

2019 DRAFTING REQUEST

Bill

For: **Administration-Budget** Drafter: **chanaman**
 By: **Potts** Secondary Drafters:
 Date: **2/13/2019** May Contact:

Same as LRB:

Submit via email: **YES**
 Requester's email:
 Carbon copy (CC) to: **doasbostatlanguage@wisconsin.gov**

Pre Topic:

DOA:.....Potts, BB0355 -

Topic:

Decriminalize less than 25 grams of marijuana

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	chanaman 2/13/2019	ccarmich 2/15/2019			
/P1	chanaman 2/17/2019	ccarmich 2/18/2019	dwalker 2/15/2019		State S&L
/P2			mbarman 2/18/2019		State S&L
/P3	chanaman 2/21/2019	csicilia 2/21/2019	mbarman 2/21/2019		State S&L

FE Sent For:

<END>

Hanaman, Cathlene

From: Potts, Andrew - DOA
Sent: Tuesday, February 12, 2019 5:44 PM
To: Hanaman, Cathlene
Cc: Potts, Andrew - DOA; Potts, Andrew - DOA
Subject: Statutory Language Drafting Request - 2019-21

Biennial Budget: 2019-21

Topic: Decriminalization of Marijuana

Tracking Code: BB0355

SBO Team: AEJ

SBO Analyst: Potts, Andrew
Phone: 608-266-2081
E-mail: andrew.potts@wisconsin.gov

Agency Acronym: 625

Agency Number: 625

Priority: High

Intent:

Please draft 2015 AB 246 (LRB-1353/3) as a budget draft. Also, include a provision that, notwithstanding 973.015, allows a person convicted possession of less than 25 grams of marijuana to apply for expungement of his or her conviction.

Attachments: False

Please send completed drafts to SBOSatlanguage@spmail.enterprise.wistate.us



DOA:.....Potts, BB0355 - Decriminalize less than 25 grams of marijuana

FOR 2019-2021 BUDGET -- NOT READY FOR INTRODUCTION

5/14
X-ref
skv

1

AN ACT ^φ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

CRIMES

1. Decriminalizing 25 grams or less of marijuana.

Current law prohibits a person from possessing or attempting to possess; possessing with the intent to manufacture, distribute, or deliver; and manufacturing, distributing, or delivering marijuana. The penalties vary based on the amount of marijuana or plants involved or the number of previous controlled-substance convictions the person has. Current law also allows local governments to enact ordinances prohibiting the possession of marijuana.

This bill eliminates 1) the penalty for possession of marijuana if the amount of marijuana involved is no more than 25 grams; 2) the penalty for manufacturing or for possessing with the intent to manufacture, distribute, or deliver if the amount of marijuana involved is no more than 25 grams or the number of plants involved is no more than two; and 3) the penalty for distributing or delivering marijuana if the amount of marijuana involved is no more than 25 grams or the number of plants involved is no more than two. The bill retains the current law penalty for distributing or delivering any amount of marijuana to a minor who is no more than 17 years of age by a person who is at least three years older than the minor. This bill limits local governments to enacting ordinances prohibiting only the possession of more than 25 grams of marijuana.

The bill also prohibits establishing probable cause that a person is violating the prohibition against possessing more than 25 grams of marijuana by an odor of

marijuana or by the possession of not more than 25 grams of marijuana. Current law requires that, when determining the weight of controlled substances, the weight includes the weight of the controlled substance together with any compound, mixture, or other substance mixed or combined with the controlled substance. Under this bill, when determining the amount of tetrahydrocannabinols, only the weight of the marijuana may be considered. Finally, this bill creates a process for expunging or dismissing convictions involving less than 25 grams of marijuana that occurred before this bill takes effect.

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.** 59.54 (25) (a) (intro.) of the statutes is amended to read:

2 59.54 (25) (a) (intro.) The board may enact and enforce an ordinance to prohibit
3 the possession of more than 25 grams of marijuana, as defined in s. 961.01 (14),
4 subject to the exceptions in s. 961.41 (3g) (intro.), and provide a forfeiture for a
5 violation of the ordinance; except that if a complaint is issued regarding an allegation
6 of alleging possession of more than 25 grams of marijuana, or possession of any
7 amount of marijuana following a conviction in this state for possession of more than
8 25 grams of marijuana, the subject of the complaint may not be prosecuted under this
9 subsection for the same action that is the subject of the complaint unless all of the
10 following occur:

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; 2009 a. 42; 2011 a. 31, 35; 2013 a. 226, 293, 351; 2015 a. 55, 170, 195; 2017 a. 366.

11 **SECTION 2.** 66.0107 (1) (bm) of the statutes is amended to read:

12 66.0107 (1) (bm) Enact and enforce an ordinance to prohibit the possession of
13 more than 25 grams of marijuana, as defined in s. 961.01 (14), subject to the
14 exceptions in s. 961.41 (3g) (intro.), and provide a forfeiture for a violation of the
15 ordinance; except that if a complaint is issued regarding an allegation of alleging
16 possession of more than 25 grams of marijuana, or possession of any amount of

1 marijuana following a conviction in this state for possession of more than 25 grams
2 of marijuana, the subject of the complaint may not be prosecuted under this
3 paragraph for the same action that is the subject of the complaint unless the charges
4 are dismissed or the district attorney declines to prosecute the case.

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; 2011 a. 31; 2013 a. 293, 351; 2015 a. 195.

5 **SECTION 3.** 961.41 (1) (h) 1. of the statutes is renumbered 961.41 (1) (h) 1r. and
6 amended to read:

7 961.41 (1) (h) 1r. ~~Two hundred~~ More than 25 grams but not more than 200
8 grams or less, or more than 2 but not more than 4 or fewer plants containing
9 tetrahydrocannabinols, the person is guilty of a Class I felony.

History: 1971 c. 219, 307; 1973 c. 12; 1981 c. 90, 314; 1985 a. 328; 1987 a. 339, 403; 1989 a. 31, 56, 121; 1991 a. 39; 138; 1993 a. 98, 118, 437, 482; 1995 a. 201; 1995 a. 448 ss. 243 to 266, 487 to 490; Stats. 1995 s. 961.41; 1997 a. 220, 283; 1999 a. 21, 32, 48, 57; 2001 a. 16, 109; 2003 a. 33, 49, 139, 320, 325, 327; 2005 a. 14, 25, 52, 262; 2007 a. 20; 2009 a. 28, 180; 2011 a. 31; 2013 a. 20, 166, 196, 351; 2015 a. 195 s. 83.

10 **SECTION 4.** 961.41 (1) (h) 1g. of the statutes is created to read:

11 961.41 (1) (h) 1g. Twenty-five grams or less, or 2 or fewer plants containing
12 tetrahydrocannabinols, the person is guilty of a Class I felony if the person is at least
13 17 years of age and distributes or delivers to a person who is no more than 17 years
14 of age and who is at least 3 years younger than the person distributing or delivering.

15 **SECTION 5.** 961.41 (1m) (h) 1. of the statutes is amended to read:

16 961.41 (1m) (h) 1. ~~Two hundred~~ More than 25 grams but not more than 200
17 grams or less, or more than 2 but not more than 4 or fewer plants containing
18 tetrahydrocannabinols, the person is guilty of a Class I felony.

History: 1971 c. 219, 307; 1973 c. 12; 1981 c. 90, 314; 1985 a. 328; 1987 a. 339, 403; 1989 a. 31, 56, 121; 1991 a. 39; 138; 1993 a. 98, 118, 437, 482; 1995 a. 201; 1995 a. 448 ss. 243 to 266, 487 to 490; Stats. 1995 s. 961.41; 1997 a. 220, 283; 1999 a. 21, 32, 48, 57; 2001 a. 16, 109; 2003 a. 33, 49, 139, 320, 325, 327; 2005 a. 14, 25, 52, 262; 2007 a. 20; 2009 a. 28, 180; 2011 a. 31; 2013 a. 20, 166, 196, 351; 2015 a. 195 s. 83.

19 **SECTION 6.** 961.41 (1q) (title) of the statutes is repealed and recreated to read:

20 961.41 (1q) (title) TETRAHYDROCANNABINOLS PENALTY AND PROBABLE CAUSE.

21 **SECTION 7.** 961.41 (1q) of the statutes is renumbered 961.41 (1q) (a).

22 **SECTION 8.** 961.41 (1q) (b) and (c) of the statutes are created to read:

1 961.41 (1q) (b) The following are not sufficient to establish probable cause that
2 a violation of sub. (1) (h) has occurred:

- 3 1. Odor of marijuana.
- 4 2. The possession of not more than 25 grams of marijuana.

5 (c) No individual on parole, probation, extended supervision, supervised
6 release, or any other release may have the release revoked for possessing not more
7 than 25 grams of marijuana.

8 **SECTION 9.** 961.41 (1r) of the statutes is amended to read:

9 961.41 (1r) DETERMINING WEIGHT OF SUBSTANCE. In determining amounts under
10 s. 961.49 (2) (b), 1999 stats., and subs. (1) and (1m), an amount includes the weight
11 of cocaine, cocaine base, heroin, phencyclidine, lysergic acid diethylamide, psilocin,
12 psilocybin, amphetamine, methamphetamine, tetrahydrocannabinols, synthetic
13 cannabinoids, or substituted cathinones, or any controlled substance analog of any
14 of these substances together with any compound, mixture, diluent, plant material
15 or other substance mixed or combined with the controlled substance or controlled
16 substance analog. In addition, in determining amounts under subs. (1) (h) and (1m)
17 (h), and (3g) (e), the amount of tetrahydrocannabinols ~~means anything included~~
18 under s. 961.14 (4) (t) and includes means the weight of any only marijuana.

History 1971 c. 219, 307; 1973 c. 12; 1981 c. 90, 314; 1985 a. 328; 1987 a. 339, 403; 1989 a. 31, 56, 121; 1991 a. 39; 138; 1993 a. 98, 118, 437, 482; 1995 a. 201; 1995
a. 448-ss. 243 to 266, 487 to 490; Stats. 1995 s. 961.41; 1997 a. 220, 283; 1999 a. 21, 32, 48, 57; 2001 a. 16, 109; 2003 a. 33, 49, 139, 320, 325, 327; 2005 a. 14, 25, 52, 262;
2007 a. 20; 2009 a. 28, 180; 2011 a. 31; 2013 a. 20, 166, 196, 351; 2015 a. 195 s. 83.

19 **SECTION 10.** 961.41 (3g) (e) of the statutes is amended to read:

20 961.41 (3g) (e) *Tetrahydrocannabinols*. If a person possesses or attempts to
21 possess more than 25 grams of tetrahydrocannabinols included under s. 961.14 (4)
22 (t), or ~~of~~ a controlled substance analog of tetrahydrocannabinols, the person may be
23 fined not more than \$1,000 or imprisoned for not more than 6 months or both upon

1 a first conviction and is guilty of a Class I felony for a 2nd or subsequent offense. For
2 purposes of this paragraph, an offense is considered a 2nd or subsequent offense if,
3 prior to the offender's conviction of the offense, the offender has at any time been
4 convicted of any felony or misdemeanor under this chapter or under any statute of
5 the United States or of any state relating to controlled substances, controlled
6 substance analogs, narcotic drugs, marijuana, or depressant, stimulant, or
7 hallucinogenic drugs.

History: 1971 c. 219, 307; 1973 c. 12; 1981 c. 90, 314; 1985 a. 328; 1987 a. 339, 403; 1989 a. 31, 56, 121; 1991 a. 39; 138; 1993 a. 98, 118, 437, 482; 1995 a. 201; 1995 a. 448 ss. 243 to 266, 487 to 490; Stats. 1995 s. 961.41; 1997 a. 220, 283; 1999 a. 21, 32, 48, 57; 2001 a. 16, 109; 2003 a. 33, 49, 139, 320, 325, 327; 2005 a. 14, 25, 52, 262; 2007 a. 20; 2009 a. 28, 180; 2011 a. 31; 2013 a. 20, 166, 196, 351; 2015 a. 195 s. 83.

8 **SECTION 11.** 961.46 of the statutes is amended to read:

9 **961.46 Distribution to persons under age 18.** If a person 17 years of age
10 or over violates s. 961.41 (1), except s. 961.41 (1) (h) 1g., by distributing or delivering
11 a controlled substance or a controlled substance analog to a person 17 years of age
12 or under who is at least 3 years his or her junior, the applicable maximum term of
13 imprisonment prescribed under s. 961.41 (1) for the offense may be increased by not
14 more than 5 years.

History: 1971 c. 219; 1985 a. 328; 1987 a. 339; 1989 a. 121; 1993 a. 98, 118, 490; 1995 a. 27; 1995 a. 448 ss. 276 to 279; Stats. 1995 s. 961.46; 1999 a. 48, 57; 2001 a. 109.

15 **SECTION 12.** 973.016 of the statutes is created to read:

16 **973.016 Special disposition for marijuana-related crimes. (1)**

17 **DISMISSAL OF CONVICTION FOR PERSONS SERVING A SENTENCE OR PROBATION.** (a) A person
18 serving a sentence or on probation may request dismissal as provided under par. (b)
19 if one of the following applies:

20 1. The sentence or probation period was imposed for a conviction under s.
21 961.41 (1) (h), 2017 stats., or s. 961.41 (1m) (h), 2017 stats., and the amount of
22 marijuana involved was 25 grams or less, or 2 or fewer plants.

1 2. The sentence or probation period was imposed for a conviction under s.
2 961.41 (3g) (e), 2017 stats., and the amount of marijuana involved was 25 grams or
3 less.

4 (b) A person to whom par. (a) applies shall file a petition with the sentencing
5 court to request dismissal of the conviction. If the court receiving a petition under
6 this paragraph determines that par. (a) applies, the court may grant the petition
7 without a hearing or may schedule a hearing to consider the petition. If a hearing
8 is scheduled, unless the court determines that the dismissal of the conviction
9 presents an unreasonable risk of danger to public safety, the court shall grant the
10 petition.

11 **(2) EXPUNGING AN OFFENSE FOR PERSONS WHO COMPLETED A SENTENCE OR**
12 **PROBATION.** (a) A person who has completed his or her sentence or period of probation
13 may request under par. (b) expungement of the conviction if one of the following
14 applies:

15 1. The sentence or probation period was imposed for a conviction under s.
16 961.41 (1) (h), 2017 stats., or s. 961.41 (1m) (h), 2017 stats., and the amount of
17 marijuana involved was 25 grams or less, or 2 or fewer plants.

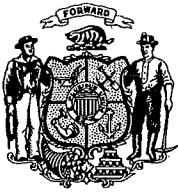
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19 961.41 (3g) (e), 2017 stats., and the amount of marijuana involved was 25 grams or
20 less.

21 (b) A person to whom par. (a) applies shall file a petition with the sentencing
22 court to request expungement of the conviction. If the court receiving a petition
23 under ^{this paragraph} ~~subd. 1~~ determines that par. (a) applies, the court may grant the petition
24 without a hearing or may schedule a hearing to consider the petition. If a hearing
25 is scheduled, unless the court determines that expungement of the conviction

1 presents an unreasonable risk of danger to public safety, the court shall grant the
2 petition.

3 (3) CRIMES DISMISSED OR EXPUNGED UNDER THIS SECTION. A conviction that has
4 been expunged or dismissed under this section is not considered a conviction for any
5 purpose under state or federal law, including for purposes of s. 941.29[✓] or 18 USC 921[✓].

6 (END)



State of Wisconsin
2019 - 2020 LEGISLATURE

PL
LRB-1996/P1
CMH:cdc

DOA:.....Potts, BB0355 - Decriminalize less than 25 grams of marijuana
FOR 2019-2021 BUDGET -- NOT READY FOR INTRODUCTION

1 **AN ACT ...; relating to:** the budget.

Analysis by the Legislative Reference Bureau
CRIMES

1. Decriminalizing 25 grams or less of marijuana

Current law prohibits a person from possessing or attempting to possess; possessing with the intent to manufacture, distribute, or deliver; and manufacturing, distributing, or delivering marijuana. The penalties vary based on the amount of marijuana or plants involved or the number of previous controlled-substance convictions the person has. Current law also allows local governments to enact ordinances prohibiting the possession of marijuana.

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The bill also prohibits establishing probable cause that a person is violating the prohibition against possessing more than 25 grams of marijuana by an odor of

marijuana or by the possession of not more than 25 grams of marijuana. Current law requires that, when determining the weight of controlled substances, the weight includes the weight of the controlled substance together with any compound, mixture, or other substance mixed or combined with the controlled substance. Under the bill, when determining the amount of tetrahydrocannabinols, only the weight of the marijuana may be considered. Finally, the bill creates a process for expunging or dismissing convictions involving less than 25 grams of marijuana that occurred before this bill takes effect.

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

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13 of age and who is at least 3 years younger than the person distributing or delivering.

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8 psilocybin, amphetamine, methamphetamine, ~~tetrahydrocannabinols~~, synthetic
9 cannabinoids, or substituted cathinones, or any controlled substance analog of any
10 of these substances together with any compound, mixture, diluent, plant material
11 or other substance mixed or combined with the controlled substance or controlled
12 substance analog. In ~~addition, in~~ determining amounts under subs. (1) (h) ~~and~~, (1m)
13 (h), and (3g) (e), the amount of tetrahydrocannabinols ~~means anything included~~
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15 **SECTION 10.** 961.41 (3g) (e) of the statutes is amended to read:

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17 possess more than 25 grams of tetrahydrocannabinols included under s. 961.14 (4)
18 (t), or a controlled substance analog of tetrahydrocannabinols, the person may be
19 fined not more than \$1,000 or imprisoned for not more than 6 months or both upon
20 a first conviction and is guilty of a Class I felony for a 2nd or subsequent offense. For
21 purposes of this paragraph, an offense is considered a 2nd or subsequent offense if,
22 prior to the offender's conviction of the offense, the offender has at any time been
23 convicted of any felony or misdemeanor under this chapter or under any statute of
24 the United States or of any state relating to controlled substances, controlled

1 substance analogs, narcotic drugs, marijuana, or depressant, stimulant, or
2 hallucinogenic drugs.

3 SECTION 11. 961.46 of the statutes is amended to read:

4 **961.46 Distribution to persons under age 18.** If a person 17 years of age
5 or over violates s. 961.41 (1), except s. 961.41 (1) (h) 1g., by distributing or delivering
6 a controlled substance or a controlled substance analog to a person 17 years of age
7 or under who is at least 3 years his or her junior, the applicable maximum term of
8 imprisonment prescribed under s. 961.41 (1) for the offense may be increased by not
9 more than 5 years.

10 SECTION 12. 973.016 of the statutes is created to read:

11 **973.016 Special disposition for marijuana-related crimes. (1)**

12 DISMISSAL OF CONVICTION FOR PERSONS SERVING A SENTENCE OR PROBATION. (a) A person
13 serving a sentence or on probation may request dismissal as provided under par. (b)
14 if one of the following applies:

15 1. The sentence or probation period was imposed for a conviction under s.
16 961.41 (1) (h), 2017 stats., or s. 961.41 (1m) (h), 2017 stats., and the amount of
17 marijuana involved was 25 grams or less, or 2 or fewer plants.

18 2. The sentence or probation period was imposed for a conviction under s.
19 961.41 (3g) (e), 2017 stats., and the amount of marijuana involved was 25 grams or
20 less.

21 (b) A person to whom par. (a) applies shall file a petition with the sentencing
22 court to request dismissal of the conviction. If the court receiving a petition under
23 this paragraph determines that par. (a) applies, the court may grant the petition
24 without a hearing or may schedule a hearing to consider the petition. If a hearing
25 is scheduled, unless the court determines that the dismissal of the conviction

*person cannot prove the amount of marijuana
involved was 25 grams or less or the*

*person proves to the court by
a preponderance
of
the
evidence
that
the*

1 presents an unreasonable risk of danger to public safety, the court shall grant the
2 petition.

3 (2) EXPUNGING AN OFFENSE FOR PERSONS WHO COMPLETED A SENTENCE OR
4 PROBATION. (a) A person who has completed his or her sentence or period of probation
5 may request under par. (b) expungement of the conviction if one of the following
6 applies:

the person proves to the court by a preponderance of the evidence that

7 1. The sentence or probation period was imposed for a conviction under s.
8 961.41 (1) (h), 2017 stats., or s. 961.41 (1m) (h), 2017 stats., and the amount of
9 marijuana involved was 25 grams or less, or 2 or fewer plants.

10 2. The sentence or probation period was imposed for a conviction under s.
11 961.41 (3g) (e), 2017 stats., and the amount of marijuana involved was 25 grams or
12 less.

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16 petition without a hearing or may schedule a hearing to consider the petition. If a
17 hearing is scheduled, unless the court determines that expungement of the
18 conviction presents an unreasonable risk of danger to public safety, the court shall
19 grant the petition.

20 (3) CRIMES DISMISSED OR EXPUNGED UNDER THIS SECTION. A conviction that has
21 been expunged or dismissed under this section is not considered a conviction for any
22 purpose under state or federal law, including for purposes of s. 941.29 or 18 USC 921.

23 (END)

the person cannot prove the amount of marijuana involved was 25 grams or less or



State of Wisconsin
2019 - 2020 LEGISLATURE

LRB-1996/P2

CMH:cde

p3

D-N

gjs

DOA:.....Potts, BB0355 - Decriminalize less than 25 grams of marijuana

FOR 2019-2021 BUDGET -- NOT READY FOR INTRODUCTION

1 AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

CRIMES

1. Decriminalizing 25 grams or less of marijuana

Current law prohibits a person from possessing or attempting to possess; possessing with the intent to manufacture, distribute, or deliver; and manufacturing, distributing, or delivering marijuana. The penalties vary based on the amount of marijuana or plants involved or the number of previous controlled-substance convictions the person has. Current law also allows local governments to enact ordinances prohibiting the possession of marijuana.

This bill eliminates 1) the penalty for possession of marijuana if the amount of marijuana involved is no more than 25 grams; 2) the penalty for manufacturing or for possessing with the intent to manufacture, distribute, or deliver if the amount of marijuana involved is no more than 25 grams or the number of plants involved is no more than two; and 3) the penalty for distributing or delivering marijuana if the amount of marijuana involved is no more than 25 grams or the number of plants involved is no more than two. The bill retains the current law penalty for distributing or delivering any amount of marijuana to a minor who is no more than 17 years of age by a person who is at least three years older than the minor. The bill limits local governments to enacting ordinances prohibiting only the possession of more than 25 grams of marijuana.

The bill also prohibits establishing probable cause that a person is violating the prohibition against possessing more than 25 grams of marijuana by an odor of

marijuana or by the possession of not more than 25 grams of marijuana. Current law requires that, when determining the weight of controlled substances, the weight includes the weight of the controlled substance together with any compound, mixture, or other substance mixed or combined with the controlled substance. Under the bill, when determining the amount of tetrahydrocannabinols, only the weight of the marijuana may be considered. Finally, the bill creates a process for expunging or dismissing convictions involving less than 25 grams of marijuana that occurred before this bill takes effect.

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.** 59.54 (25) (a) (intro.) of the statutes is amended to read:

2 59.54 (25) (a) (intro.) The board may enact and enforce an ordinance to prohibit
3 the possession of more than 25 grams of marijuana, as defined in s. 961.01 (14),
4 subject to the exceptions in s. 961.41 (3g) (intro.), and provide a forfeiture for a
5 violation of the ordinance; except that if a complaint is issued regarding an allegation
6 of alleging possession of more than 25 grams of ~~marijuana, or possession of any~~
7 amount of marijuana following a conviction in this state for possession of more than
8 25 grams of marijuana, the subject of the complaint may not be prosecuted under this
9 subsection for the same action that is the subject of the complaint unless all of the
10 following occur:

11 **SECTION 2.** 66.0107 (1) (bm) of the statutes is amended to read:

12 66.0107 (1) (bm) Enact and enforce an ordinance to prohibit the possession of
13 more than 25 grams of marijuana, as defined in s. 961.01 (14), subject to the
14 exceptions in s. 961.41 (3g) (intro.), and provide a forfeiture for a violation of the
15 ordinance; except that if a complaint is issued regarding an allegation of alleging
16 possession of more than 25 grams of ~~marijuana, or possession of any amount of~~
17 marijuana following a conviction in this state for possession of more than 25 grams

1 ~~of marijuana, the subject of the complaint may not be prosecuted under this~~
2 ~~paragraph for the same action that is the subject of the complaint unless the charges~~
3 ~~are dismissed or the district attorney declines to prosecute the case.~~

4 **SECTION 3.** 961.41 (1) (h) 1. of the statutes is renumbered 961.41 (1) (h) 1r. and
5 amended to read:

6 961.41 (1) (h) 1r. ~~Two hundred~~ More than 25 grams but not more than 200
7 ~~grams or less, or more than 2 but not more than 4 or fewer~~ plants containing
8 tetrahydrocannabinols, the person is guilty of a Class I felony.

9 **SECTION 4.** 961.41 (1) (h) 1g. of the statutes is created to read:

10 961.41 (1) (h) 1g. Twenty-five grams or less, or 2 or fewer plants containing
11 tetrahydrocannabinols, the person is guilty of a Class I felony if the person is at least
12 17 years of age and distributes or delivers to a person who is no more than 17 years
13 of age and who is at least 3 years younger than the person distributing or delivering.

14 **SECTION 5.** 961.41 (1m) (h) 1. of the statutes is amended to read:

15 961.41 (1m) (h) 1. ~~Two hundred~~ More than 25 grams but not more than 200
16 ~~grams or less, or more than 2 but not more than 4 or fewer~~ plants containing
17 tetrahydrocannabinols, the person is guilty of a Class I felony.

18 **SECTION 6.** 961.41 (1q) (title) of the statutes is repealed and recreated to read:

19 961.41 (1q) (title) TETRAHYDROCANNABINOLS PENALTY AND PROBABLE CAUSE.

20 **SECTION 7.** 961.41 (1q) of the statutes is renumbered 961.41 (1q) (a).

21 **SECTION 8.** 961.41 (1q) (b) and (c) of the statutes are created to read:

22 961.41 (1q) (b) The following are not sufficient to establish probable cause that
23 a violation of sub. (1) (h) has occurred:

24 1. Odor of marijuana.

25 2. The possession of not more than 25 grams of marijuana.

1 (c) No individual on parole, probation, extended supervision, supervised
2 release, or any other release may have the release revoked for possessing not more
3 than 25 grams of marijuana.

4 **SECTION 9.** 961.41 (1r) of the statutes is amended to read:

5 961.41 (1r) DETERMINING WEIGHT OF SUBSTANCE. In determining amounts under
6 s. 961.49 (2) (b), 1999 stats., and subs. (1) and (1m), an amount includes the weight
7 of cocaine, cocaine base, heroin, phencyclidine, lysergic acid diethylamide, psilocin,
8 psilocybin, amphetamine, methamphetamine, ~~tetrahydrocannabinols~~, synthetic
9 cannabinoids, or substituted cathinones, or any controlled substance analog of any
10 of these substances together with any compound, mixture, diluent, plant material
11 or other substance mixed or combined with the controlled substance or controlled
12 substance analog. ~~In addition, in determining amounts under subs. (1) (h) and, (1m)~~
13 ~~(h), and (3g) (e), the amount of tetrahydrocannabinols means anything included~~
14 ~~under s. 961.14 (4) (t) and includes~~ means the weight of any only marijuana.

15 **SECTION 10.** 961.41 (3g) (e) of the statutes is amended to read:

16 961.41 (3g) (e) *Tetrahydrocannabinols*. If a person possesses or attempts to
17 possess more than 25 grams of tetrahydrocannabinols included under s. 961.14 (4)
18 (t), or a controlled substance analog of tetrahydrocannabinols, the person may be
19 fined not more than \$1,000 or imprisoned for not more than 6 months or both upon
20 a first conviction and is guilty of a Class I felony for a 2nd or subsequent offense. For
21 purposes of this paragraph, an offense is considered a 2nd or subsequent offense if,
22 prior to the offender's conviction of the offense, the offender has at any time been
23 convicted of any felony or misdemeanor under this chapter or under any statute of
24 the United States or of any state relating to controlled substances, controlled

1 substance analogs, narcotic drugs, marijuana, or depressant, stimulant, or
2 hallucinogenic drugs.

3 **SECTION 11.** 961.46 of the statutes is amended to read:

4 **961.46 Distribution to persons under age 18.** If a person 17 years of age
5 or over violates s. 961.41 (1), except s. 961.41 (1) (h) 1g., by distributing or delivering
6 a controlled substance or a controlled substance analog to a person 17 years of age
7 or under who is at least 3 years his or her junior, the applicable maximum term of
8 imprisonment prescribed under s. 961.41 (1) for the offense may be increased by not
9 more than 5 years.

10 **SECTION 12.** 973.016 of the statutes is created to read:

11 **973.016 Special disposition for marijuana-related crimes. (1)**

12 **DISMISSAL OF CONVICTION FOR PERSONS SERVING A SENTENCE OR PROBATION.** (a) A person
13 serving a sentence or on probation may request dismissal as provided under par. (b)
14 if one of the following applies:

15 1. The sentence or probation period was imposed for a conviction under s.
16 961.41 (1) (h), 2017 stats., or s. 961.41 (1m) (h), 2017 stats., and the person proves
17 to the court by a preponderance of the evidence that the amount of marijuana
18 involved was 25 grams or less, or 2 or fewer plants.

19 2. The sentence or probation period was imposed for a conviction under s.
20 961.41 (3g) (e), 2017 stats., and the person proves to the court by a preponderance
21 of the evidence that the amount of marijuana involved was 25 grams or less.

22 (b) A person to whom par. (a) applies shall file a petition with the sentencing
23 court to request dismissal of the conviction. If the court receiving a petition under
24 this paragraph determines that par. (a) applies, the court may grant the petition
25 without a hearing or may schedule a hearing to consider the petition. If a hearing

1 is scheduled, unless the person cannot prove the amount of marijuana involved was
2 25 grams or less or the court determines that the dismissal of the conviction presents
3 an unreasonable risk of danger to public safety, the court shall grant the petition.

4 (2) EXPUNGING AN OFFENSE FOR PERSONS WHO COMPLETED A SENTENCE OR
5 PROBATION. (a) A person who has completed his or her sentence or period of probation
6 may request under par. (b) expungement of the conviction if one of the following
7 applies:

8 1. The sentence or probation period was imposed for a conviction under s.
9 961.41 (1) (h), 2017 stats., or s. 961.41 (1m) (h), 2017 stats., and the person proves
10 to the court by a preponderance of the evidence that the amount of marijuana
11 involved was 25 grams or less, or 2 or fewer plants.

12 2. The sentence or probation period was imposed for a conviction under s.
13 961.41 (3g) (e), 2017 stats., and the person proves to the court by a preponderance
14 of the evidence that the amount of marijuana involved was 25 grams or less.

15 (b) A person to whom par. (a) applies shall file a petition with the sentencing
16 court to request expungement of the conviction. If the court receiving a petition
17 under this paragraph determines that par. (a) applies, the court may grant the
18 petition without a hearing or may schedule a hearing to consider the petition. If a
19 hearing is scheduled, unless the person cannot prove the amount of marijuana
20 involved was 25 grams or less or the court determines that expungement of the
21 conviction presents an unreasonable risk of danger to public safety, the court shall
22 grant the petition.

1 (3) CRIMES DISMISSED OR EXPUNGED UNDER THIS SECTION. A conviction that has
2 been expunged or dismissed under this section is not considered a conviction for any
3 purpose under state or federal law, including for purposes of s. 941.29 or 18 USC 921.

4 (END)

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1996/P3dn
CMH:cde

js

date

✓
This draft reconciles LRB-1996/p2 and LRB-1539/p6. Both of these drafts should
continue to appear in the compiled bill. ✓

cmH

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1996/P3dn
CMH:cjs

February 21, 2019

This draft reconciles LRB-1996/p2 and LRB-1539/p6. Both of these drafts should continue to appear in the compiled bill.

Cathlene M. Hanaman
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State of Wisconsin
2019 - 2020 LEGISLATURE

LRB-1996/P3
CMH:cdc&cjs

DOA:.....Potts, BB0355 - Decriminalize less than 25 grams of marijuana
FOR 2019-2021 BUDGET -- NOT READY FOR INTRODUCTION

1 AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

CRIMES

1. Decriminalizing 25 grams or less of marijuana

Current law prohibits a person from possessing or attempting to possess; possessing with the intent to manufacture, distribute, or deliver; and manufacturing, distributing, or delivering marijuana. The penalties vary based on the amount of marijuana or plants involved or the number of previous controlled-substance convictions the person has. Current law also allows local governments to enact ordinances prohibiting the possession of marijuana.

This bill eliminates 1) the penalty for possession of marijuana if the amount of marijuana involved is no more than 25 grams; 2) the penalty for manufacturing or for possessing with the intent to manufacture, distribute, or deliver if the amount of marijuana involved is no more than 25 grams or the number of plants involved is no more than two; and 3) the penalty for distributing or delivering marijuana if the amount of marijuana involved is no more than 25 grams or the number of plants involved is no more than two. The bill retains the current law penalty for distributing or delivering any amount of marijuana to a minor who is no more than 17 years of age by a person who is at least three years older than the minor. The bill limits local governments to enacting ordinances prohibiting only the possession of more than 25 grams of marijuana.

The bill also prohibits establishing probable cause that a person is violating the prohibition against possessing more than 25 grams of marijuana by an odor of

marijuana or by the possession of not more than 25 grams of marijuana. Current law requires that, when determining the weight of controlled substances, the weight includes the weight of the controlled substance together with any compound, mixture, or other substance mixed or combined with the controlled substance. Under the bill, when determining the amount of tetrahydrocannabinols, only the weight of the marijuana may be considered. Finally, the bill creates a process for expunging or dismissing convictions involving less than 25 grams of marijuana that occurred before this bill takes effect.

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.** 961.41 (1) (h) 1. of the statutes is renumbered 961.41 (1) (h) 1r. and
2 amended to read:

3 961.41 (1) (h) 1r. ~~Two hundred~~ More than 25 grams but not more than 200
4 ~~grams or less, or more than 2 but not more than 4 or fewer~~ plants containing
5 tetrahydrocannabinols, the person is guilty of a Class I felony.

6 **SECTION 2.** 961.41 (1) (h) 1g. of the statutes is created to read:

7 961.41 (1) (h) 1g. Twenty-five grams or less, or 2 or fewer plants containing
8 tetrahydrocannabinols, the person is guilty of a Class I felony if the person is at least
9 17 years of age and distributes or delivers to a person who is no more than 17 years
10 of age and who is at least 3 years younger than the person distributing or delivering.

11 **SECTION 3.** 961.41 (1m) (h) 1. of the statutes is amended to read:

12 961.41 (1m) (h) 1. ~~Two hundred~~ More than 25 grams but not more than 200
13 ~~grams or less, or more than 2 but not more than 4 or fewer~~ plants containing
14 tetrahydrocannabinols, the person is guilty of a Class I felony.

15 **SECTION 4.** 961.41 (1q) (title) of the statutes is repealed and recreated to read:

16 961.41 (1q) (title) TETRAHYDROCANNABINOLS PENALTY AND PROBABLE CAUSE.

17 **SECTION 5.** 961.41 (1q) of the statutes is renumbered 961.41 (1q) (a).

1 **SECTION 6.** 961.41 (1q) (b) and (c) of the statutes are created to read:

2 961.41 (1q) (b) The following are not sufficient to establish probable cause that
3 a violation of sub. (1) (h) has occurred:

4 1. Odor of marijuana.

5 2. The possession of not more than 25 grams of marijuana.

6 (c) No individual on parole, probation, extended supervision, supervised
7 release, or any other release may have the release revoked for possessing not more
8 than 25 grams of marijuana.

9 **SECTION 7.** 961.41 (1r) of the statutes is amended to read:

10 961.41 (1r) DETERMINING WEIGHT OF SUBSTANCE. In determining amounts under
11 s. 961.49 (2) (b), 1999 stats., and subs. (1) and (1m), an amount includes the weight
12 of cocaine, cocaine base, heroin, phencyclidine, lysergic acid diethylamide, psilocin,
13 psilocybin, amphetamine, methamphetamine, tetrahydrocannabinols, synthetic
14 cannabinoids, or substituted cathinones, or any controlled substance analog of any
15 of these substances together with any compound, mixture, diluent, plant material
16 or other substance mixed or combined with the controlled substance or controlled
17 substance analog. In addition, in determining amounts under subs. (1) (h) and, (1m)
18 (h), and (3g) (e), the amount of tetrahydrocannabinols ~~means anything included~~
19 ~~under s. 961.14 (4) (t) and includes~~ means the weight of any only marijuana.

20 **SECTION 8.** 961.41 (3g) (e) of the statutes is amended to read:

21 961.41 (3g) (e) *Tetrahydrocannabinols.* If a person possesses or attempts to
22 possess more than 25 grams of tetrahydrocannabinols included under s. 961.14 (4)
23 (t), or a controlled substance analog of tetrahydrocannabinols, the person may be
24 fined not more than \$1,000 or imprisoned for not more than 6 months or both upon
25 a first conviction and is guilty of a Class I felony for a 2nd or subsequent offense. For

1 purposes of this paragraph, an offense is considered a 2nd or subsequent offense if,
2 prior to the offender's conviction of the offense, the offender has at any time been
3 convicted of any felony or misdemeanor under this chapter or under any statute of
4 the United States or of any state relating to controlled substances, controlled
5 substance analogs, narcotic drugs, marijuana, or depressant, stimulant, or
6 hallucinogenic drugs.

7 **SECTION 9.** 961.46 of the statutes is amended to read:

8 **961.46 Distribution to persons under age 18.** If a person 17 years of age
9 or over violates s. 961.41 (1), except s. 961.41 (1) (h) 1g., by distributing or delivering
10 a controlled substance or a controlled substance analog to a person 17 years of age
11 or under who is at least 3 years his or her junior, the applicable maximum term of
12 imprisonment prescribed under s. 961.41 (1) for the offense may be increased by not
13 more than 5 years.

14 **SECTION 10.** 973.016 of the statutes is created to read:

15 **973.016 Special disposition for marijuana-related crimes. (1)**

16 DISMISSAL OF CONVICTION FOR PERSONS SERVING A SENTENCE OR PROBATION. (a) A person
17 serving a sentence or on probation may request dismissal as provided under par. (b)
18 if one of the following applies:

19 1. The sentence or probation period was imposed for a conviction under s.
20 961.41 (1) (h), 2017 stats., or s. 961.41 (1m) (h), 2017 stats., and the person proves
21 to the court by a preponderance of the evidence that the amount of marijuana
22 involved was 25 grams or less, or 2 or fewer plants.

23 2. The sentence or probation period was imposed for a conviction under s.
24 961.41 (3g) (e), 2017 stats., and the person proves to the court by a preponderance
25 of the evidence that the amount of marijuana involved was 25 grams or less.

1 (b) A person to whom par. (a) applies shall file a petition with the sentencing
2 court to request dismissal of the conviction. If the court receiving a petition under
3 this paragraph determines that par. (a) applies, the court may grant the petition
4 without a hearing or may schedule a hearing to consider the petition. If a hearing
5 is scheduled, unless the person cannot prove the amount of marijuana involved was
6 25 grams or less or the court determines that the dismissal of the conviction presents
7 an unreasonable risk of danger to public safety, the court shall grant the petition.

8 **(2) EXPUNGING AN OFFENSE FOR PERSONS WHO COMPLETED A SENTENCE OR**
9 **PROBATION.** (a) A person who has completed his or her sentence or period of probation
10 may request under par. (b) expungement of the conviction if one of the following
11 applies:

12 1. The sentence or probation period was imposed for a conviction under s.
13 961.41 (1) (h), 2017 stats., or s. 961.41 (1m) (h), 2017 stats., and the person proves
14 to the court by a preponderance of the evidence that the amount of marijuana
15 involved was 25 grams or less, or 2 or fewer plants.

16 2. The sentence or probation period was imposed for a conviction under s.
17 961.41 (3g) (e), 2017 stats., and the person proves to the court by a preponderance
18 of the evidence that the amount of marijuana involved was 25 grams or less.

19 (b) A person to whom par. (a) applies shall file a petition with the sentencing
20 court to request expungement of the conviction. If the court receiving a petition
21 under this paragraph determines that par. (a) applies, the court may grant the
22 petition without a hearing or may schedule a hearing to consider the petition. If a
23 hearing is scheduled, unless the person cannot prove the amount of marijuana
24 involved was 25 grams or less or the court determines that expungement of the

1 conviction presents an unreasonable risk of danger to public safety, the court shall
2 grant the petition.

3 (3) CRIMES DISMISSED OR EXPUNGED UNDER THIS SECTION. A conviction that has
4 been expunged or dismissed under this section is not considered a conviction for any
5 purpose under state or federal law, including for purposes of s. 941.29 or 18 USC 921.

6 (END)