

1993 Senate Bill 299

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1993 WISCONSIN ACT 118

AN ACT to amend 48.34 (4s) (a) (intro.), 48.34 (7m), 48.45 (1m) (b), 161.14 (7) (L), 161.41 (1) (e) (intro.), 161.41 (1m) (e) (intro.), 161.41 (3), 161.46 (3), 161.465 (2), 161.472 (2), 161.475, 161.48 (2), 161.49 (1), 161.495, 161.55 (1) (d) 3, 971.365 (1) (c) and 971.365 (2); and to create 161.41 (3p) of the statutes, relating to: methcathinone and providing penalties.

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

SECTION 1. 48.34 (4s) (a) (intro.) of the statutes is amended to read:

48.34 (4s) (a) (intro.) In addition to any other dispositions imposed under this section, if the child is found to have violated s. 161.41 (2r), (3), (3m), (3n), (3p) or (3r), the judge shall order one of the following penalties:

SECTION 2. 48.34 (7m) of the statutes is amended to read:

48.34 (7m) If the child is adjudicated delinquent under a violation of s. 161.41 (2r), (3), (3m), (3n), (3p) or (3r) by possessing or attempting to possess a controlled substance listed in schedule I or II under ch. 161 while in or otherwise within 1,000 feet of a state, county, city, village or town park, a swimming pool open to members of the public, a youth center, as defined in s. 161.01 (22), or a community center, while on or otherwise within 1,000 feet of any private or public school premises or while on or otherwise within 1,000 feet of a school bus, as defined in s. 340.01 (56), the judge shall require that the child participate for 100 hours in a supervised work program under sub. (9) or perform 100 hours of other community service work.

SECTION 3. 48.45 (1m) (b) of the statutes is amended to read:

48.45 (1m) (b) In a proceeding in which a child has been adjudged delinquent for the violation of s. 161.41 (1), (1m), (2r), (3), (3m), (3n), (3p) or (3r), the judge may

order the child's parent, guardian or legal custodian to participate in a drug abuse education program approved by the court if the child of the person has agreed to participate in a drug abuse education program under s. 48.34 (4s) (b).

SECTION 4. 161.14 (7) (L) of the statutes is amended to read:

161.14 (7) (L) ~~methcathinone~~ Methcathinone, including its salts and salts of isomers.

SECTION 5. 161.41 (1) (e) (intro.) of the statutes is amended to read:

161.41 (1) (e) (intro.) Phencyclidine, amphetamine or methamphetamine or a controlled substance under s. 161.14 (7) (L) is subject to the following penalties:

SECTION 6. 161.41 (1m) (e) (intro.) of the statutes is amended to read:

161.41 (1m) (e) (intro.) Phencyclidine, amphetamine or methamphetamine or a controlled substance under s. 161.14 (7) (L) is subject to the following penalties:

SECTION 7. 161.41 (3) of the statutes is amended to read:

161.41 (3) Except as provided in subs. (3m), (3n), (3p) and (3r), it is unlawful for any person to possess or attempt to possess a controlled substance, other than a controlled substance classified in schedule I or II that is a narcotic drug, unless the substance was obtained directly from, or pursuant to a valid prescription or order of, a practitioner while acting in the course of his or her professional practice, or except as otherwise authorized

1993 Senate Bill 299

by this chapter. Any person who violates this subsection is guilty of a misdemeanor, punishable under s. 939.61.

SECTION 8. 161.41 (3p) of the statutes is created to read:

161.41 (3p) It is unlawful for any person to possess or attempt to possess methcathinone unless the substance was obtained directly from, or pursuant to a valid prescription or order of, a practitioner while acting in the course of his or her professional practice, or except as otherwise authorized by this chapter. Any person who violates this subsection shall be fined not less than \$1,000 nor more than \$5,000 and may be imprisoned for not more than one year in the county jail.

SECTION 9. 161.46 (3) of the statutes is amended to read:

161.46 (3) If any person 18 years of age or over violates s. 161.41 (1) (c), (cm), (d), (e), (f), (g) or (h) by distributing a controlled substance included under s. 161.14 (7) (a) or (L) or 161.16 (2) (b), heroin, phencyclidine, lysergic acid diethylamide, psilocin, psilocybin, amphetamine, methamphetamine or any form of tetrahydrocannabinols to a person under 18 years of age who is at least 3 years his or her junior, any applicable minimum and maximum fines and minimum and maximum periods of imprisonment under s. 161.41 (1) (c), (cm), (d), (e), (f), (g) or (h) are doubled.

SECTION 10. 161.465 (2) of the statutes is amended to read:

161.465 (2) If a person violates s. 161.41 (1) (c), (cm), (d), (e), (f), (g) or (h) or (1m) (c), (cm), (d), (e), (f), (g) or (h) by delivering or possessing with intent to deliver a controlled substance included under s. 161.14 (7) (a) or (L) or 161.16 (2) (b), heroin, phencyclidine, lysergic acid diethylamide, psilocin, psilocybin, amphetamine, methamphetamine or any form of tetrahydrocannabinols to a prisoner within the precincts of any prison, jail or house of correction, any applicable minimum and maximum fines and minimum and maximum periods of imprisonment under s. 161.41 (1) (c), (cm), (d), (e), (f), (g) or (h) or (1m) (c), (cm), (d), (e), (f), (g) or (h) are doubled.

SECTION 11. 161.472 (2) of the statutes is amended to read:

161.472 (2) Except as provided in sub. (5), if a person pleads guilty or is found guilty of possession or attempted possession of a controlled substance under s. 161.41 (2r) (b), (3m) ~~or~~ (3n) or (3p), the court shall order the person to comply with an assessment of the person's use of controlled substances. The court's order shall designate a facility that is operated by or pursuant to a contract with the county department established under s. 51.42 and that is certified by the department of health and social services to provide assessment services to perform the assessment and, if appropriate, to develop a proposed treatment plan. The court shall notify the person that noncompliance with the order limits the court's ability to

determine whether the treatment option under s. 161.475 is appropriate. The court shall also notify the person of the fee provisions under s. 46.03 (18) (fm).

SECTION 12. 161.475 of the statutes is amended to read:

161.475 Treatment option. Whenever any person pleads guilty to or is found guilty of possession or attempted possession of a controlled substance under s. 161.41 (2r), (3), (3m), (3n), ~~(3p)~~ or (3r), the court may, upon request of the person and with the consent of a treatment facility with special inpatient or outpatient programs for the treatment of drug dependent persons, allow the person to enter the treatment programs voluntarily for purposes of treatment and rehabilitation. Treatment shall be for the period the treatment facility feels is necessary and required, but shall not exceed the maximum sentence allowable unless the person consents to the continued treatment. At the end of the necessary and required treatment, with the consent of the court, the person may be released from sentence. If treatment efforts are ineffective or the person ceases to cooperate with treatment rehabilitation efforts, the person may be remanded to the court for completion of sentencing.

SECTION 13. 161.48 (2) of the statutes is amended to read:

161.48 (2) If any person is convicted of a 2nd or subsequent offense under this chapter that is specified in s. 161.41 (1) (c), (cm), (d), (e), (f), (g) or (h), (1m) (c), (cm), (d), (e), (f), (g) or (h), (2r) (b), (3m), (3n), ~~(3p)~~ or (3r), any applicable minimum and maximum fines and minimum and maximum periods of imprisonment under s. 161.41 (1) (c), (cm), (d), (e), (f), (g) or (h), (1m) (c), (cm), (d), (e), (f), (g) or (h), (2r) (b), (3m), (3n), ~~(3p)~~ or (3r) are doubled. A 2nd or subsequent offense under s. 161.41 (3m), (3n), ~~(3p)~~ or (3r) is a felony and the person may be imprisoned in state prison.

SECTION 14. 161.49 (1) of the statutes is amended to read:

161.49 (1) If any person violates s. 161.41 (1) (c), (cm), (d), (e), (f), (g) or (h) by distributing, or violates s. 161.41 (1m) (c), (cm), (d), (e), (f), (g) or (h) by possessing with intent to deliver, a controlled substance included under s. 161.14 (7) (a) or (L) or 161.16 (2) (b), heroin, phencyclidine, lysergic acid diethylamide, psilocin, psilocybin, amphetamine, methamphetamine or any form of tetrahydrocannabinols while in or otherwise within 1,000 feet of a state, county, city, village or town park, a swimming pool open to members of the public, a youth center or a community center, while on or otherwise within 1,000 feet of any private or public school premises or while on or otherwise within 1,000 feet of a school bus, as defined in s. 340.01 (56), the maximum term of imprisonment prescribed by law for that crime may be increased by 5 years.

SECTION 15. 161.495 of the statutes is amended to read:

1993 Senate Bill 299

– 3 –

161.495 Possession or attempted possession of a controlled substance on or near certain places. If any person violates s. 161.41 (2r), (3), (3m), (3n), ~~(3p)~~ or (3r) by possessing or attempting to possess a controlled substance listed in schedule I or II while in or otherwise within 1,000 feet of a state, county, city, village or town park, a swimming pool open to members of the public, a youth center or a community center, while on or otherwise within 1,000 feet of any private or public school premises or while on or otherwise within 1,000 feet of a school bus, as defined in s. 340.01 (56), the court shall, in addition to any other penalties that may apply to the crime, impose 100 hours of community service work for a public agency or a nonprofit charitable organization. The court shall ensure that the defendant is provided a written statement of the terms of the community service order and that the community service order is monitored. Any organization or agency acting in good faith to which a defendant is assigned pursuant to an order under this section has immunity from any civil liability in excess of \$25,000 for acts or omissions by or impacting on the defendant.

SECTION 16. 161.55 (1) (d) 3. of the statutes is amended to read:

161.55 (1) (d) 3. A vehicle is not subject to forfeiture for a violation of s. 161.41 (3), (3m), (3n), ~~(3p)~~ or (3r); and

SECTION 17. 971.365 (1) (c) of the statutes is amended to read:

971.365 (1) (c) In any case under s. 161.41 (2r) (b), (3m), (3n), ~~(3p)~~ or (3r) involving more than one violation, all violations may be prosecuted as a single crime if the violations were pursuant to a single intent and design.

SECTION 18. 971.365 (2) of the statutes is amended to read:

971.365 (2) An acquittal or conviction under sub. (1) does not bar a subsequent prosecution for any acts in violation of s. 161.41 (1) (c), (cm), (d), (e), (f), (g) or (h), (1m) (c), (cm), (d), (e), (f), (g) or (h), (2r) (b), (3m), (3n), ~~(3p)~~ or (3r) on which no evidence was received at the trial on the original charge.

SECTION 19. Initial applicability. This act first applies to offenses committed on the effective date of this SECTION, but does not preclude the counting of other offenses as prior offenses for sentencing a person.