



State of Wisconsin
2023 - 2024 LEGISLATURE

LRB-1829/P1
MJW:cjs

DOA:.....Schmidt, BB0493 - Immunity for Certain Controlled Substances
Offenses

FOR 2023-2025 BUDGET -- NOT READY FOR INTRODUCTION

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

Analysis by the Legislative Reference Bureau

CRIMES

Immunity for certain controlled substances offenses

Current law grants immunity from prosecution for possessing a controlled substance to a person, called an aider, who summons or provides emergency medical assistance to another person because the aider believes the other person is suffering from an overdose or other adverse reaction to a controlled substance. Under [2017 Wisconsin Act 33](#), an aider was also immune from having probation, parole, or extended supervision revoked for possessing a controlled substance under the same circumstances. Act 33 also granted the aided person immunity from from having probation, parole, or extended supervision revoked for possessing a controlled substance when an aider seeks assistance for the aided person. The immunity applied only if the aided person completes a treatment program as part of his or her probation, parole, or extended supervision. Act 33 also provided that a prosecutor must offer an aided person who is subject to prosecution for possessing a controlled substance a deferred prosecution agreement if the aided person completes a treatment program.

The expanded immunities under [2017 Wisconsin Act 33](#) were temporary, and expired on August 1, 2020. This bill permanently restores these expanded immunities from [2017 Wisconsin Act 33](#).

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

SECTION 1. 961.443 (2) (title) of the statutes is amended to read:

961.443 (2) (title) IMMUNITY FROM CRIMINAL PROSECUTION AND REVOCATION OF PAROLE, PROBATION, OR EXTENDED SUPERVISION.

SECTION 2. 961.443 (2) of the statutes is renumbered 961.443 (2) (a) and amended to read:

961.443 (2) (a) An No aider may have his or her parole, probation, or extended supervision revoked, and an aider is immune from prosecution under s. 961.573 for the possession of drug paraphernalia, under s. 961.41 (3g) for the possession of a controlled substance or a controlled substance analog, and under s. 961.69 (2) for possession of a masking agent under the circumstances surrounding or leading to his or her commission of an act described in sub. (1) if the aider's attempt to obtain assistance occurs immediately after the aider believes the other person is suffering from the overdose or other adverse reaction.

SECTION 3. 961.443 (2) (b) of the statutes is created to read:

961.443 (2) (b) 1. No aided person person may have his or her parole, probation, or extended supervision revoked under the circumstances surrounding or leading to an aider's commission of an act described in sub. (1) if the aided person completes a treatment program as a condition of his or her parole, probation, or extended supervision or, if a treatment program is unavailable or would be prohibitive financially, agrees to be imprisoned in the county jail for not less than 15 days.

2. If an aided person is subject to prosecution under s. 961.573 for the possession of drug paraphernalia, under s. 961.41 (3g) for the possession of a controlled substance or a controlled substance analog, or under s. 961.69 (2) for possession of a masking agent under the circumstances surrounding or leading to an aider's commission of an act described in sub. (1), the district attorney shall offer the aided person a deferred prosecution agreement that includes the completion of a treatment program. This subdivision does not apply to an aided person who is on parole, probation, or extended supervision and fails to meet a condition under subd. 1.

(END)