

2007 DRAFTING REQUEST

Bill

Received: 04/16/2007

Received By: chanaman

Wanted: As time permits

Identical to LRB:

For: Mark Pocan (608) 266-8570

By/Representing: Glenn Wavrunek

This file may be shown to any legislator: NO

Drafter: chanaman

May Contact:

Addl. Drafters:

Subject: Criminal Law - drugs

Extra Copies:

Submit via email: YES

Requester's email: Rep.Pocan@legis.wisconsin.gov

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Medical use of marijuana

Instructions:

See Attached--2003 -2145/3

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>
/?	chanaman 04/18/2007	kfollett 05/11/2007		_____			S&L Crime
/1			jfrantze 05/11/2007	_____	mbarman 05/11/2007	cduerst 09/18/2007	

FE Sent For: "/1" @ intro. 10-23-07 <END>

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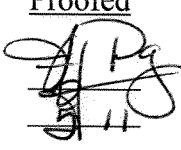
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/?	chanaman	11/11 5/11	9/6 5/11				

FE Sent For:

<END>

Hanaman, Cathlene

From: Wavrunek, Glenn
Sent: Wednesday, April 04, 2007 11:14 AM
To: Hanaman, Cathlene
Subject: Draft for Medical Marijuana for WI

Attachments: 03-21453.pdf

Cathlene -

In 2003 our office worked with LRB in drafting 2003 LRB-2145/3 (attached). While this LRB was never introduced, it did become the framework that Rep. Underheim used when drafting his medical marijuana bill (2003 AB892 & 2005 AB740). Now that Rep. Underheim has retired, Mark would like 2003 LRB-2145/3 re-drafted as is so that we can introduce it in the 2007 Session. Please feel free to call me at 266-8570 if you have any questions. Thanks!

Glenn Wavrunek
Office of Rep. Mark Pocan



03-21453.pdf (81
KB)

~~Stop Today~~

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2003 - 2004 LEGISLATURE

LRB-2145/3
MGD:kmg:cph

cmh:kjf

PWF

2003 BILL

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1 AN ACT *to renumber and amend* 59.54 (25), 961.55 (8), 968.19 and 968.20 (1);
 2 *to amend* 60.23 (21), 66.0107 (1) (bm), 173.12 (1m), 289.33 (3) (d), 349.02 (2)
 3 (b) 4., 961.555 (2) (a), 961.56 (1), 968.20 (3) (a) and 968.20 (3) (b); and *to create*
 4 20.435 (6) (gm), 59.54 (25) (b) 2., 59.54 (25) (b) 3., 146.45, 146.46, 961.01 (5m),
 5 961.01 (11t), 961.01 (14c), 961.01 (14g), 961.01 (19m), 961.01 (20hm), 961.01
 6 (20t), 961.01 (21f), 961.01 (21t), 961.436, 961.55 (8) (b), 961.55 (8) (c), 961.55 (8)
 7 (d), 961.555 (2) (e), 961.555 (2m), 961.5755, 968.073, 968.12 (5), 968.19 (2),
 8 968.20 (1d) and 968.20 (1j) of the statutes; **relating to:** medical use of
 9 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

Under current law, it is a felony to manufacture, distribute, or deliver marijuana or to possess marijuana with intent to manufacture, distribute, or deliver

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it. How the felony is classified depends on the amount of marijuana involved. For example, if the crime involves 200 grams of marijuana or less or four or fewer marijuana plants, the person is guilty of a Class I felony and may be fined up to \$10,000 or sentenced to a term of imprisonment (consisting of a term of confinement in state prison followed by a term of extended supervision) of up to three and a half years or both. ~~At the other end of the spectrum, if the crime involves more than 10,000 grams or more than 200 plants, the person is guilty of a Class E felony and may be fined up to \$50,000 or sentenced to a term of imprisonment of up to 15 years 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, or sentenced to the county jail for up to six months, or both. ~~A person committing a repeat offense is guilty of a Class I felony. In addition, a town, village, city, or county may enact an ordinance that prohibits the possession of 25 grams or less of marijuana. A person who violates the ordinance is subject to a forfeiture.~~

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 use it 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 or 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), is also guilty of a misdemeanor and may be fined not more than \$1,000 or 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 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

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For a second or subsequent offense

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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; 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 18. The defense and the prohibition also apply 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

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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:

7 59.54 (25) (a) The board may enact and enforce an ordinance to prohibit the
8 possession of 25 grams or less of marijuana, as defined in s. 961.01 (14), subject to
9 par. (b) and the exceptions in s. 961.41 (3g) (intro.), and provide a forfeiture for a
10 violation of the ordinance; ~~except that any person who is charged with possession of~~
11 ~~more than 25 grams of marijuana, or who is charged with possession of any amount~~
12 ~~of marijuana following a conviction for possession of marijuana, in this state shall~~

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1 ~~not be prosecuted under this subsection. Any ordinance enacted under this~~
2 ~~paragraph shall provide a person who is prosecuted under it with the defenses that~~
3 ~~the person has under s. 961.436 to prosecutions under s. 961.41 (1) (h), (1m) (h), or~~
4 ~~(3g) (e).~~

5 (b) 1. Any ordinance enacted under this subsection par. (a) does not apply in
6 any municipality that has enacted an ordinance prohibiting the possession of
7 marijuana.

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

9 59.54 (25) (b) 2. A person may not be prosecuted under an ordinance enacted
10 under par. (a) if, under s. 968.073 (2), the person would not be subject to prosecution
11 under s. 961.41 (3g) (e).

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

13 59.54 (25) (b) 3. No person who is charged with possession of more than 25
14 grams of marijuana, or who is charged with possession of any amount of marijuana
15 following a conviction for possession of marijuana, in this state may be prosecuted
16 under an ordinance enacted under par. (a).

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17 SECTION 5. 60.23 (21) of the statutes is amended to read:

18 60.23 (21) DRUG PARAPHERNALIA. Adopt an ordinance to prohibit conduct that
19 is the same as that prohibited by s. 961.573 (2), 961.574 (2) or 961.575 (2). Any
20 ordinance enacted under this subsection shall provide a person prosecuted under it
21 with the defenses that the person has under s. 961.5755 to prosecutions under s.
22 961.573 (1), 961.574 (1), or 961.575 (1). A person may not be prosecuted under an
23 ordinance enacted under this subsection if, under s. 968.073 (3), the person would
24 not be subject to prosecution under s. 961.573 (2) or 961.574 (2).

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

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1 66.0107 (1) (bm) Enact and enforce an ordinance to prohibit the possession of
 2 25 grams or less of marijuana, as defined in s. 961.01 (14), subject to this paragraph
 3 and the exceptions in s. 961.41 (3g) (intro.), and provide a forfeiture for a violation
 4 of the ordinance; ~~except that any.~~ Any ordinance enacted under this paragraph shall
 5 provide a person prosecuted under it with the defenses that the person has under s.
 6 961.436 to prosecutions under s. 961.41 (1) (h), (1m) (h), or (3g) (e). A person may not
 7 be prosecuted under an ordinance enacted under this paragraph if, under s. 968.073
 8 (2), the person would not be subject to prosecution under s. 961.41 (3g) (e). No person
 9 who is charged with possession of more than 25 grams of marijuana, or who is
 10 charged with possession of any amount of marijuana following a conviction for
 11 possession of marijuana, in this state ~~shall not~~ may be prosecuted under this
 12 paragraph.

13 **SECTION 7.** 146.45 of the statutes is created to read:

14 **146.45 Medical Marijuana Registry Program. (1) DEFINITIONS.** In this
 15 section:

16 (a) "Applicant" means a person who is applying for a registry identification card
 17 under sub. (2) (a).

18 (b) "Debilitating medical condition or treatment" has the meaning given in s.
 19 961.01 (5m).

20 (c) "Medical use of tetrahydrocannabinols" has the meaning given in s. 961.01
 21 (14g).

22 (d) "Primary caregiver" has the meaning given in s. 961.01 (19m).

23 (e) "Qualifying patient" has the meaning given in s. 961.01 (20hm).

24 (f) "Registrant" means a person to whom a registry identification card is issued
 25 under sub. (4).

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1 (g) "Registry identification card" means a document issued by the department ✓
2 under this section ✓ that identifies a person as a qualifying patient or primary
3 caregiver.

4 (h) "Written certification" has the meaning given in s. 961.01 (21t) ✓.

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

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

9 2. A written certification.

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

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

14 (b) A qualifying patient who is an adult and who has been issued a registry
15 identification card under sub. (4) ✓ or an applicant may jointly apply with another
16 adult to the department ✓ for a registry identification card for the other adult,
17 designating him or her as a primary caregiver for the qualifying patient or the
18 applicant. ^{Both} Persons who jointly apply for a registry identification card under this
19 paragraph shall both sign the application form, which shall contain the name,
20 address, and date of birth of the individual applying to be registered as a primary
21 caregiver.

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

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SECTION 7

Except as provided in sub. (2) (c), (c)

1 **(3) PROCESSING THE APPLICATION.** The department shall verify the information
2 contained in or accompanying an application submitted under sub. (2) and shall
3 approve or deny the application within 30 days after receiving it. The department
4 may deny an application submitted under sub. (2) only if the required information
5 has not been provided or if false information has been provided.

6 **(4) ISSUING A REGISTRY IDENTIFICATION CARD.** The department shall issue a
7 registry identification card within 5 days after approving an application under sub.
8 (3). Unless voided under sub. (5) (b) or revoked under rules issued by the department
9 under sub. (7) (d), a registry identification card shall expire one year from the date
10 of issuance. A registry identification card shall contain all of the following:

- 11 (a) The name, address, and date of birth of all of the following:
 - 12 1. The registrant.
 - 13 2. The primary caregivers, if the registrant is a qualifying patient.
 - 14 3. The qualifying patient, if ^{the} registrant is a primary caregiver.
 - 15 (b) The date of issuance and expiration date of the registry identification card.
 - 16 (c) A photograph of the registrant.
 - 17 (d) Other information that the department may require by rule.

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

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

5 (b) If a registrant fails to notify the department within 10 days after any change
6 for which notification is required under par. (a) 1., his or her registry identification
7 card is void. If a registrant fails to comply with par. (a) 2., the registry identification
8 card for the qualifying patient to whom the information under par. (a) 2. relates is
9 void.

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

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

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

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

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

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

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SECTION 7

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

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

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

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

9 **SECTION 8.** 146.46 of the statutes is created to read:

10 **146.46 Medical use of marijuana; debilitating medical condition or**

11 **treatment.** Notwithstanding s. 227.12 (1), any person may petition the department
12 to promulgate a rule to designate a medical condition or treatment as a debilitating
13 medical condition or treatment, as defined in s. 961.01 (5m). The department shall
14 promulgate rules providing for public notice of and a public hearing regarding any
15 such petition, with the public hearing providing persons an opportunity to comment
16 upon the petition. After the hearing, but no later than 180 days after the submission
17 of the petition, the department shall approve or deny the petition. The department's
18 decision to approve or deny a petition is subject to judicial review under s. 227.52.

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

20 173.12 (1m) If an animal has been seized because it is alleged that the animal
21 has been used in or constitutes evidence of any crime specified in s. 951.08, the
22 animal may not be returned to the owner by an officer under s. 968.20 (2). In any
23 hearing under s. 968.20 (1) (1f), the court shall determine if the animal is needed as
24 evidence or there is reason to believe that the animal has participated in or been

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1 trained for fighting. If the court makes such a finding, the animal shall be retained
2 in custody.

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

4 289.33 (3) (d) "Local approval" includes any requirement for a permit, license,
5 authorization, approval, variance or exception or any restriction, condition of
6 approval or other restriction, regulation, requirement or prohibition imposed by a
7 charter ordinance, general ordinance, zoning ordinance, resolution or regulation by
8 a town, city, village, county or special purpose district, including without limitation
9 because of enumeration any ordinance, resolution or regulation adopted under s.
10 59.03 (2), 59.11 (5), 59.42 (1), 59.48, 59.51 (1) and (2), 59.52 (2), (5), (6), (7), (8), (9),
11 (11), (12), (13), (15), (16), (17), (18), (19), (20), (21), (22), (23), (24), (25), (26) and (27),
12 59.53 (1), (2), (3), (4), (5), (7), (8), (9), (11), (12), (13), (14), (15), (19), (20) and (23),
13 59.535 (2), (3) and (4), 59.54 (1), (2), (3), (4), (4m), (5), (6), (7), (8), (10), (11), (12), (16),
14 (17), (18), (19), (20), (21), (22), (23), (24), (25) (a) and (26), 59.55 (3), (4), (5) and (6),
15 59.56 (1), (2), (4), (5), (6), (7), (9), (10), (11), (12), (12m), (13) and (16), 59.57 (1), 59.58
16 (1) and (5), 59.62, 59.69, 59.692, 59.693, 59.696, 59.697, 59.698, 59.70 (1), (2), (3), (5),
17 (7), (8), (9), (10), (11), (21), (22) and (23), 59.79 (1), (2), (3), (4), (5), (6), (7), (8), (10) and
18 (11), 59.792 (2) and (3), 59.80, 59.82, 60.10, 60.22, 60.23, 60.54, 60.77, 61.34, 61.35,
19 61.351, 61.354, 62.11, 62.23, 62.231, 62.234, 66.0101, 66.0415, 87.30, 91.73, 196.58,
20 200.11 (8), 236.45, 281.43 or 349.16 or subch. VIII of ch. 60.

21 **SECTION 11.** 349.02 (2) (b) 4. of the statutes is amended to read:

22 349.02 (2) (b) 4. Local ordinances enacted under s. 59.54 (25) (a), 60.23 (21) or
23 66.0107 (1) (bm).

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

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1 961.01 (5m) "Debilitating medical condition or treatment" means any of the
2 following:

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

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

9 (c) Any other medical condition or any other treatment for a medical condition
10 designated as a debilitating medical condition or treatment in rules promulgated by
11 the department of health and family services under s. ~~146.46~~ 961.436(5)

12 **SECTION 13.** 961.01 (11~~h~~) of the statutes is created to read:

13 961.01 (11~~h~~) "HIV" means any strain of human immunodeficiency virus, which
14 causes acquired immunodeficiency syndrome.

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

16 961.01 (14c) "Maximum authorized amount" means 10 live marijuana plants
17 and 3 ounces of usable marijuana.

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

19 961.01 (14g) "Medical use of tetrahydrocannabinols" means any of the
20 following:

21 (a) The use of tetrahydrocannabinols by a *qualifying* patient to alleviate the
22 symptoms or effects of the patient's debilitating medical condition or treatment.

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

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1 (c) The acquisition, possession, cultivation, or transportation of
2 tetrahydrocannabinols by a primary caregiver of a qualifying patient, the transfer
3 of tetrahydrocannabinols between a qualifying patient and his or her primary
4 caregivers, or the transfer of tetrahydrocannabinols between persons who are
5 primary caregivers for the same qualifying patient if all of the following apply:

6 1. The acquisition, possession, cultivation, transportation, or transfer of the
7 tetrahydrocannabinols is done to facilitate the qualifying patient's use of
8 tetrahydrocannabinols under par. (a) or (b).

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

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

13 961.01 (19m) "Primary caregiver" means a person who is at least 18 years of
14 age and who has agreed to help a qualifying patient in his or her medical use of
15 tetrahydrocannabinols.

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

17 961.01 (20hm) "Qualifying patient" means a person who has been diagnosed
18 by a physician as having or undergoing a debilitating medical condition or treatment
19 but does not include a person under the age of 18 years unless all of the following
20 apply:

21 (a) The person's physician has explained the potential risks and benefits of the
22 medical use of tetrahydrocannabinols to the person and to a parent, guardian, or
23 person having legal custody of the person.

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

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

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

5 961.01 (20t) "Treatment team" means a qualifying patient and his or her
6 primary caregivers.

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

8 961.01 (21f) "Usable marijuana" means dried marijuana leaves or flowers but
9 does not include marijuana seeds, stalks, or roots.

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

11 961.01 (21t) "Written certification" means a statement made by a person's
12 physician if all of the following apply:

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

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

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

22 **SECTION 21.** 961.436 of the statutes is created to read:

23 **961.436 Medical use defense in cases involving**
24 **tetrahydrocannabinols. (1)** A member of a qualifying patient's treatment team
25 has a defense to prosecution under s. 961.41 (1) (h) or (1m) (h) for manufacturing, or

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1 possessing with intent to manufacture, tetrahydrocannabinols if all of the following
2 apply:

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

5 (b) The amount of tetrahydrocannabinols does not exceed the maximum
6 authorized amount.

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

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

13 (b) The amount of tetrahydrocannabinols does not exceed the maximum
14 authorized amount.

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

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

20 2. The amount of tetrahydrocannabinols does not exceed the maximum
21 authorized amount.

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

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1 1. The person drives or operates a motor vehicle while under the influence of
 2 tetrahydrocannabinols in violation of s. 346.64 (1) or a local ordinance in conformity
 3 with s. 346.64 (1).

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

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

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

9 b. The person's place of employment.

10 c. Public or private school premises.

11 d. A juvenile correctional facility.

12 e. A jail or adult correctional facility.

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

14 g. A youth center.

15 (4) For the purposes of a defense raised under sub. (1), (2), or (3) (a), a valid
 16 registration card issued under s. 146.45 (4) or a written certification is presumptive
 17 evidence that the person identified on the card as a qualifying patient or the subject
 18 of the written certification is a qualifying patient and that, if the person uses
 19 tetrahydrocannabinols, he or she does so to alleviate the symptoms or effects of his
 20 or her debilitating medical condition or treatment.

21 **SECTION 22.** 961.55 (8) of the statutes is renumbered 961.55 (8) (intro.) and
 22 amended to read:

23 961.55 (8) (intro.) The failure, upon demand by any officer or employee
 24 designated in s. 961.51 (1) or (2), of the person in occupancy or in control of land or

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1 premises upon which the species of plants are growing or being stored, to produce an
2 any of the following constitutes authority for the seizure and forfeiture of the plants:

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

5 **SECTION 23.** 961.55 (8) (b) of the statutes is created to read:

6 961.55 (8) (b) A valid registration ^{identification} card issued to the person under s. 146.45(4).

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

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

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

11 961.55 (8) (d) A written certification for a qualifying patient for whom the
12 person is a primary caregiver.

13 **SECTION 26.** 961.555 (2) (a) of the statutes is amended to read:

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

25 **SECTION 27.** 961.555 (2) (e) of the statutes is created to read:

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1 961.555 (2) (e) The court shall adjourn forfeiture proceedings until after
2 adjudication of any charge concerning a crime that was the basis for the seizure of
3 the property if any of the following applies:

4 1. The defendant requests an adjournment.

5 2. The defendant invokes a defense to the crime under s. 961.436 or 961.5755.

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

7 961.555 (2m) **MEDICAL NECESSITY DEFENSE.** (a) In an action to forfeit property
8 seized under s. 961.55, the person who was in possession of the property when it was
9 seized has a defense to the forfeiture of the property if any of the following applies:

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

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

17 (b) The owner of property seized under s. 961.55 who is raising a defense under
18 par. (a) shall do so in the answer to the complaint that he or she serves under sub.
19 (2) (b). ~~When~~ ^{If} a property owner raises such a defense in his or her answer, the state
20 must, as part of the burden of proof specified in sub. (3), prove that the facts
21 constituting the defense do not exist.

22 **SECTION 29.** 961.56 (1) of the statutes is amended to read:

23 961.56 (1) It Except as provided in s. 961.555 (2m) (b) and except for any
24 presumption arising under s. 961.436 (4) or 961.5755 (3), it is not necessary for the
25 state to negate any exemption or exception in this chapter in any complaint,

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1 information, indictment or other pleading or in any trial, hearing or other proceeding
2 under this chapter. ~~The, and the~~ burden of proof of any exemption or exception is
3 upon the person claiming it.

4 **SECTION 30.** 961.5755 of the statutes is created to read:

5 **961.5755 Medical use of marijuana defense in drug paraphernalia**
6 **cases.** (1) (a) Except as provided in par. (b), a member of a treatment team has a
7 defense to prosecution under s. 961.573 (1) if he or she uses, or possesses with the
8 primary intent to use, drug paraphernalia ^{only} for the medical use of
9 tetrahydrocannabinols by the treatment team.

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

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

17 (3) For the purposes of a defense raised under sub. (1) (a) or (2), a valid
18 registration card issued under s. 146.45 (4) ^{identification} or a written certification is presumptive
19 evidence that the person identified on the ^{valid registry identification} card as a qualifying patient or the subject
20 of the written certification is a qualifying patient and that, if the person uses
21 tetrahydrocannabinols, he or she does so to alleviate the symptoms or effects of his
22 or her debilitating medical condition or treatment.

23 **SECTION 31.** 968.073² of the statutes is created to read:

24 **968.073² Medical use of marijuana; arrest and prosecution.** (1)

25 DEFINITIONS. In this section:

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SECTION 31

1 (a) "Maximum authorized amount" has the meaning given in s. 961.01 (14c).

2 (b) "Medical use of tetrahydrocannabinols" has the meaning given in s. 961.01
3 (14g).

4 (c) "Primary caregiver" has the meaning given in s. 961.01 (19m).

5 (d) "Qualifying patient" has the meaning given in s. 961.01 (20hm).

6 (e) "Treatment team" has the meaning given in s. 961.01 (20t).

7 (f) "Written certification" has the meaning given in s. 961.01 (21t).

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

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

14 (b) The person possesses a valid registration card issued to him or her under
15 ~~s. 146.45 (4)~~ or a copy of the qualifying patient's written certification.

16 (c) The quantity of tetrahydrocannabinols does not exceed the maximum
17 authorized amount.

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

22 1. The person uses, or possesses with the primary intent to use, drug
23 paraphernalia ^{only} for the medical use of tetrahydrocannabinols by the treatment team.

24 2. The person possesses a valid registration card issued to him or her under s.
25 ~~146.45 (4)~~ or a copy of the qualifying patient's written certification.

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1 3. The person does not possess more than the maximum authorized amount of
2 tetrahydrocannabinols.

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

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

10 2. The person possesses a valid registration card issued to him or her under s.
11 ~~146.45 (4)~~ or a copy of the qualifying patient's written certification.

12 3. The person does not possess more than the maximum authorized amount of
13 tetrahydrocannabinols.

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

18 **(5) PENALTY FOR FALSE STATEMENTS.** Whoever intentionally provides false
19 information to a law enforcement officer in an attempt to avoid arrest or prosecution
20 under this section for a violation of s. 961.41 (1) (h), (1m) (h), or (3g) (e), 961.573 (1),
21 961.574 (1), or 961.575 (1) may be fined not more than \$500.

22 **SECTION 32.** 968.12 (5) of the statutes is created to read:

23 968.12 **(5) MEDICAL USE OF MARIJUANA.** A person's possession, use, or submission
24 of or connection with an application for a registry identification card under s. 146.45
25 (2), the issuance of such a card under s. 146.45 (4), or a person's possession of such

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1 a card or an original or a copy of a written certification, as defined in s. 961.01 (21t),
2 *may* shall not, by itself, constitute probable cause under sub. (1) or otherwise subject any
3 person or the property of any person to inspection by any governmental agency.

4 SECTION 33. 968.19 of the statutes is renumbered 968.19 (1) and amended to
5 read:

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

10 SECTION 34. 968.19 (2) of the statutes is created to read:

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

13 SECTION 35. 968.20 (1) of the statutes is renumbered 968.20 (1f), and 968.20
14 (1f) (intro.), as renumbered, is amended to read:

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

24 SECTION 36. 968.20 (1d) of the statutes is created to read:

25 968.20 (1d) In this section:

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

2 (b) "Tetrahydrocannabinols" means a substance included in s. 961.14 (4) (t).

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

4 968.20 (1j) (a) Except as provided in par. (b), sub. (1f) does not apply to
5 contraband or property covered under sub. (1m) or (1r) or s. 173.12, 173.21 (4), or
6 968.205.

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

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

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

17 **SECTION 38.** 968.20 (3) (a) of the statutes is amended to read:

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

BILL**SECTION 38**

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

18 **SECTION 39.** 968.20 (3) (b) of the statutes is amended to read:

19 968.20 **(3)** (b) Except as provided in par. (a) or sub. (1m) or (4), a city, village,
20 town or county or other custodian of a seized dangerous weapon or ammunition, if
21 the dangerous weapon or ammunition is not required for evidence or use in further
22 investigation and has not been disposed of pursuant to a court order at the
23 completion of a criminal action or proceeding, shall make reasonable efforts to notify
24 all persons who have or may have an authorized rightful interest in the dangerous
25 weapon or ammunition of the application requirements under sub. ~~(1)~~ (1f). If, within

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1 30 days after the notice, an application under sub. (1) ~~(1)~~ (1f) is not made and the seized
2 dangerous weapon or ammunition is not returned by the officer under sub. (2), the
3 city, village, town or county or other custodian may retain the dangerous weapon or
4 ammunition and authorize its use by a law enforcement agency, except that a
5 dangerous weapon used in the commission of a homicide or a handgun, as defined
6 in s. 175.35 (1) (b), may not be retained. If a dangerous weapon other than a firearm
7 is not so retained, the city, village, town or county or other custodian shall safely
8 dispose of the dangerous weapon or, if the dangerous weapon is a motor vehicle, as
9 defined in s. 340.01 (35), sell the motor vehicle following the procedure under s.
10 973.075 (4). If a firearm or ammunition is not so retained, the city, village, town or
11 county or other custodian shall ship it to the state crime laboratories and it is then
12 the property of the laboratories. A person designated by the department of justice
13 may destroy any material for which the laboratories have no use or arrange for the
14 exchange of material with other public agencies. In lieu of destruction, shoulder
15 weapons for which the laboratory has no use shall be turned over to the department
16 of natural resources for sale and distribution of proceeds under s. 29.934.

17 **SECTION 40. Effective date.**

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

20 (END)

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1 Insert A

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

2

3 Insert 5-8

4 **SECTION 1.** 59.54 (25) of the statutes is renumbered 59.54 (25) (a) and amended
5 to read:

6 59.54 (25) (a) The board may enact and enforce an ordinance to prohibit the
7 possession of 25 grams or less of marijuana, as defined in s. 961.01 (14), subject to
8 par. (b) and the exceptions in s. 961.41 (3g) (intro.), and provide a forfeiture for a
9 violation of the ordinance; ~~except that any person who is charged with possession of~~
10 ~~more than 25 grams of marijuana, or who is charged with possession of any amount~~
11 ~~of marijuana following a conviction for possession of marijuana, in this state shall~~

1 ~~not be prosecuted under this subsection. Any ordinance enacted under this~~
2 paragraph shall provide a person who is prosecuted under it with the defenses that
3 the person has under s. 961.436 to prosecutions under s. 961.41 (1) (h), (1m) (h), or
4 (3g) (e).

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

7 History: 1995 a. 201 ss. 146 to 149, 154 to 156, 159, 160, 162, 175 to 177, 179, 180, 183, 191, 193, 210 to 213, 222, 226 to 228, 274, 283, 366, 403, 404; 1995 a. 448 s. 59; 1997 a. 27, 35; 2001 a. 16; 2003 a. 193; 2005 a. 90.

8 Insert 5-16

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

10 59.54 (25m) DRUG PARAPHERNALIA. The board may enact an ordinance to
11 prohibit conduct that is the same as that prohibited by s. 961.573 (1) or (2), 961.574
12 (1) or (2), or 961.575 (1) or (2) and provide a forfeiture for violation of the ordinance.

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

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

20 History: 1995 a. 201 ss. 146 to 149, 154 to 156, 159, 160, 162, 175 to 177, 179, 180, 183, 191, 193, 210 to 213, 222, 226 to 228, 274, 283, 366, 403, 404; 1995 a. 448 s. 59; 1997 a. 27, 35; 2001 a. 16; 2003 a. 193; 2005 a. 90.

21 Insert 6-13

22 SECTION 3. 66.0107 (1) (bp) of the statutes is amended to read:

Paragraph - 3 -

1 66.0107 (1) (bp) Enact and enforce an ordinance to prohibit conduct that is the
 2 same as that prohibited by s. 961.573 (1) or (2), 961.574 (1) or (2), or 961.575 (1) or
 3 (2) and provide a forfeiture for violation of the ordinance. Any ordinance enacted
 4 under this subsection shall provide a person prosecuted under it with the defenses
 5 that the person has under s. 961.5755 to prosecutions under s. 961.573 (1), 961.574
 6 (1), or 961.575 (1). A person may not be prosecuted under an ordinance enacted under
 7 this subsection if, under s. 968.072 (3), the person would not be subject to prosecution
 8 under s. 961.573 (1), 961.574 (1), or 961.575 (1).

History: 1973 c. 198; 1979 c. 131 s. 4; 1987 a. 332 s. 64; 1987 a. 416; 1989 a. 121, 276; 1993 a. 246; 1995 a. 353, 448; 1999 a. 150 ss. 151, 153; Stats. 1999 s. 66.0107; 2005 a. 116, ss. 2 to 4.

9
10 Insert 11-24

11 **SECTION 4.** 349.02 (2) (b) 4. of the statutes is amended to read:
 12 349.02 (2) (b) 4. Local ordinances enacted under s. 59.54 (25) (a) or (25m) or
 13 66.0107 (1) (bm).

History: 1971 c. 277; 1987 a. 34, 399; 1991 a. 39, 269; 1993 a. 246; 1995 a. 113, 201, 448; 1999 a. 90; 1999 a. 150 s. 672; 2003 a. 193; 2005 a. 116.

14
15 Insert 14-4

16 **SECTION 5.** 961.01 (20ht) of the statutes is created to read:
 17 961.01 (20ht) "Registry identification card" has the meaning given in s. 146.45
 18 (1) (g).

19
20 Insert 20-6

21 (e) "Registry identification card" has the meaning given in s. 146.45 (1) (g).

22
23 Insert 25-17

24 **SECTION 6.** 968.20 (3) (a) and (b) of the statutes are amended to read:

1 968.20 (3) (a) First class cities shall dispose of dangerous weapons or
2 ammunition seized 12 months after taking possession of them if the owner,
3 authorized under sub. (1m), has not requested their return and if the dangerous
4 weapon or ammunition is not required for evidence or use in further investigation
5 and has not been disposed of pursuant to a court order at the completion of a criminal
6 action or proceeding. Disposition procedures shall be established by ordinance or
7 resolution and may include provisions authorizing an attempt to return to the
8 rightful owner any dangerous weapons or ammunition which appear to be stolen or
9 are reported stolen. If enacted, any such provision shall include a presumption that
10 if the dangerous weapons or ammunition appear to be or are reported stolen an
11 attempt will be made to return the dangerous weapons or ammunition to the
12 authorized rightful owner. If the return of a seized dangerous weapon other than a
13 firearm is not requested by its rightful owner under sub. ~~(1)~~ [✓] (1f) and is not returned
14 by the officer under sub. (2), the city shall safely dispose of the dangerous weapon or,
15 if the dangerous weapon is a motor vehicle, as defined in s. 340.01 (35), sell the motor
16 vehicle following the procedure under s. 973.075 (4) or authorize a law enforcement
17 agency to retain and use the motor vehicle. If the return of a seized firearm or
18 ammunition is not requested by its authorized rightful owner under sub. ~~(1)~~ [✓] (1f) and
19 is not returned by the officer under sub. (2), the seized firearm or ammunition shall
20 be shipped to and become property of the state crime laboratories. A person
21 designated by the department of justice may destroy any material for which the
22 laboratory has no use or arrange for the exchange of material with other public
23 agencies. In lieu of destruction, shoulder weapons for which the laboratories have

1 no use shall be turned over to the department of natural resources for sale and
2 distribution of proceeds under s. 29.934 or for use under s. 29.938.

History: 1977 c. 260; 1977 c. 449 s. 497; 1979 c. 221; 1981 c. 160; 1983 a. 189 s. 329 (3); 1983 a. 278; 1985 a. 29 ss. 2447 to 2449, 3200 (35); 1987 a. 203; 1987 a. 332 s. 64; 1993 a. 90, 196; 1996 a. 157; 1997 a. 192, 248; 1999 a. 185; 2001 a. 16; 2005 a. 387, 394.

3 (b) Except as provided in par. (a) or sub. (1m) or (4), a city, village, town or
4 county or other custodian of a seized dangerous weapon or ammunition, if the
5 dangerous weapon or ammunition is not required for evidence or use in further
6 investigation and has not been disposed of pursuant to a court order at the
7 completion of a criminal action or proceeding, shall make reasonable efforts to notify
8 all persons who have or may have an authorized rightful interest in the dangerous
9 weapon or ammunition of the application requirements under sub. (1) (1f). If, within
10 30 days after the notice, an application under sub. (1) (1f) is not made and the seized
11 dangerous weapon or ammunition is not returned by the officer under sub. (2), the
12 city, village, town or county or other custodian may retain the dangerous weapon or
13 ammunition and authorize its use by a law enforcement agency, except that a
14 dangerous weapon used in the commission of a homicide or a handgun, as defined
15 in s. 175.35 (1) (b), may not be retained. If a dangerous weapon other than a firearm
16 is not so retained, the city, village, town or county or other custodian shall safely
17 dispose of the dangerous weapon or, if the dangerous weapon is a motor vehicle, as
18 defined in s. 340.01 (35), sell the motor vehicle following the procedure under s.
19 973.075 (4). If a firearm or ammunition is not so retained, the city, village, town or
20 county or other custodian shall ship it to the state crime laboratories and it is then
21 the property of the laboratories. A person designated by the department of justice
22 may destroy any material for which the laboratories have no use or arrange for the
23 exchange of material with other public agencies. In lieu of destruction, shoulder
24 weapons for which the laboratory has no use shall be turned over to the department

1 of natural resources for sale and distribution of proceeds under s. 29.934 or for use
2 under s. 29.938.

History: 1977 c. 260; 1977 c. 449 s. 497; 1979 c. 221; 1981 c. 160; 1983 a. 189 s. 329 (3); 1983 a. 278; 1985 a. 29 ss. 2447 to 2449, 3200 (35); 1987 a. 203; 1987 a. 332 s. 64; 1993 a. 90, 196; 1996 a. 157; 1997 a. 192, 248; 1999 a. 185; 2001 a. 16; 2005 a. 387, 394.

Duerst, Christina

From: Wavrunek, Glenn
Sent: Tuesday, September 18, 2007 3:28 PM
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Subject: Draft Review: LRB 07-2455/1 Topic: Medical use of marijuana

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