

State of Misconsin 2009 - 2010 LEGISLATURE

LRB-4126/1 CMH:bjk:md

## **2009 SENATE BILL 551**

February 22, 2010 – Introduced by Senator HANSEN, cosponsored by Representatives HRAYCHUCK, TURNER, BERCEAU and TOWNSEND. Referred to Committee on Judiciary, Corrections, Insurance, Campaign Finance Reform, and Housing.

AN ACT *to renumber* 961.455 (1); *to renumber and amend* 961.455 (2), 961.455 (3) and 961.455 (4); *to amend* 939.30 (1), 961.455 (title) and 973.01 (2) (c) 2. a.; and *to create* 948.015 (7r) and 961.455 (2m) of the statutes; **relating to:** distribution or delivery of a controlled substance or controlled substance analog in the presence of a child and providing a penalty.

## Analysis by the Legislative Reference Bureau

Under current law, a person who distributes or delivers a controlled substance or controlled substance analog is guilty of a felony, the penalties for which vary depending on the controlled substance or controlled substance analog. Under this bill, the maximum term of imprisonment for distributing or delivering a controlled substance or controlled substance analog is increased by five years if the offense is done in the presence of a child who is no more than ten years old.

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. **SENATE BILL 551** 

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

1	<b>SECTION 1.</b> 939.30 (1) of the statutes is amended to read:
2	939.30 (1) Except as provided in sub. (2) and s. 961.455 (1m), whoever, with
3	intent that a felony be committed, advises another to commit that crime under
4	circumstances that indicate unequivocally that he or she has the intent is guilty of
5	a Class H felony.
6	<b>SECTION 2.</b> 948.015 (7r) of the statutes is created to read:
7	948.015 (7r) Section 961.455 (2m) relating to the distribution or delivery of a
8	controlled substance or controlled substance analog in the presence of a child who
9	has not attained the age of 10 years.
10	<b>SECTION 3.</b> 961.455 (title) of the statutes is amended to read:
11	961.455 (title) Using a child for Children and illegal drug distribution,
12	<u>delivery</u> , or manufacturing <del>purposes</del> .
12	<u>delivery,</u> or manufacturing <del>purposes</del> .
12 13	<b>delivery, or manufacturing <del>purposes</del>.</b> <b>SECTION 4.</b> 961.455 (1) of the statutes is renumbered 961.455 (1m) (a).
12 13 14	<ul> <li>delivery, or manufacturing purposes.</li> <li>SECTION 4. 961.455 (1) of the statutes is renumbered 961.455 (1m) (a).</li> <li>SECTION 5. 961.455 (2) of the statutes is renumbered 961.455 (1m) (b) and</li> </ul>
12 13 14 15	<ul> <li>delivery, or manufacturing purposes.</li> <li>SECTION 4. 961.455 (1) of the statutes is renumbered 961.455 (1m) (a).</li> <li>SECTION 5. 961.455 (2) of the statutes is renumbered 961.455 (1m) (b) and amended to read:</li> </ul>
12 13 14 15 16	<ul> <li>delivery, or manufacturing purposes.</li> <li>SECTION 4. 961.455 (1) of the statutes is renumbered 961.455 (1m) (a).</li> <li>SECTION 5. 961.455 (2) of the statutes is renumbered 961.455 (1m) (b) and amended to read:</li> <li>961.455 (1m) (b) The knowledge requirement under sub. (1) par. (a) does not</li> </ul>
12 13 14 15 16 17	<ul> <li>delivery, or manufacturing purposes.</li> <li>SECTION 4. 961.455 (1) of the statutes is renumbered 961.455 (1m) (a).</li> <li>SECTION 5. 961.455 (2) of the statutes is renumbered 961.455 (1m) (b) and amended to read:</li> <li>961.455 (1m) (b) The knowledge requirement under sub. (1) par. (a) does not require proof of knowledge of the age of the child. It is not a defense to a prosecution</li> </ul>
12 13 14 15 16 17 18	<ul> <li>delivery, or manufacturing purposes.</li> <li>SECTION 4. 961.455 (1) of the statutes is renumbered 961.455 (1m) (a).</li> <li>SECTION 5. 961.455 (2) of the statutes is renumbered 961.455 (1m) (b) and amended to read:</li> <li>961.455 (1m) (b) The knowledge requirement under sub. (1) par. (a) does not require proof of knowledge of the age of the child. It is not a defense to a prosecution under this section that the actor mistakenly believed that the person solicited, hired,</li> </ul>

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1	961.455 (2m) If a person who is 18 years of age or older violates s. 961.41 (1)
2	by delivering or distributing while in the presence of a child who is 10 years of age
3	or younger the maximum term of imprisonment for that crime is increased by $5$
4	years.
5	<b>SECTION 7.</b> 961.455 (3) of the statutes is renumbered 961.455 (1m) (c) and
6	amended to read:
7	961.455 <b>(1m)</b> (c) Solicitation under <del>sub. (1)</del> <u>par. (a)</u> occurs in the manner
8	described under s. 939.30, but the penalties under <del>sub. (1) <u>par. (a)</u> apply instead of</del>
9	the penalties under s. 939.30.
10	<b>SECTION 8.</b> 961.455 (4) of the statutes is renumbered 961.455 (1m) (d) and
11	amended to read:
12	961.455 (1m) (d) If the conduct described under sub. (1) par. (a) results in a
13	violation under s. 961.41 (1), the actor is subject to prosecution and conviction under
14	s. 961.41 (1) or this section or both.
15	SECTION 9. 973.01 (2) (c) 2. a. of the statutes is amended to read:
16	973.01 (2) (c) 2. a. Sections 939.621, 939.632, 939.645, 946.42 (4), <u>961.455 (2m).</u>
17	961.46, and 961.49.
18	(END)