



## 2003 ASSEMBLY BILL 687

December 5, 2003 - Introduced by Representatives UNDERHEIM, HAHN, OLSEN, KRAWCZYK, PETROWSKI, HINES, VAN ROY, TOWNSEND, LOTHIAN, GUNDERSON and OTT. Referred to Committee on Criminal Justice.

1     **AN ACT** *to amend* 961.41 (3g) (b), 961.41 (3g) (c), 961.41 (3g) (d), 961.41 (3g) (e),  
2             961.472 (2), 961.48 (3), 961.48 (5), 961.55 (1) (d) 3., 971.365 (1) (c) and 971.365  
3             (2); and *to create* 961.41 (3g) (h) of the statutes; **relating to:** possession of  
4             ecstasy and providing penalties.

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### *Analysis by the Legislative Reference Bureau*

Current law prohibits the possession of the controlled substance known as ecstasy (3,4-methylenedioxymethamphetamine or MDMA). A person who violates this prohibition is guilty of a misdemeanor (simple possession) and may be fined not more than \$500 or sentenced to the county jail for up to 30 days or both. (Significantly higher penalties apply — and the person is guilty of a felony — if the person possesses ecstasy with intent to manufacture, distribute, or deliver it.) Current law also permits a court to suspend the prosecution of a person who pleads guilty to or is found guilty of simple possession of ecstasy (as well as certain other drugs, but excluding heroin, cocaine, LSD, methamphetamine, marijuana, and certain date-rape drugs), if the person has no prior controlled substance offenses. In such a case, the court places the person on probation. If the person violates the requirements of probation, the court reinstates the case and sentences the person. If the person complies with those requirements, the court dismisses the case without ever entering a judgment of conviction.

This bill increases the penalties for simple possession of ecstasy. If a person possesses ecstasy and has no prior controlled substance convictions, the person is guilty of a misdemeanor and may be fined not more than \$5,000 or sentenced to the

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county jail for up to one year or both. If the person has one or more prior controlled substance convictions, the person is guilty of a felony and may be fined not more than \$10,000 or sentenced to a term of imprisonment (consisting of a term of confinement in state prison followed by a term of extended supervision) of up to three and a half years or both. The bill also eliminates the option of suspending the prosecution of a person who pleads guilty to or is found guilty of simple possession of ecstasy. Finally, the bill requires a person who is convicted of possession or attempted possession of ecstasy to submit to an assessment of the person's use of controlled substances, in the same manner as is required under current law for a conviction related to heroin, cocaine, LSD, or methamphetamine.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

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

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

1           **SECTION 1.** 961.41 (3g) (b) of the statutes, as affected by 2003 Wisconsin Act 49,  
2 is amended to read:

3           961.41 **(3g)** (b) *Other drugs generally.* Except as provided in pars. (c) to ~~(g)~~ (h),  
4 if the person possesses or attempts to possess a controlled substance or controlled  
5 substance analog, other than a controlled substance included in schedule I or II that  
6 is a narcotic drug or a controlled substance analog of a controlled substance included  
7 in schedule I or II that is a narcotic drug, the person is guilty of a misdemeanor,  
8 punishable under s. 939.61.

9           **SECTION 2.** 961.41 (3g) (c) of the statutes, as affected by 2001 Wisconsin Act 109,  
10 is amended to read:

11           961.41 **(3g)** (c) *Cocaine and cocaine base.* If a person possess or attempts to  
12 possess cocaine or cocaine base, or a controlled substance analog of cocaine or cocaine  
13 base, the person shall be fined not more than \$5,000 and may be imprisoned for not

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1 more than one year in the county jail upon a first conviction and is guilty of a Class  
2 I felony for a 2nd or subsequent offense. ~~For purposes of this paragraph, an offense~~  
3 ~~is considered a 2nd or subsequent offense if, prior to the offender's conviction of the~~  
4 ~~offense, the offender has at any time been convicted of any felony or misdemeanor~~  
5 ~~under this chapter or under any statute of the United States or of any state relating~~  
6 ~~to controlled substances, controlled substance analogs, narcotic drugs, marijuana,~~  
7 ~~or depressant, stimulant, or hallucinogenic drugs under s. 961.48 (3).~~

8 **SECTION 3.** 961.41 (3g) (d) of the statutes, as affected by 2003 Wisconsin Act 49,  
9 is amended to read:

10 961.41 (3g) (d) *Certain hallucinogenic and stimulant drugs.* If a person  
11 possesses or attempts to possess lysergic acid diethylamide, phencyclidine,  
12 amphetamine, methcathinone, psilocin or psilocybin, or a controlled substance  
13 analog of lysergic acid diethylamide, phencyclidine, amphetamine, methcathinone,  
14 psilocin or psilocybin, the person may be fined not more than \$5,000 or imprisoned  
15 for not more than one year in the county jail or both upon a first conviction and is  
16 guilty of a Class I felony for a 2nd or subsequent offense. ~~For purposes of this~~  
17 ~~paragraph, an offense is considered a 2nd or subsequent offense if, prior to the~~  
18 ~~offender's conviction of the offense, the offender has at any time been convicted of any~~  
19 ~~felony or misdemeanor under this chapter or under any statute of the United States~~  
20 ~~or of any state relating to controlled substances, controlled substance analogs,~~  
21 ~~narcotic drugs, marijuana, or depressant, stimulant, or hallucinogenic drugs under~~  
22 ~~s. 961.48 (3).~~

23 **SECTION 4.** 961.41 (3g) (e) of the statutes, as affected by 2001 Wisconsin Act 109,  
24 is amended to read:

**ASSEMBLY BILL 687****SECTION 4**

1           961.41 (3g) (e) *Tetrahydrocannabinols*. If a person possesses or attempts to  
2 possess tetrahydrocannabinols included under s. 961.14 (4) (t), or a controlled  
3 substance analog of tetrahydrocannabinols, the person may be fined not more than  
4 \$1,000 or imprisoned for not more than 6 months or both upon a first conviction and  
5 is guilty of a Class I felony for a 2nd or subsequent offense. ~~For purposes of this~~  
6 ~~paragraph, an offense is considered a 2nd or subsequent offense if, prior to the~~  
7 ~~offender's conviction of the offense, the offender has at any time been convicted of any~~  
8 ~~felony or misdemeanor under this chapter or under any statute of the United States~~  
9 ~~or of any state relating to controlled substances, controlled substance analogs,~~  
10 ~~narcotic drugs, marijuana, or depressant, stimulant, or hallucinogenic drugs under~~  
11 s. 961.48 (3).

12           **SECTION 5.** 961.41 (3g) (h) of the statutes is created to read:

13           961.41 (3g) (h) *Ecstasy*. If a person possesses or attempts to possess  
14 3,4-methylenedioxymethamphetamine, or a controlled substance analog of  
15 3,4-methylenedioxymethamphetamine, the person may be fined not more than  
16 \$5,000 or imprisoned for not more than one year in the county jail or both upon a first  
17 conviction and is guilty of a Class I felony for a 2nd or subsequent offense.

18           **SECTION 6.** 961.472 (2) of the statutes, as affected by 2003 Wisconsin Act 49,  
19 is amended to read:

20           961.472 (2) Except as provided in sub. (5), if a person pleads guilty or is found  
21 guilty of possession or attempted possession of a controlled substance or controlled  
22 substance analog under s. 961.41 (3g) (am), (c), ~~or (d),~~ or (h), the court shall order the  
23 person to comply with an assessment of the person's use of controlled substances.  
24 The court's order shall designate a facility that is operated by or pursuant to a  
25 contract with the county department established under s. 51.42 and that is certified

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1 by the department of health and family services to provide assessment services to  
2 perform the assessment and, if appropriate, to develop a proposed treatment plan.  
3 The court shall notify the person that noncompliance with the order limits the court's  
4 ability to determine whether the treatment option under s. 961.475 is appropriate.  
5 The court shall also notify the person of the fee provisions under s. 46.03 (18) (fm).

6 **SECTION 7.** 961.48 (3) of the statutes, as affected by 2001 Wisconsin Act 109,  
7 is amended to read:

8 961.48 (3) For purposes of this section, ~~a felony~~ and s. 961.41 (3g), an offense  
9 ~~under this chapter~~ is considered a 2nd or subsequent offense if, prior to the offender's  
10 conviction of the offense, the offender has at any time been convicted of any felony  
11 or misdemeanor offense under this chapter or under any statute of the United States  
12 or of any state relating to controlled substances or controlled substance analogs,  
13 narcotic drugs, marijuana or depressant, stimulant or hallucinogenic drugs.

14 **SECTION 8.** 961.48 (5) of the statutes, as created by 2003 Wisconsin Act 49, is  
15 amended to read:

16 961.48 (5) This section does not apply if the person is presently charged with  
17 a felony under s. 961.41 (3g) (c), (d), (e), ~~or (g), or (h).~~

18 **SECTION 9.** 961.55 (1) (d) 3. of the statutes, as affected by 2003 Wisconsin Act  
19 49, is amended to read:

20 961.55 (1) (d) 3. A vehicle is not subject to forfeiture for a violation of s. 961.41  
21 (3g) (b) to ~~(g)~~ (h); and

22 **SECTION 10.** 971.365 (1) (c) of the statutes, as affected by 2003 Wisconsin Act  
23 49, is amended to read:

24 971.365 (1) (c) In any case under s. 961.41 (3g) (a) 2., 1999 stats., or s. 961.41  
25 (3g) (dm), 1999 stats., or s. 961.41 (3g) (am), (c), (d), (e), ~~or (g), or (h)~~ involving more

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1 than one violation, all violations may be prosecuted as a single crime if the violations  
2 were pursuant to a single intent and design.

3 **SECTION 11.** 971.365 (2) of the statutes, as affected by 2003 Wisconsin Act 49,  
4 is amended to read:

5 971.365 (2) An acquittal or conviction under sub. (1) does not bar a subsequent  
6 prosecution for any acts in violation of s. 961.41 (1) (em), 1999 stats., s. 961.41 (1m)  
7 (em), 1999 stats., s. 961.41 (3g) (a) 2., 1999 stats., or s. 961.41 (3g) (dm), 1999 stats.,  
8 or s. 961.41 (1) (cm), (d), (e), (f), (g), or (h), (1m) (cm), (d), (e), (f), (g), or (h) or (3g) (am),  
9 (c), (d), (e), ~~or (g),~~ or (h) on which no evidence was received at the trial on the original  
10 charge.

11 (END)