

1993 Assembly Bill 268

Date of enactment: **November 24, 1993**

Date of publication\*: **December 8, 1993**

# 1993 WISCONSIN ACT 87

**AN ACT** to amend 48.34 (7m), 161.49 (1), 161.49 (2) (a) and 161.495; and to create 161.01 (12m) and 161.465 (2m) of the statutes, **relating to:** distribution or possession of controlled substances in or near prisons or jails and providing a penalty.

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

**SECTION 1.** 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) 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 jail or correctional facility, as defined in s. 161.01 (12m), 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 2.** 161.01 (12m) of the statutes is created to read:

161.01 (12m) "Jail or correctional facility" means any of the following:

- (a) A type I prison, as defined in s. 301.01 (5).
- (b) A jail, as defined in s. 302.30.
- (c) A house of correction.
- (d) A Huber facility under s. 303.09.
- (e) A lockup facility, as defined in s. 302.30.

**SECTION 3.** 161.465 (2m) of the statutes is created to read:

161.465 (2m) A person may be subject to increased penalties under both this section and s. 161.49 regarding the same unlawful act.

**SECTION 4.** 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 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 jail or correctional facility, 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 5.** 161.49 (2) (a) of the statutes is amended to read:

161.49 (2) (a) Except as provided in par. (b), if any person violates s. 161.41 (1) by distributing, or violates s. 161.41 (1m) by possessing with intent to deliver, 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 jail or correctional facility, a swimming pool open to members of the public, a youth center or a community center, while on or otherwise within 1,000

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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 sentence the person to at least 3 years in prison, but otherwise the penalties for the crime apply. Except as provided in s. 161.438, the court shall not place the person on probation. The person is not eligible for parole until he or she has served at least 3 years, with no modification by the calculation under s. 302.11 (1).

**SECTION 6.** 161.495 of the statutes is amended to read:

**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) 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 jail or correctional facility, 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 7. Initial applicability.** This act first applies to offenses occurring on the effective date of this SECTION.

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