, or the treatment of these conditions; 2) a chronic or debilitating disease or medical condition, or the treatment of such a disease or condition, that

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causes cachexia (wasting away), severe pain, severe nausea, seizures, or severe and persistent muscle spasms; 3) any other medical condition or treatment for a medical condition designated as a debilitating medical condition or treatment in rules promulgated by the Department of Health and Family Services (DHFS).

A qualifying patient may invoke this defense if he or she acquires, possesses, cultivates, transports, or uses marijuana to alleviate the symptoms or effects of his or her debilitating medical condition or treatment, but only if no more than the maximum authorized amount of marijuana (that is, ten marijuana plants and three ounces — approximately 85 grams — of marijuana leaves or flowers) is involved. If a person has obtained a valid registry identification card from DHFS (see ***Registry for medical users of marijuana*** below) or has a statement from his or her physician documenting that the person has or is undergoing a debilitating medical condition or treatment and that the potential benefits to the person of using marijuana outweigh the health risks involved (a “written certification”), the person is presumed to have this defense if no more than the maximum authorized amount of marijuana is involved.

The bill also prohibits the arrest or prosecution of a qualifying patient who acquires, possesses, cultivates, transports, or uses marijuana to alleviate the symptoms or effects of his or her debilitating medical condition or treatment if the person possesses a valid registry identification card or a written certification. This prohibition, however, only applies if no more than the maximum authorized amount of marijuana is involved. In addition, the bill prohibits the arrest or prosecution of or the imposition of any penalty on a physician who provides a written certification to a person in good faith.

The defense provided under the bill and the prohibition on arrest and prosecution contained in the bill do not apply if the person possesses or attempts to possess marijuana and if: 1) while under the influence of marijuana, the person drives or operates a motor vehicle; 2) while under the influence of marijuana, the person operates heavy machinery or engages in any other conduct that endangers the health or well-being of another person; or 3) the person smokes marijuana on a bus, at the person’s workplace, on school premises, in an adult or juvenile correctional facility or jail, at a public park, beach, or recreation center, or at a youth center. In addition, if the putative qualifying patient is under 18 years of age, the defense provided under the bill and the prohibition on arrest and prosecution contained in the bill apply only if the person’s parent, guardian, or legal custodian agrees to serve as a primary caregiver for the person. The bill defines a primary caregiver as a person who is at least 18 years old and who has agreed to be responsible for managing a qualifying patient’s medical use of marijuana.

The defense provided under the bill and the prohibition on arrest and prosecution contained in the bill also apply to a primary caregiver for any qualifying patient (regardless of the qualifying patient’s age), if the primary caregiver acquires, possesses, cultivates, transfers, or transports marijuana to facilitate the qualifying patient’s medical use of it. The defense and the prohibition apply to the primary caregiver only if it is not practicable for the qualifying patient to acquire, possess, cultivate, or transport marijuana independently or if the qualifying patient is under

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18. The defense and the prohibition apply also to offenses involving drug paraphernalia if the qualifying patient uses the drug paraphernalia for the medical use of marijuana.

Registry for medical users of marijuana

The bill requires DHFS to establish a registry for medical users of marijuana. Under the bill, a person claiming to be a qualifying patient may apply for a registry identification card by submitting to DHFS a signed application, accompanied by a written certification and a registration fee of not more than \$150. DHFS must then verify the information. If it is complete and correct, DHFS must issue the person a registry identification card. A qualifying patient and one of his or her primary caregivers may also jointly apply for a registry identification card for the primary caregiver. DHFS may not disclose that it has issued to a person a registry identification card, or information from an application for one, except to a law enforcement agency for the purpose of verifying that a person possesses a valid registry identification card. A registry identification card is valid for one year, unless revoked sooner by DHFS based on a change of circumstances, and may be renewed.

Effect on federal law

This bill changes state law regarding marijuana. It does not affect federal law, which generally prohibits persons from manufacturing, delivering, or possessing marijuana and applies to both intrastate and interstate violations.

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.

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.** 20.435 (6) (gm) of the statutes is created to read:

2 20.435 **(6)** (gm) *Medical marijuana registry.* All moneys received from
3 applicants, as defined in s. 146.45 (1) (a), as fees under s. 146.45 (2) (a) 4., for the
4 purposes of the Medical Marijuana Registry Program under s. 146.45.

5 **SECTION 2.** 59.54 (25) of the statutes is renumbered 59.54 (25) (a) and amended
6 to read:

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1 59.54 (25) (a) The board may enact and enforce an ordinance to prohibit the
2 possession of 25 grams or less of marijuana, as defined in s. 961.01 (14), subject to
3 par. (b) and the exceptions in s. 961.41 (3g) (intro.), and provide a forfeiture for a
4 violation of the ordinance; ~~except that any person who is charged with possession of~~
5 ~~more than 25 grams of marijuana, or who is charged with possession of any amount~~
6 ~~of marijuana following a conviction for possession of marijuana, in this state shall~~
7 ~~not be prosecuted under this subsection.~~ Any ordinance enacted under this
8 paragraph shall provide a person who is prosecuted under it with the defenses that
9 the person has under s. 961.436 to prosecutions under s. 961.41 (1) (h), (1m) (h), or
10 (3g) (e).

11 **(b) 1.** Any ordinance enacted under ~~this subsection~~ par. (a) applies in every
12 municipality within the county.

13 **SECTION 3.** 59.54 (25) (b) 2. of the statutes is created to read:

14 59.54 (25) (b) 2. A person may not be prosecuted under an ordinance enacted
15 under par. (a) if, under s. 968.072 (2), the person would not be subject to prosecution
16 under s. 961.41 (3g) (e).

17 **SECTION 4.** 59.54 (25) (b) 3. of the statutes is created to read:

18 59.54 (25) (b) 3. No person who is charged with possession of more than 25
19 grams of marijuana, or who is charged with possession of any amount of marijuana
20 following a conviction for possession of marijuana, in this state may be prosecuted
21 under an ordinance enacted under par. (a).

22 **SECTION 5.** 59.54 (25m) of the statutes is amended to read:

23 59.54 (25m) **DRUG PARAPHERNALIA.** The board may enact an ordinance to
24 prohibit conduct that is the same as that prohibited by s. 961.573 (1) or (2), 961.574
25 (1) or (2), or 961.575 (1) or (2) and provide a forfeiture for violation of the ordinance.

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1 Any ordinance enacted under this subsection shall provide a person prosecuted
2 under it with the defenses that the person has under s. 961.5755 to prosecutions
3 under s. 961.573 (1), 961.574 (1), or 961.575 (1). A person may not be prosecuted
4 under an ordinance enacted under this subsection if, under s. 968.072 (3), the person
5 would not be subject to prosecution under s. 961.573 (1), 961.574 (1), or 961.575 (1).

6 The board may enforce an ordinance enacted under this subsection in any
7 municipality within the county.

8 **SECTION 6.** 66.0107 (1) (bm) of the statutes is amended to read:

9 66.0107 (1) (bm) Enact and enforce an ordinance to prohibit the possession of
10 25 grams or less of marijuana, as defined in s. 961.01 (14), subject to this paragraph
11 and the exceptions in s. 961.41 (3g) (intro.), and provide a forfeiture for a violation
12 of the ordinance; except that any. Any ordinance enacted under this paragraph shall
13 provide a person prosecuted under it with the defenses that the person has under s.
14 961.436 to prosecutions under s. 961.41 (1) (h), (1m) (h), or (3g) (e). A person may not
15 be prosecuted under an ordinance enacted under this paragraph if, under s. 968.072
16 (2), the person would not be subject to prosecution under s. 961.41 (3g) (e). No person
17 who is charged with possession of more than 25 grams of marijuana, or who is
18 charged with possession of any amount of marijuana following a conviction for
19 possession of marijuana, in this state ~~shall not~~ may be prosecuted under this
20 paragraph.

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

22 66.0107 (1) (bp) Enact and enforce an ordinance to prohibit conduct that is the
23 same as that prohibited by s. 961.573 (1) or (2), 961.574 (1) or (2), or 961.575 (1) or
24 (2) and provide a forfeiture for violation of the ordinance. Any ordinance enacted
25 under this paragraph shall provide a person prosecuted under it with the defenses

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1 that the person has under s. 961.5755 to prosecutions under s. 961.573 (1), 961.574
2 (1), or 961.575 (1). A person may not be prosecuted under an ordinance enacted
3 under this paragraph if, under s. 968.072 (3), the person would not be subject to
4 prosecution under s. 961.573 (1), 961.574 (1), or 961.575 (1).

5 **SECTION 8.** 146.45 of the statutes is created to read:

6 **146.45 Medical Marijuana Registry Program. (1) DEFINITIONS.** In this
7 section:

8 (a) “Applicant” means a person who is applying for a registry identification card
9 under sub. (2) (a).

10 (b) “Debilitating medical condition or treatment” has the meaning given in s.
11 961.01 (5m).

12 (c) “Medical use of tetrahydrocannabinols” has the meaning given in s. 961.01
13 (14g).

14 (d) “Primary caregiver” has the meaning given in s. 961.01 (19m).

15 (e) “Qualifying patient” has the meaning given in s. 961.01 (20hm).

16 (f) “Registrant” means a person to whom a registry identification card is issued
17 under sub. (4).

18 (g) “Registry identification card” means a document issued by the department
19 under this section that identifies a person as a qualifying patient or primary
20 caregiver.

21 (h) “Written certification” has the meaning given in s. 961.01 (21t).

22 **(2) APPLICATION.** (a) An adult who is claiming to be a qualifying patient may
23 apply for a registry identification card by submitting to the department a signed
24 application form containing or accompanied by all of the following:

25 1. His or her name, address, and date of birth.

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1 2. A written certification.

2 3. The name, address, and telephone number of the person's current physician,
3 as listed in the written certification.

4 4. A registration fee in an amount determined by the department, but not to
5 exceed \$150.

6 (b) A qualifying patient who is an adult and who has been issued a registry
7 identification card under sub. (4) or an applicant may jointly apply with another
8 adult to the department for a registry identification card for the other adult,
9 designating him or her as a primary caregiver for the qualifying patient or the
10 applicant. Both persons who jointly apply for a registry identification card under this
11 paragraph shall sign the application form, which shall contain the name, address,
12 and date of birth of the individual applying to be registered as a primary caregiver.

13 (c) The department shall promulgate rules specifying how a parent, guardian,
14 or person having legal custody of a child may apply for a registry identification card
15 for himself or herself and for the child and the circumstances under which the
16 department may approve or deny the application.

17 **(3) PROCESSING THE APPLICATION.** The department shall verify the information
18 contained in or accompanying an application submitted under sub. (2) and shall
19 approve or deny the application within 30 days after receiving it. Except as provided
20 in sub. (2) (c), the department may deny an application submitted under sub. (2) only
21 if the required information has not been provided or if false information has been
22 provided.

23 **(4) ISSUING A REGISTRY IDENTIFICATION CARD.** The department shall issue a
24 registry identification card within 5 days after approving an application under sub.
25 (3). Unless voided under sub. (5) (b) or (c) or revoked under rules issued by the

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1 department under sub. (7) (d), a registry identification card shall expire one year
2 from the date of issuance. A registry identification card shall contain all of the
3 following:

4 (a) The name, address, and date of birth of all of the following:

5 1. The registrant.

6 2. The primary caregivers, if the registrant is a qualifying patient.

7 3. The qualifying patient, if the registrant is a primary caregiver.

8 (b) The date of issuance and expiration date of the registry identification card.

9 (c) A photograph of the registrant.

10 (d) Other information that the department may require by rule.

11 **(5) ADDITIONAL INFORMATION TO BE PROVIDED BY REGISTRANT.** (a) 1. An adult
12 registrant shall notify the department of any change in the registrant's name and
13 address. An adult registrant who is a qualifying patient shall notify the department
14 of any change in his or her physician, of any significant improvement in his or her
15 health as it relates to his or her debilitating medical condition or treatment, and if
16 a registered primary caregiver no longer assists the registrant with the medical use
17 of tetrahydrocannabinols.

18 2. If a qualifying patient is a child, a primary caregiver for the child shall
19 provide the department with any information that the child, if he or she were an
20 adult, would have to provide under subd. 1. within 10 days after the date of the
21 change to which the information relates.

22 (b) If a registrant fails to notify the department within 10 days after any change
23 for which notification is required under par. (a) 1., his or her registry identification
24 card is void. If a registrant fails to comply with par. (a) 2., the registry identification

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1 card for the qualifying patient to whom the information under par. (a) 2. relates is
2 void.

3 (c) If a qualifying patient's registry identification card becomes void under par.
4 (b), the registry identification card for each of the qualifying patient's primary
5 caregivers is void. The department shall send written notice of this fact to each such
6 primary caregiver.

7 **(6) RECORDS.** (a) The department shall maintain a list of all registrants.

8 (b) Notwithstanding s. 19.35 and except as provided in par. (c), the department
9 may not disclose information from an application submitted or a registry
10 identification card issued under this section.

11 (c) The department may disclose to state or local law enforcement agencies
12 information from an application submitted by, or from a registry identification card
13 issued to, a specific person under this section, for the purpose of verifying that the
14 person possesses a valid registry identification card.

15 **(7) RULES.** The department shall promulgate rules to implement this section,
16 including the rules required under sub. (2) (c) and rules doing all of the following:

17 (a) Creating forms for applications to be used under sub. (2).

18 (b) Specifying how the department will verify the truthfulness of information
19 submitted on an application under sub. (2).

20 (c) Specifying how and under what circumstances registry identification cards
21 may be renewed.

22 (d) Specifying how and under what changed circumstances a registry
23 identification card may be revoked.

24 (e) Specifying under what circumstances a person whose application for a
25 registry identification card is denied may reapply.

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1 **SECTION 9.** 173.12 (1m) of the statutes is amended to read:

2 173.12 **(1m)** If an animal has been seized because it is alleged that the animal
3 has been used in or constitutes evidence of any crime specified in s. 951.08, the
4 animal may not be returned to the owner by an officer under s. 968.20 (2). In any
5 hearing under s. 968.20 ~~(1)~~ (1f), the court shall determine if the animal is needed as
6 evidence or there is reason to believe that the animal has participated in or been
7 trained for fighting. If the court makes such a finding, the animal shall be retained
8 in custody.

9 **SECTION 10.** 289.33 (3) (d) of the statutes is amended to read:

10 289.33 **(3)** (d) “Local approval” includes any requirement for a permit, license,
11 authorization, approval, variance or exception or any restriction, condition of
12 approval or other restriction, regulation, requirement or prohibition imposed by a
13 charter ordinance, general ordinance, zoning ordinance, resolution or regulation by
14 a town, city, village, county or special purpose district, including without limitation
15 because of enumeration any ordinance, resolution or regulation adopted under s.
16 59.03 (2), 59.11 (5), 59.42 (1), 59.48, 59.51 (1) and (2), 59.52 (2), (5), (6), (7), (8), (9),
17 (11), (12), (13), (15), (16), (17), (18), (19), (20), (21), (22), (23), (24), (25), (26) and (27),
18 59.53 (1), (2), (3), (4), (5), (7), (8), (9), (11), (12), (13), (14), (15), (19), (20) and (23),
19 59.535 (2), (3) and (4), 59.54 (1), (2), (3), (4), (4m), (5), (6), (7), (8), (10), (11), (12), (16),
20 (17), (18), (19), (20), (21), (22), (23), (24), (25) (a), and (26), 59.55 (3), (4), (5) and (6),
21 59.56 (1), (2), (4), (5), (6), (7), (9), (10), (11), (12), (12m), (13) and (16), 59.57 (1), 59.58
22 (1) and (5), 59.62, 59.69, 59.692, 59.693, 59.696, 59.697, 59.698, 59.70 (1), (2), (3), (5),
23 (7), (8), (9), (10), (11), (21), (22) and (23), 59.79 (1), (2), (3), (4), (5), (6), (7), (8), (10) and
24 (11), 59.792 (2) and (3), 59.80, 59.82, 60.10, 60.22, 60.23, 60.54, 60.77, 61.34, 61.35,

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1 61.351, 61.354, 62.11, 62.23, 62.231, 62.234, 66.0101, 66.0415, 87.30, 91.73, 196.58,
2 200.11 (8), 236.45, 281.43 or 349.16 or subch. VIII of ch. 60.

3 **SECTION 11.** 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) (a) or (25m) or
5 66.0107 (1) (bm).

6 **SECTION 12.** 961.01 (5m) of the statutes is created to read:

7 961.01 (5m) “Debilitating medical condition or treatment” means any of the
8 following:

9 (a) Cancer, glaucoma, acquired immunodeficiency syndrome, a positive test for
10 the presence of HIV, antigen or nonantigenic products of HIV, or an antibody to HIV,
11 or the treatment of these conditions.

12 (b) A chronic or debilitating disease or medical condition or the treatment of
13 such a disease or condition that causes cachexia, severe pain, severe nausea,
14 seizures, or severe and persistent muscle spasms.

15 (c) Any other medical condition or any other treatment for a medical condition
16 designated as a debilitating medical condition or treatment in rules promulgated by
17 the department of health and family services under s. 961.436 (5).

18 **SECTION 13.** 961.01 (11v) of the statutes is created to read:

19 961.01 (11v) “HIV” means any strain of human immunodeficiency virus, which
20 causes acquired immunodeficiency syndrome.

21 **SECTION 14.** 961.01 (14c) of the statutes is created to read:

22 961.01 (14c) “Maximum authorized amount” means 10 live marijuana plants
23 and 3 ounces of usable marijuana.

24 **SECTION 15.** 961.01 (14g) of the statutes is created to read:

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1 961.01 (14g) “Medical use of tetrahydrocannabinols” means any of the
2 following:

3 (a) The use of tetrahydrocannabinols by a qualifying patient to alleviate the
4 symptoms or effects of the qualifying patient’s debilitating medical condition or
5 treatment.

6 (b) The acquisition, possession, cultivation, or transportation of
7 tetrahydrocannabinols by a qualifying patient if done to facilitate his or her use of
8 the tetrahydrocannabinols under par. (a).

9 (c) The acquisition, possession, cultivation, or transportation of
10 tetrahydrocannabinols by a primary caregiver of a qualifying patient, the transfer
11 of tetrahydrocannabinols between a qualifying patient and his or her primary
12 caregivers, or the transfer of tetrahydrocannabinols between persons who are
13 primary caregivers for the same qualifying patient if all of the following apply:

14 1. The acquisition, possession, cultivation, transportation, or transfer of the
15 tetrahydrocannabinols is done to facilitate the qualifying patient’s use of
16 tetrahydrocannabinols under par. (a) or (b).

17 2. It is not practicable for the qualifying patient to acquire, possess, cultivate,
18 or transport the tetrahydrocannabinols independently, or the qualifying patient is
19 under 18 years of age.

20 **SECTION 16.** 961.01 (19m) of the statutes is created to read:

21 961.01 (19m) “Primary caregiver” means a person who is at least 18 years of
22 age and who has agreed to help a qualifying patient in his or her medical use of
23 tetrahydrocannabinols.

24 **SECTION 17.** 961.01 (20hm) of the statutes is created to read:

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1 **961.01 (20hm)** “Qualifying patient” means a person who has been diagnosed
2 by a physician as having or undergoing a debilitating medical condition or treatment
3 but does not include a person under the age of 18 years unless all of the following
4 apply:

5 (a) The person’s physician has explained the potential risks and benefits of the
6 medical use of tetrahydrocannabinols to the person and to a parent, guardian, or
7 person having legal custody of the person.

8 (b) The parent, guardian, or person having legal custody provides the physician
9 a written statement consenting to do all of the following:

- 10 1. Allow the person’s medical use of tetrahydrocannabinols.
- 11 2. Serve as a primary caregiver for the person.
- 12 3. Manage the person’s medical use of tetrahydrocannabinols.

13 **SECTION 18.** 961.01 (20ht) of the statutes is created to read:

14 **961.01 (20ht)** “Registry identification card” has the meaning given in s. 146.45
15 (1) (g).

16 **SECTION 19.** 961.01 (20t) of the statutes is created to read:

17 **961.01 (20t)** “Treatment team” means a qualifying patient and his or her
18 primary caregivers.

19 **SECTION 20.** 961.01 (21f) of the statutes is created to read:

20 **961.01 (21f)** “Usable marijuana” means dried marijuana leaves or flowers but
21 does not include marijuana seeds, stalks, or roots.

22 **SECTION 21.** 961.01 (21t) of the statutes is created to read:

23 **961.01 (21t)** “Written certification” means a statement made by a person’s
24 physician if all of the following apply:

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1 (a) The statement indicates that, in the physician's professional opinion, the
2 person has or is undergoing a debilitating medical condition or treatment and the
3 potential benefits of the person's use of tetrahydrocannabinols under sub. (14g) (a)
4 would likely outweigh the health risks for the person.

5 (b) The statement indicates that the opinion described in par. (a) was formed
6 after a full assessment, made in the course of a bona fide physician-patient
7 relationship, of the person's medical history and current medical condition.

8 (c) The statement is signed by the physician or is contained in the person's
9 medical records.

10 **SECTION 22.** 961.436 of the statutes is created to read:

11 **961.436 Medical use defense in cases involving**
12 **tetrahydrocannabinols. (1)** A member of a qualifying patient's treatment team
13 has a defense to prosecution under s. 961.41 (1) (h) or (1m) (h) for manufacturing, or
14 possessing with intent to manufacture, tetrahydrocannabinols if all of the following
15 apply:

16 (a) The manufacture or possession is a medical use of tetrahydrocannabinols
17 by the treatment team.

18 (b) The amount of tetrahydrocannabinols does not exceed the maximum
19 authorized amount.

20 **(2)** A member of a qualifying patient's treatment team has a defense to
21 prosecution under s. 961.41 (1) (h) or (1m) (h) for distributing or delivering, or
22 possessing with intent to distribute or deliver, tetrahydrocannabinols to another
23 member of the treatment team if all of the following apply:

24 (a) The distribution, delivery, or possession is a medical use of
25 tetrahydrocannabinols by the treatment team.

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1 (b) The amount of tetrahydrocannabinols does not exceed the maximum
2 authorized amount.

3 **(3)** (a) Except as provided in par. (b), a member of a qualifying patient's
4 treatment team has a defense to a prosecution under s. 961.41 (3g) (e) if all of the
5 following apply:

6 1. The possession or attempted possession is a medical use of
7 tetrahydrocannabinols by the treatment team.

8 2. The amount of tetrahydrocannabinols does not exceed the maximum
9 authorized amount.

10 (b) A person may not assert the defense described in par. (a) if, while he or she
11 possesses or attempts to possess tetrahydrocannabinols, any of the following applies:

12 1. The person drives or operates a motor vehicle while under the influence of
13 tetrahydrocannabinols in violation of s. 346.63 (1) or a local ordinance in conformity
14 with s. 346.63 (1).

15 2. While under the influence of tetrahydrocannabinols, the person operates
16 heavy machinery or engages in any other conduct that endangers the health or
17 well-being of another person.

18 3. The person smokes marijuana in, on, or at any of the following places:

19 a. A school bus or a public transit vehicle.

20 b. The person's place of employment.

21 c. Public or private school premises.

22 d. A juvenile correctional facility.

23 e. A jail or adult correctional facility.

24 f. A public park, beach, or recreation center.

25 g. A youth center.

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1 **(4)** For the purposes of a defense raised under sub. (1), (2), or (3) (a), a valid
2 registry identification card or a written certification is presumptive evidence that the
3 person identified on the card as a qualifying patient or the subject of the written
4 certification is a qualifying patient and that, if the person uses
5 tetrahydrocannabinols, he or she does so to alleviate the symptoms or effects of his
6 or her debilitating medical condition or treatment.

7 **(5)** Notwithstanding s. 227.12 (1), any person may petition the department of
8 health and family services to promulgate a rule to designate a medical condition or
9 treatment as a debilitating medical condition or treatment. The department of
10 health and family services shall promulgate rules providing for public notice of and
11 a public hearing regarding any such petition, with the public hearing providing
12 persons an opportunity to comment upon the petition. After the hearing, but no later
13 than 180 days after the submission of the petition, the department of health and
14 family services shall approve or deny the petition. The department's decision to
15 approve or deny a petition is subject to judicial review under s. 227.52.

16 **SECTION 23.** 961.55 (8) of the statutes is renumbered 961.55 (8) (intro.) and
17 amended to read:

18 961.55 **(8)** (intro.) The failure, upon demand by any officer or employee
19 designated in s. 961.51 (1) or (2), of the person in occupancy or in control of land or
20 premises upon which the species of plants are growing or being stored, to produce an
21 any of the following constitutes authority for the seizure and forfeiture of the plants:

22 (a) An appropriate federal registration, or proof that the person is the holder
23 thereof, constitutes authority for the seizure and forfeiture of the plants.

24 **SECTION 24.** 961.55 (8) (b) of the statutes is created to read:

25 961.55 **(8)** (b) A valid registry identification card.

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1 **SECTION 25.** 961.55 (8) (c) of the statutes is created to read:

2 961.55 **(8)** (c) The person's written certification, if the person is a qualifying
3 patient.

4 **SECTION 26.** 961.55 (8) (d) of the statutes is created to read:

5 961.55 **(8)** (d) A written certification for a qualifying patient for whom the
6 person is a primary caregiver.

7 **SECTION 27.** 961.555 (2) (a) of the statutes is amended to read:

8 961.555 **(2)** (a) ~~The Except as provided in par. (e), the district attorney of the~~
9 county within which the property was seized shall commence the forfeiture action
10 within 30 days after the seizure of the property; ~~except that the defendant may~~
11 ~~request that the forfeiture proceedings be adjourned until after adjudication of any~~
12 ~~charge concerning a crime which was the basis for the seizure of the property. The~~
13 ~~request shall be granted.~~ The forfeiture action shall be commenced by filing a
14 summons, complaint and affidavit of the person who seized the property with the
15 clerk of circuit court, provided service of authenticated copies of those papers is made
16 in accordance with ch. 801 within 90 days after filing upon the person from whom
17 the property was seized and upon any person known to have a bona fide perfected
18 security interest in the property.

19 **SECTION 28.** 961.555 (2) (e) of the statutes is created to read:

20 961.555 **(2)** (e) The court shall adjourn forfeiture proceedings until after
21 adjudication of any charge concerning a crime that was the basis for the seizure of
22 the property if any of the following applies:

- 23 1. The defendant requests an adjournment.
- 24 2. The defendant invokes a defense to the crime under s. 961.436 or 961.5755.

25 **SECTION 29.** 961.555 (2m) of the statutes is created to read:

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1 961.555 **(2m)** MEDICAL NECESSITY DEFENSE. (a) In an action to forfeit property
2 seized under s. 961.55, the person who was in possession of the property when it was
3 seized has a defense to the forfeiture of the property if any of the following applies:

4 1. The person was prosecuted under s. 961.41 (1) (h), (1m) (h), or (3g) (e),
5 961.573 (1), 961.574 (1), or 961.575 (1) in connection with the seized property but had
6 a valid defense under s. 961.436 (1), (2), or (3) (a) or 961.5755 (1) (a) or (2).

7 2. The person was not prosecuted under s. 961.41 (1) (h), (1m) (h), or (3g) (e),
8 961.573 (1), 961.574 (1), or 961.575 (1) in connection with the seized property, but,
9 if the person had been, he or she would have had a valid defense under s. 961.436 (1),
10 (2), or (3) (a) or 961.5755 (1) (a) or (2).

11 (b) The owner of property seized under s. 961.55 who is raising a defense under
12 par. (a) shall do so in the answer to the complaint that he or she serves under sub.
13 (2) (b). If a property owner raises such a defense in his or her answer, the state must,
14 as part of the burden of proof specified in sub. (3), prove that the facts constituting
15 the defense do not exist.

16 **SECTION 30.** 961.56 (1) of the statutes is amended to read:

17 961.56 **(1)** ~~It~~ Except as provided in s. 961.555 (2m) (b) and except for any
18 presumption arising under s. 961.436 (4) or 961.5755 (3), it is not necessary for the
19 state to negate any exemption or exception in this chapter in any complaint,
20 information, indictment or other pleading or in any trial, hearing or other proceeding
21 under this chapter. ~~The, and the~~ burden of proof of any exemption or exception is
22 upon the person claiming it.

23 **SECTION 31.** 961.5755 of the statutes is created to read:

24 **961.5755 Medical use of marijuana defense in drug paraphernalia**
25 **cases.** (1) (a) Except as provided in par. (b), a member of a treatment team has a

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1 defense to prosecution under s. 961.573 (1) if he or she uses, or possesses with the
2 primary intent to use, drug paraphernalia only for the medical use of
3 tetrahydrocannabinols by the treatment team.

4 (b) This subsection does not apply if while the person uses, or possesses with
5 the primary intent to use, drug paraphernalia s. 961.436 (3) (b) 1., 2., or 3. applies.

6 (2) A member of a treatment team has a defense to prosecution under s. 961.574
7 (1) or 961.575 (1) if he or she delivers, possesses with intent to deliver, or
8 manufactures with intent to deliver to another member of his or her treatment team
9 drug paraphernalia, knowing that it will be primarily used for the medical use of
10 tetrahydrocannabinols by the treatment team.

11 (3) For the purposes of a defense raised under sub. (1) (a) or (2), a valid registry
12 identification card issued or a written certification is presumptive evidence that the
13 person identified on the valid registry identification card as a qualifying patient or
14 the subject of the written certification is a qualifying patient and that, if the person
15 uses tetrahydrocannabinols, he or she does so to alleviate the symptoms or effects of
16 his or her debilitating medical condition or treatment.

17 **SECTION 32.** 968.072 of the statutes is created to read:

18 **968.072 Medical use of marijuana; arrest and prosecution. (1)**

19 DEFINITIONS. In this section:

20 (a) “Maximum authorized amount” has the meaning given in s. 961.01 (14c).

21 (b) “Medical use of tetrahydrocannabinols” has the meaning given in s. 961.01
22 (14g).

23 (c) “Primary caregiver” has the meaning given in s. 961.01 (19m).

24 (d) “Qualifying patient” has the meaning given in s. 961.01 (20hm).

25 (e) “Registry identification card” has the meaning given in s. 146.45 (1) (g).

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1 (f) “Treatment team” has the meaning given in s. 961.01 (20t).

2 (g) “Written certification” has the meaning given in s. 961.01 (21t).

3 **(2)** LIMITATIONS ON ARRESTS AND PROSECUTION; MEDICAL USE OF MARIJUANA. Unless
4 s. 961.436 (3) (b) 1., 2., or 3. applies, a member of a qualifying patient’s treatment
5 team may not be arrested or prosecuted for a violation of s. 961.41 (1) (h), (1m) (h),
6 or (3g) (e) if all of the following apply:

7 (a) The person manufactures, distributes, delivers, or possesses
8 tetrahydrocannabinols for their medical use by the treatment team.

9 (b) The person possesses a valid registry identification card or a copy of the
10 qualifying patient’s written certification.

11 (c) The quantity of tetrahydrocannabinols does not exceed the maximum
12 authorized amount.

13 **(3)** LIMITATIONS ON ARRESTS AND PROSECUTION; DRUG PARAPHERNALIA FOR MEDICAL
14 USE OF MARIJUANA. (a) Unless s. 961.436 (3) (b) 1., 2., or 3. applies, a member of a
15 treatment team may not be arrested or prosecuted for a violation of s. 961.573 (1) if
16 all of the following apply:

17 1. The person uses, or possesses with the primary intent to use, drug
18 paraphernalia only for the medical use of tetrahydrocannabinols by the treatment
19 team.

20 2. The person possesses a valid registry identification card or a copy of the
21 qualifying patient’s written certification.

22 3. The person does not possess more than the maximum authorized amount of
23 tetrahydrocannabinols.

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1 (b) Unless s. 961.436 (3) (b) 1., 2., or 3. applies, a member of a treatment team
2 may not be arrested or prosecuted for a violation of s. 961.574 (1) or 961.575 (1) if all
3 of the following apply:

4 1. The person delivers, possesses with intent to deliver, or manufactures with
5 intent to deliver to another member of his or her treatment team drug paraphernalia,
6 knowing that it will be primarily used for the medical use of tetrahydrocannabinols
7 by the treatment team.

8 2. The person possesses a valid registry identification card or a copy of the
9 qualifying patient's written certification.

10 3. The person does not possess more than the maximum authorized amount of
11 tetrahydrocannabinols.

12 **(4) LIMITATIONS ON ARRESTS, PROSECUTION, AND OTHER SANCTIONS; PHYSICIANS.** A
13 physician may not be arrested and a physician, hospital, or clinic may not be subject
14 to prosecution, denied any right or privilege, or penalized in any manner for making
15 or providing a written certification in good faith.

16 **(5) PENALTY FOR FALSE STATEMENTS.** Whoever intentionally provides false
17 information to a law enforcement officer in an attempt to avoid arrest or prosecution
18 under this section for a violation of s. 961.41 (1) (h), (1m) (h), or (3g) (e), 961.573 (1),
19 961.574 (1), or 961.575 (1) may be fined not more than \$500.

20 **SECTION 33.** 968.12 (5) of the statutes is created to read:

21 968.12 **(5) MEDICAL USE OF MARIJUANA.** A person's possession, use, or submission
22 of or connection with an application for a registry identification card under s. 146.45
23 (2), the issuance of such a card under s. 146.45 (4), or a person's possession of such
24 a card or an original or a copy of a written certification, as defined in s. 961.01 (21t),

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1 may not, by itself, constitute probable cause under sub. (1) or otherwise subject any
2 person or the property of any person to inspection by any governmental agency.

3 **SECTION 34.** 968.19 of the statutes is renumbered 968.19 (1) and amended to
4 read:

5 968.19 (1) Property Except as provided in sub. (2), property seized under a
6 search warrant or validly seized without a warrant shall be safely kept by the officer,
7 who may leave it in the custody of the sheriff and take a receipt therefor, so long as
8 necessary for the purpose of being produced as evidence on any trial.

9 **SECTION 35.** 968.19 (2) of the statutes is created to read:

10 968.19 (2) A law enforcement agency that has seized a live marijuana plant is
11 not responsible for the plant's care and maintenance.

12 **SECTION 36.** 968.20 (1) of the statutes is renumbered 968.20 (1f), and 968.20
13 (1f) (intro.), as renumbered, is amended to read:

14 968.20 (1f) (intro.) Any person claiming the right to possession of property
15 seized pursuant to a search warrant or seized without a search warrant may apply
16 for its return to the circuit court for the county in which the property was seized or
17 where the search warrant was returned. The court shall order such notice as it
18 deems adequate to be given the district attorney and all persons who have or may
19 have an interest in the property and shall hold a hearing to hear all claims to its true
20 ownership. If Except as provided in sub. (1j), if the right to possession is proved to
21 the court's satisfaction, it shall order the property, other than contraband or property
22 covered under sub. (1m) or (1r) or s. 173.12, 173.21 (4), or 968.205, returned if:

23 **SECTION 37.** 968.20 (1d) of the statutes is created to read:

24 968.20 (1d) In this section:

25 (a) "Drug paraphernalia" has the meaning given in s. 961.571 (1) (a).

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1 (b) “Tetrahydrocannabinols” means a substance included in s. 961.14 (4) (t).

2 **SECTION 38.** 968.20 (1j) of the statutes is created to read:

3 968.20 **(1j)** (a) Except as provided in par. (b), sub. (1f) does not apply to
4 contraband or property covered under sub. (1m) or (1r) or s. 173.12, 173.21 (4), or
5 968.205.

6 (b) Under sub. (1f), the court may return drug paraphernalia or
7 tetrahydrocannabinols that have been seized to the person from whom they were
8 seized if any of the following applies:

9 1. The person was prosecuted under s. 961.41 (1) (h), (1m) (h), or (3g) (e),
10 961.573 (1), 961.574 (1), or 961.575 (1) in connection with the seized property but had
11 a valid defense under s. 961.436 (1), (2), or (3) (a) or 961.5755 (1) (a) or (2).

12 2. The person was not prosecuted under s. 961.41 (1) (h), (1m) (h), or (3g) (e),
13 961.573 (1), 961.574 (1), or 961.575 (1) in connection with the seized property, but,
14 if the person had been, he or she would have had a valid defense under s. 961.436 (1),
15 (2), or (3) (a) or 961.5755 (1) (a) or (2).

16 **SECTION 39.** 968.20 (3) (a) and (b) of the statutes are amended to read:

17 968.20 **(3)** (a) First class cities shall dispose of dangerous weapons or
18 ammunition seized 12 months after taking possession of them if the owner,
19 authorized under sub. (1m), has not requested their return and if the dangerous
20 weapon or ammunition is not required for evidence or use in further investigation
21 and has not been disposed of pursuant to a court order at the completion of a criminal
22 action or proceeding. Disposition procedures shall be established by ordinance or
23 resolution and may include provisions authorizing an attempt to return to the
24 rightful owner any dangerous weapons or ammunition which appear to be stolen or
25 are reported stolen. If enacted, any such provision shall include a presumption that

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1 if the dangerous weapons or ammunition appear to be or are reported stolen an
2 attempt will be made to return the dangerous weapons or ammunition to the
3 authorized rightful owner. If the return of a seized dangerous weapon other than a
4 firearm is not requested by its rightful owner under sub. (1) (1f) and is not returned
5 by the officer under sub. (2), the city shall safely dispose of the dangerous weapon or,
6 if the dangerous weapon is a motor vehicle, as defined in s. 340.01 (35), sell the motor
7 vehicle following the procedure under s. 973.075 (4) or authorize a law enforcement
8 agency to retain and use the motor vehicle. If the return of a seized firearm or
9 ammunition is not requested by its authorized rightful owner under sub. (1) (1f) and
10 is not returned by the officer under sub. (2), the seized firearm or ammunition shall
11 be shipped to and become property of the state crime laboratories. A person
12 designated by the department of justice may destroy any material for which the
13 laboratory has no use or arrange for the exchange of material with other public
14 agencies. In lieu of destruction, shoulder weapons for which the laboratories have
15 no use shall be turned over to the department of natural resources for sale and
16 distribution of proceeds under s. 29.934 or for use under s. 29.938.

17 (b) Except as provided in par. (a) or sub. (1m) or (4), a city, village, town or
18 county or other custodian of a seized dangerous weapon or ammunition, if the
19 dangerous weapon or ammunition is not required for evidence or use in further
20 investigation and has not been disposed of pursuant to a court order at the
21 completion of a criminal action or proceeding, shall make reasonable efforts to notify
22 all persons who have or may have an authorized rightful interest in the dangerous
23 weapon or ammunition of the application requirements under sub. (1) (1f). If, within
24 30 days after the notice, an application under sub. (1) (1f) is not made and the seized
25 dangerous weapon or ammunition is not returned by the officer under sub. (2), the

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1 city, village, town or county or other custodian may retain the dangerous weapon or
2 ammunition and authorize its use by a law enforcement agency, except that a
3 dangerous weapon used in the commission of a homicide or a handgun, as defined
4 in s. 175.35 (1) (b), may not be retained. If a dangerous weapon other than a firearm
5 is not so retained, the city, village, town or county or other custodian shall safely
6 dispose of the dangerous weapon or, if the dangerous weapon is a motor vehicle, as
7 defined in s. 340.01 (35), sell the motor vehicle following the procedure under s.
8 973.075 (4). If a firearm or ammunition is not so retained, the city, village, town or
9 county or other custodian shall ship it to the state crime laboratories and it is then
10 the property of the laboratories. A person designated by the department of justice
11 may destroy any material for which the laboratories have no use or arrange for the
12 exchange of material with other public agencies. In lieu of destruction, shoulder
13 weapons for which the laboratory has no use shall be turned over to the department
14 of natural resources for sale and distribution of proceeds under s. 29.934 or for use
15 under s. 29.938.

SECTION 40. Effective date.

16
17 (1) This act takes effect on the first day of the 6th month beginning after
18 publication.

19 (END)