



State of Wisconsin
2005 - 2006 LEGISLATURE

LRBs0215/2
CMH:cjs:rs

**ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO 2005 ASSEMBLY BILL 740**

November 4, 2005 - Offered by Representative UNDERHEIM.

1 **AN ACT** *to renumber* 961.01 (1); *to renumber and amend* 59.54 (25) and 968.20
2 (1); *to amend* 59.54 (25m), 60.23 (21), 66.0107 (1) (bm), 173.12 (1m), 289.33 (3)
3 (d), 349.02 (2) (b) 4., 961.555 (2) (a), 961.56 (1), 968.20 (3) (a) and 968.20 (3) (b);
4 and *to create* 20.435 (5) (h), 59.54 (25) (b) 2., 59.54 (25) (b) 3., 146.45, 961.01
5 (1g), 961.01 (5m), 961.01 (11v), 961.01 (14g), 961.01 (19m), 961.01 (20hm),
6 961.01 (20ht), 961.01 (20t), 961.01 (21g), 961.436, 961.555 (2) (e), 961.555 (2m),
7 961.5755, 968.073, 968.12 (5), 968.20 (1d) and 968.20 (1j) of the statutes;
8 **relating to:** medical use of marijuana, requiring the exercise of rule-making
9 authority, providing a penalty, and making an appropriation.

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

10 **SECTION 1.** 20.005 (3) (schedule) of the statutes: at the appropriate place, insert
11 the following amounts for the purposes indicated:

	2005-06	2006-07
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1
2 **20.435 Health and family services, department**
3 **of**

4 (5) PUBLIC HEALTH SERVICES PLANNING, REGULATION
5 AND DELIVERY; AIDS AND LOCAL ASSISTANCE

6 (h) Medical marijuana registry PR A -0- -0-

7 **SECTION 2.** 20.435 (5) (h) of the statutes is created to read:

8 20.435 (5) (h) *Medical marijuana registry.* The amounts in the schedule for the
9 costs of the medical marijuana registry program under s. 146.45. All moneys
10 received from fees collected under s. 146.45 (2) (d) shall be credited to this
11 appropriation.

12 **SECTION 3.** 59.54 (25) of the statutes is renumbered 59.54 (25) (a) and amended
13 to read:

14 59.54 (25) (a) The board may enact and enforce an ordinance to prohibit the
15 possession of 25 grams or less of marijuana, as defined in s. 961.01 (14), subject to
16 par. (b) and the exceptions in s. 961.41 (3g) (intro.), and provide a forfeiture for a
17 violation of the ordinance; ~~except that any person who is charged with possession of~~
18 ~~more than 25 grams of marijuana, or who is charged with possession of any amount~~
19 ~~of marijuana following a conviction for possession of marijuana, in this state shall~~
20 ~~not be prosecuted under this subsection.~~ Any ordinance enacted under this
21 paragraph shall provide a person who is prosecuted under it with the defenses that
22 the person has under s. 961.436 to prosecutions under s. 961.41 (1) (h), (1m) (h), or
23 (3g) (e).

1 **(b) 1.** Any ordinance enacted under ~~this subsection~~ par. (a) by a county with a
2 population of less than 500,000 does not apply in any municipality that has enacted
3 an ordinance prohibiting the possession of marijuana. Any ordinance enacted under
4 ~~this subsection~~ par. (a) by a county with a population of 500,000 or more applies in
5 every municipality within the county.

6 **SECTION 4.** 59.54 (25) (b) 2. of the statutes is created to read:

7 **59.54 (25) (b) 2.** A person may not be prosecuted under an ordinance enacted
8 under par. (a) if, under s. 968.073 (2), the person would not be subject to prosecution
9 under s. 961.41 (3g) (e).

10 **SECTION 5.** 59.54 (25) (b) 3. of the statutes is created to read:

11 **59.54 (25) (b) 3.** No person who is charged with possession of more than 25
12 grams of marijuana, or who is charged with possession of any amount of marijuana
13 following a conviction for possession of marijuana, in this state may be prosecuted
14 under an ordinance enacted under par. (a).

15 **SECTION 6.** 59.54 (25m) of the statutes is amended to read:

16 **59.54 (25m) DRUG PARAPHERNALIA.** The board of a county with a population of
17 500,000 or more may enact an ordinance to prohibit conduct that is the same as that
18 prohibited by s. 961.573 (1) or (2), 961.574 (1) or (2), or 961.575 (1) or (2) and provide
19 a forfeiture for violation of the ordinance. Any ordinance enacted under this
20 subsection shall provide a person prosecuted under it with the defenses that the
21 person has under s. 961.5755 to prosecutions under s. 961.573 (1), 961.574 (1), or
22 961.575 (1). A person may not be prosecuted under an ordinance enacted under this
23 subsection if, under s. 968.073 (3), the person would not be subject to prosecution
24 under s. 961.573 (1), 961.574 (1), or 961.575 (1). The board may enforce an ordinance
25 enacted under this subsection in any municipality within the county.

1 **SECTION 7.** 60.23 (21) of the statutes is amended to read:

2 **60.23 (21) DRUG PARAPHERNALIA.** Adopt an ordinance to prohibit conduct that
3 is the same as that prohibited by s. 961.573 (2), 961.574 (2) or 961.575 (2). Any
4 ordinance enacted under this subsection shall provide a person prosecuted under it
5 with the defenses that the person has under s. 961.5755 to prosecutions under s.
6 961.573 (1), 961.574 (1), or 961.575 (1). A person may not be prosecuted under an
7 ordinance enacted under this subsection if, under s. 968.073 (3), the person would
8 not be subject to prosecution under s. 961.573 (1), 961.574 (1), or 961.575 (1).

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

10 **66.0107 (1) (bm)** Enact and enforce an ordinance to prohibit the possession of
11 25 grams or less of marijuana, as defined in s. 961.01 (14), subject to this paragraph
12 and the exceptions in s. 961.41 (3g) (intro.), and provide a forfeiture for a violation
13 of the ordinance; except that any. Any ordinance enacted under this paragraph shall
14 provide a person prosecuted under it with the defenses that the person has under s.
15 961.436 to prosecutions under s. 961.41 (1) (h), (1m) (h), or (3g) (e). A person may not
16 be prosecuted under an ordinance enacted under this paragraph if, under s. 968.073
17 (2), the person would not be subject to prosecution under s. 961.41 (3g) (e). No person
18 who is charged with possession of more than 25 grams of marijuana, or who is
19 charged with possession of any amount of marijuana following a conviction for
20 possession of marijuana, in this state ~~shall not~~ may be prosecuted under this
21 paragraph.

22 **SECTION 9.** 146.45 of the statutes is created to read:

23 **146.45 Medical marijuana registry program. (1) DEFINITIONS.** In this
24 section:

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

3 (b) "Debilitating medical condition or treatment" has the meaning given in s.
4 961.01 (5m).

5 (c) "Medical use of tetrahydrocannabinols" has the meaning given in s. 961.01
6 (14g).

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

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

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

11 (g) "Registry identification card" means a document issued by the department
12 under this section that identifies a person as a qualifying patient or primary
13 caregiver.

14 (h) "Written certification" means a statement made by a person's physician if
15 all of the following apply:

16 1. The statement indicates that, in the physician's professional opinion, the
17 person has or is undergoing a debilitating medical condition or treatment and the
18 potential benefits of the person's use of tetrahydrocannabinols in the manner
19 described under s. 961.01 (14g) (a) would likely outweigh the health risks for the
20 person.

21 2. The statement indicates that the opinion described in subd. 1. was formed
22 after a full assessment, made in the course of a bona fide physician-patient
23 relationship, of the person's medical history and current medical condition.

24 3. The statement is signed by the physician or is contained in the person's
25 medical records.

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

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

5 2. A written certification.

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

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

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

19 (d) The department may charge a fee for the application for or the issuance of
20 a registry identification card. The amount of the fee may not exceed the cost of the
21 materials or services provided. All fees received shall be credited to the
22 appropriation account under s. 20.435 (5) (h).

23 **(3) PROCESSING THE APPLICATION.** The department shall verify the information
24 contained in or accompanying an application submitted under sub. (2) and shall
25 approve or deny the application within 30 days after receiving it. Except as provided

1 in sub. (2) (c), the department may deny an application submitted under sub. (2) only
2 if the required information has not been provided or if false information has been
3 provided.

4 **(4) ISSUING A REGISTRY IDENTIFICATION CARD.** The department shall issue a
5 registry identification card within 5 days after approving an application under sub.
6 (3). Unless voided under sub. (5) (b) 2. or (c) or revoked under rules issued by the
7 department under sub. (7) (d), a registry identification card shall expire one year
8 from the date of issuance. A registry identification card shall contain all of the
9 following:

10 (a) The name, address, and date of birth of the registrant and the name,
11 address, and date of birth of the primary caregivers, if the registrant is a qualifying
12 patient, or of the qualifying patient, if the registrant is a primary caregiver.

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

14 (c) A photograph of the registrant.

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

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

23 2. If a qualifying patient is a child, a primary caregiver for the child shall
24 provide the department with any information that the child, if he or she were an

1 adult, would have to provide under subd. 1. within 10 days after the date of the
2 change to which the information relates.

3 (b) 1. If a registrant fails to notify the department within 10 days after any
4 change for which notification is required under par. (a) 1., or the registrant may be
5 fined not more than \$150.

6 2. If a qualifying patient notifies the department that he or she no longer has
7 a debilitating medical condition or treatment, the department shall void his or her
8 registry identification card. If a qualifying patient notifies the department that a
9 registered primary caregiver no longer assists him or her with the medical use of
10 tetrahydrocannabinols, the department shall void the registry identification card of
11 the primary caregiver.

12 (c) If a qualifying patient's registry identification card becomes void under par.
13 (b) 2., the registry identification card for each of the qualifying patient's primary
14 caregivers is void. The department shall send written notice of this fact to each such
15 primary caregiver.

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

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

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

1 **(6m) JUDICIAL REVIEW.** A department's decision to deny, revoke, void, or fail to
2 renew a registry identification card under this section is subject to judicial review
3 under s. 227.52.

4 **(7) RULES.** No later than 90 days after the effective date of this subsection ...
5 (revisor inserts date), the department shall promulgate rules to implement this
6 section, including the rules required under sub. (2) (c) and rules doing all of the
7 following:

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

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

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

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

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

17 **SECTION 10.** 173.12 (1m) of the statutes is amended to read:

18 173.12 **(1m)** If an animal has been seized because it is alleged that the animal
19 has been used in or constitutes evidence of any crime specified in s. 951.08, the
20 animal may not be returned to the owner by an officer under s. 968.20 (2). In any
21 hearing under s. 968.20 ~~(1)~~ (1f), the court shall determine if the animal is needed as
22 evidence or there is reason to believe that the animal has participated in or been
23 trained for fighting. If the court makes such a finding, the animal shall be retained
24 in custody.

25 **SECTION 11.** 289.33 (3) (d) of the statutes is amended to read:

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

18 **SECTION 12.** 349.02 (2) (b) 4. of the statutes is amended to read:

19 349.02 (2) (b) 4. Local ordinances enacted under s. 59.54 (25) (a) or (25m), 60.23
20 (21), or 66.0107 (1) (bm).

21 **SECTION 13.** 961.01 (1) of the statutes is renumbered 961.01 (1m).

22 **SECTION 14.** 961.01 (1g) of the statutes is created to read:

23 961.01 (1g) “Adequate supply” means an amount of tetrahydrocannabinols
24 that does not exceed what would be contained in 2.5 ounces of usable marijuana.

25 **SECTION 15.** 961.01 (5m) of the statutes is created to read:

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 any 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. 961.436 (5).

12 **SECTION 16.** 961.01 (11v) of the statutes is created to read:

13 961.01 **(11v)** “HIV” means any strain of human immunodeficiency virus.

14 **SECTION 17.** 961.01 (14g) of the statutes is created to read:

15 961.01 **(14g)** “Medical use of tetrahydrocannabinols” means any of the
16 following:

17 (a) The use of tetrahydrocannabinols by a qualifying patient to alleviate the
18 symptoms or effects of the qualifying patient’s debilitating medical condition or
19 treatment.

20 (b) The acquisition, possession, or transportation of tetrahydrocannabinols by
21 a qualifying patient if done to facilitate his or her use of tetrahydrocannabinols under
22 par. (a).

23 (c) The acquisition, possession, or transportation of tetrahydrocannabinols by
24 a primary caregiver of a qualifying patient, the transfer of tetrahydrocannabinols
25 between a qualifying patient and his or her primary caregivers, or the transfer of

1 tetrahydrocannabinols between persons who are primary caregivers for the same
2 qualifying patient if all of the following apply:

3 1. The acquisition, possession, transportation, or transfer of the
4 tetrahydrocannabinols is done to facilitate the qualifying patient's use of
5 tetrahydrocannabinols under par. (a) or (b).

6 2. It is not practicable for the qualifying patient to acquire, possess, or transport
7 the tetrahydrocannabinols independently, or the qualifying patient is under 18 years
8 of age.

9 **SECTION 18.** 961.01 (19m) of the statutes is created to read:

10 961.01 (19m) "Primary caregiver" means a person who is at least 18 years of
11 age and who has agreed to help a qualifying patient in his or her medical use of
12 tetrahydrocannabinols.

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

14 961.01 (20hm) "Qualifying patient" means a person who has been diagnosed
15 by a physician as having or undergoing a debilitating medical condition or treatment
16 but does not include a person under the age of 18 years unless all of the following
17 apply:

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

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

23 1. Allow the person's medical use of tetrahydrocannabinols.

24 2. Serve as a primary caregiver for the person.

25 3. Manage the person's medical use of tetrahydrocannabinols.

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

2 961.01 (**20ht**) “Registry identification card” has the meaning given in s. 146.45
3 (1) (g).

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

8 961.01 (**21g**) “Usable marijuana” means the leaves, the flowers, the resin
9 extracted from the leaves and flowers, and every compound, manufacture, salt,
10 derivative, mixture, or preparation of the leaves, flowers, or resin, but does not
11 include the seeds, stalks, or roots of plants of the genus Cannabis.

12 **SECTION 23.** 961.436 of the statutes is created to read:

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

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

20 (b) The amount of tetrahydrocannabinols does not exceed an adequate supply.

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

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

3 (b) The amount of tetrahydrocannabinols does not exceed an adequate supply.

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

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

9 2. The amount of tetrahydrocannabinols does not exceed an adequate supply.

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

12 1. The person drives or operates a motor vehicle while under the influence of
13 tetrahydrocannabinols to a degree that renders him or her incapable of safely driving
14 or operating the motor vehicle.

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

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

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

20 b. The person's place of employment.

21 c. Public or private school premises.

22 d. A juvenile correctional facility.

23 e. A jail or adult correctional facility.

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

25 g. A youth center.

1 4. The person has been convicted under s. 961.41 (1) (h) or (1m) (h).

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

7 **(5)** (a) In this subsection, “department” means the department of health and
8 family services.

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

17 **SECTION 24.** 961.555 (2) (a) of the statutes is amended to read:

18 961.555 **(2)** (a) The Except as provided in par. (e), the district attorney of the
19 county within which the property was seized shall commence the forfeiture action
20 within 30 days after the seizure of the property, ~~except that the defendant may~~
21 ~~request that the forfeiture proceedings be adjourned until after adjudication of any~~
22 ~~charge concerning a crime which was the basis for the seizure of the property. The~~
23 ~~request shall be granted.~~ The forfeiture action shall be commenced by filing a
24 summons, complaint and affidavit of the person who seized the property with the
25 clerk of circuit court, provided service of authenticated copies of those papers is made

1 in accordance with ch. 801 within 90 days after filing upon the person from whom
2 the property was seized and upon any person known to have a bona fide perfected
3 security interest in the property.

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

5 961.555 (2) (e) The court shall adjourn forfeiture proceedings until after
6 adjudication of any charge concerning a crime that was the basis for the seizure of
7 the property if any of the following applies:

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

10 **SECTION 26.** 961.555 (2m) of the statutes is created to read:

11 961.555 (2m) MEDICAL NECESSITY DEFENSE. (a) In an action to forfeit property
12 seized under s. 961.55, the person who was in possession of the property when it was
13 seized has a defense to the forfeiture of the property if any of the following applies:

14 1. The person was prosecuted under s. 961.41 (1) (h), (1m) (h), or (3g) (e),
15 961.573 (1), 961.574 (1), or 961.575 (1) in connection with the seized property but had
16 a valid defense under s. 961.436 (1), (2), or (3) (a) or 961.5755 (1) (a) or (2).

17 2. The person was not prosecuted under s. 961.41 (1) (h), (1m) (h), or (3g) (e),
18 961.573 (1), 961.574 (1), or 961.575 (1) in connection with the seized property, but,
19 if the person had been, he or she would have had a valid defense under s. 961.436 (1),
20 (2), or (3) (a) or 961.5755 (1) (a) or (2).

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

1 **SECTION 27.** 961.56 (1) of the statutes is amended to read:

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

8 **SECTION 28.** 961.5755 of the statutes is created to read:

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

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

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

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

1 **SECTION 29.** 968.073 of the statutes is created to read:

2 **968.073 Medical use of marijuana; arrest, prosecution, and other**
3 **sanctions. (1) DEFINITIONS.** In this section:

4 (a) “Adequate supply” has the meaning given in s. 961.01 (1g).

5 (b) “Medical use of tetrahydrocannabinols” has the meaning given in s. 961.01
6 (14g).

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

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

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

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

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

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

17 (b) The person possesses a copy of the qualifying patient’s or primary
18 caregiver’s valid registry identification card.

19 (c) The quantity of tetrahydrocannabinols does not exceed an adequate supply.

20 **(3) LIMITATIONS ON ARRESTS AND PROSECUTION; DRUG PARAPHERNALIA FOR MEDICAL**
21 **USE OF MARIJUANA.** (a) Unless s. 961.436 (3) (b) 1., 2., 3., or 4. applies, a member of
22 a treatment team may not be arrested or prosecuted for a violation of s. 961.573 (1)
23 if all of the following apply:

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

4 2. The person possesses a copy of the qualifying patient's or primary caregiver's
5 valid registry identification card.

6 3. The person does not possess more than an adequate supply of
7 tetrahydrocannabinols.

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

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

15 2. The person possesses a copy of the qualifying patient's or primary caregiver's
16 valid registry identification card.

17 3. The person does not possess more than an adequate supply of
18 tetrahydrocannabinols.

19 **(3m)** LIMITATIONS ON OTHER SANCTIONS. A member of a treatment team may not
20 be denied any right or privilege or penalized in any manner for applying for or
21 possessing a valid registry identification card.

22 **(4)** LIMITATIONS ON ARRESTS, PROSECUTION, AND OTHER SANCTIONS; PHYSICIANS. A
23 physician may not be arrested and a physician, hospital, or clinic may not be subject
24 to prosecution, denied any right or privilege, or penalized in any manner for making
25 or providing a written certification, as defined in s. 146.45 (1) (h), in good faith.

1 **(5) PENALTY FOR FALSE STATEMENTS.** Whoever intentionally provides false
2 information to a law enforcement officer in an attempt to avoid arrest or prosecution
3 under this section for a violation of s. 961.41 (1) (h), (1m) (h), or (3g) (e), 961.573 (1),
4 961.574 (1), or 961.575 (1) may be fined not more than \$500.

5 **SECTION 30.** 968.12 (5) of the statutes is created to read:

6 **968.12 (5) MEDICAL USE OF MARIJUANA REGISTRY CARDS.** An application for a
7 registry identification card under s. 146.45 (2), the issuance of such a card under s.
8 146.45 (4), or a person's possession of such a card shall not, by itself, constitute
9 probable cause under sub. (1) or otherwise subject the person or property of the
10 person who is applying for, issued, or possessing the card to inspection by any
11 governmental agency.

12 **SECTION 31.** 968.20 (1) of the statutes is renumbered 968.20 (1f), and 968.20
13 (1f) (intro.), as renumbered, is amended to read:

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

23 **SECTION 32.** 968.20 (1d) of the statutes is created to read:

24 **968.20 (1d)** In this section:

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

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

2 **SECTION 33.** 968.20 (1j) of the statutes is created to read:

3 968.20 (1j) (a) Except as provided in par. (b), the court may not order the return
4 of contraband or property covered under sub. (1m) or (1r) or s. 173.12, 173.21 (4), or
5 968.205.

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

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

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

16 **SECTION 34.** 968.20 (3) (a) of the statutes is amended to read:

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

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

17 **SECTION 35.** 968.20 (3) (b) of the statutes is amended to read:

18 968.20 (3) (b) Except as provided in par. (a) or sub. (1m) or (4), a city, village,
19 town or county or other custodian of a seized dangerous weapon or ammunition, if
20 the dangerous weapon or ammunition is not required for evidence or use in further
21 investigation and has not been disposed of pursuant to a court order at the
22 completion of a criminal action or proceeding, shall make reasonable efforts to notify
23 all persons who have or may have an authorized rightful interest in the dangerous
24 weapon or ammunition of the application requirements under sub. ~~(1)~~ (1f). If, within
25 30 days after the notice, an application under sub. ~~(1)~~ (1f) is not made and the seized

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

16 **SECTION 36. Effective date.**

17 (1) This act takes effect on July 1, 2007.

18 (END)