



## 1997 ASSEMBLY BILL 560

October 17, 1997 - Introduced by Representatives BOYLE and BALDWIN. Referred to Committee on Criminal Justice and Corrections.

1     **AN ACT to repeal** 961.41 (1) (h), 961.41 (1m) (h), 961.41 (1q) (title) and 961.41 (3g)  
2           (e); **to renumber** 139.90; **to renumber and amend** 139.91, 139.92, 961.14 (4)  
3           (t) and 961.41 (1q); **to amend** 59.54 (25), 66.051 (1) (bm), 139.87 (7), 139.89,  
4           139.90 (title), 139.93 (1), 139.93 (2), 139.93 (3), 139.93 (5), 139.95, 938.34 (14t),  
5           961.18 (4) (intro.), 961.41 (1) (b), 961.41 (1m) (b), 961.41 (1r), 961.41 (1x), 961.41  
6           (3g) (b), 961.46 (3), 961.465 (2), 961.48 (2), 961.49 (1), 961.49 (2) (a), 961.49 (2)  
7           (b), 961.495, 961.55 (1) (d) 3., 961.56 (1) and 971.365; and **to create** 139.87 (4g),  
8           139.87 (4r), 139.885, 139.90 (2) and (3), 139.92 (2), 139.955, 961.437 and  
9           961.555 (2m) of the statutes; **relating to:** tetrahydrocannabinols and  
10          marijuana and providing penalties.

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### ***Analysis by the Legislative Reference Bureau***

This bill makes the following changes to current law relating to tetrahydrocannabinols (THC, which covers marijuana):

#### ***Schedule designation of THC***

Current law places various restrictions on controlled substances (dangerous drugs). The substances are regulated based on their schedule designations. The

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legislature by law or the controlled substances board by rule places a controlled substance in schedule I, II, III, IV or V based on the substance's accepted medical use and the potential for abuse of the substance. Schedule I includes substances that have a high potential for abuse and no currently accepted medical use in treatment and that lack accepted safety for use in treatment. This bill moves THC from schedule I to schedule III. Schedule III includes substances that have a currently accepted medical use in treatment and that, if abused, lead to moderate or low physical dependence or high psychological dependence.

***Penalties for THC-related offenses***

Moving THC from schedule I to schedule III has an impact on penalties for certain THC-related offenses.

First, the penalties under current law for unlawful manufacture or delivery, or possession with intent to manufacture or deliver, THC are as follows:

1. If the amount of THC is 500 grams or less, or the number of marijuana plants is less than 10, the penalty is a fine of not less than \$500 nor more than \$25,000 and imprisonment of not more than 3 years.

2. If the amount of THC is more than 500 grams but not more than 2,500 grams, or the number of marijuana plants is more than 10 but not more than 50, the penalty is a fine of not less than \$1,000 nor more than \$50,000 and imprisonment of not less than 3 months nor more than 5 years.

3. If the amount of THC is more than 2,500 grams, or the number of marijuana plants is more than 50, the penalty is a fine of not less than \$1,000 nor more than \$100,000 and imprisonment of not less than 1 year nor more than 10 years.

This bill makes the penalty for unlawfully manufacturing or delivering, or possessing with intent to manufacture or deliver, THC a fine of not more than \$15,000 or imprisonment for not more than 5 years or both.

Second, under current law a person who unlawfully possesses THC may be fined not more than \$1,000 or imprisoned for not more than 6 months or both. Under this bill, the person may be fined not more than \$500 or imprisoned for not more than 30 days or both. The bill also permits first-time THC possession offenders to receive a conditional discharge. THC offenses remain subject to enhanced penalty provisions for acts such as unlawfully delivering THC near a school or to a prisoner.

***Medical necessity defense***

Under current law, a person who has a valid prescription and certain others may lawfully possess a controlled substance. This bill establishes a medical necessity defense to THC-related prosecutions and property seizure (forfeiture) actions. Under the bill, a person has a medical need for THC if all of the following apply:

1. The person is: a) undergoing chemotherapy for treatment of cancer; b) suffering from glaucoma; c) has tested positive for the human immunodeficiency virus or has acquired immunodeficiency syndrome; or d) is suffering from an illness that is acute, chronic, incurable or terminal.

2. Conventional treatment of the illness is either not effective for the person or is causing severe side effects.

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3. A physician informs the person in writing that the use of THC may help to treat the illness, to relieve symptoms of or pain caused by the illness or to relieve side effects of other treatment for the illness.

The medical necessity defense is available both to the person who has the medical need and to persons who manufacture, distribute or deliver, or possesses with intent to manufacture, distribute or deliver, THC to a person who has a medical need for THC. If a person is determined to be exempt from the tax on dealers of THC (see below), he or she is presumed to have a medical necessity defense unless the state can prove beyond a reasonable doubt that the person's conduct exceeded the scope of the exemption or that the medical necessity no longer exists. If a person has not been determined to be exempt from the tax on dealers of THC and there is evidence presented at a trial that the medical necessity defense applies to the person, the person cannot be found guilty unless the prosecutor proves beyond a reasonable doubt that the facts constituting the defense do not exist.

***Tax on dealers of THC***

Under current law, a dealer of THC (a person who possesses, manufactures, produces, ships, transports, delivers, distributes, imports, sells or transfers to another person more than 42.5 grams of material containing THC or more than 5 plants containing THC) may not possess material or plants containing THC unless he or she pays to the department of revenue (DOR) an occupational tax on the material or plants containing THC. A dealer who pays the tax is issued a stamp or other evidence of payment by DOR. A dealer who possesses material or plants containing THC that does not bear evidence that the tax has been paid must pay a penalty equal to the tax due and may also be fined not more than \$10,000 or imprisoned for not more than 5 years or both.

This bill provides an exemption from the occupational tax on dealers of THC for the following persons: 1) a dealer who has a medical need for THC; and 2) a dealer who is an immediate family member, legal guardian or primary caregiver of a person with a medical need for THC and who possesses THC for the person with the medical need for THC. The criteria for having a medical need for THC for purposes of the occupational tax exemption are the same as those established by the bill for the medical necessity defense to THC-related prosecutions (see above).

The bill also requires DOR to establish a procedure for a dealer to apply to DOR for a determination of whether he or she is exempt from the occupational tax under the bill. Under the procedure, the dealer has the burden of establishing that he or she is exempt, and a dealer who is denied the exemption by DOR may appeal the denial to the circuit court for Dane County. Information provided by a dealer in an exemption determination proceeding must be kept confidential.

Finally, if a dealer did not apply to DOR for a determination of exemption or if a dealer was determined not to be exempt by DOR or by the Dane County circuit court, the dealer may still raise as a defense that he or she is exempt from the tax if a proceeding is brought against the dealer for possessing THC without evidence that the occupational tax has been paid. As with the medical necessity defense in THC-related prosecutions, if there is evidence presented in the case that the dealer

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is exempt from the occupational tax, DOR or the prosecutor, whichever is applicable, must prove that the facts constituting the exemption do not exist.

***Effect on federal law***

This bill changes only state law regarding THC and marijuana. Federal law generally prohibits persons from manufacturing, delivering or possessing THC or marijuana, classifies THC and marijuana as schedule I substances and applies to both intrastate and interstate violations.

For further information see the **state** 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.** 59.54 (25) of the statutes is amended to read:

2           59.54 **(25)** POSSESSION OF MARIJUANA. The board may enact and enforce an  
3 ordinance to prohibit the possession of 25 grams or less of marijuana, as defined in  
4 s. 961.01 (14), subject to the exceptions in s. 961.41 (3g) (intro.) and to the defense  
5 specified in s. 961.437, and provide a forfeiture for a violation of the ordinance; except  
6 that any person who is charged with possession of more than 25 grams of marijuana,  
7 or who is charged with possession of any amount of marijuana following a conviction  
8 for possession of marijuana, in this state shall not be prosecuted under this  
9 subsection. Any ordinance enacted under this subsection does not apply in any  
10 municipality that has enacted an ordinance prohibiting the possession of marijuana.

11           **SECTION 2.** 66.051 (1) (bm) of the statutes is amended to read:

12           66.051 **(1)** (bm) Enact and enforce an ordinance to prohibit the possession of  
13 25 grams or less of marijuana, as defined in s. 961.01 (14), subject to the exceptions  
14 in s. 961.41 (3g) (intro.) and to the defense specified in s. 961.437, and provide a  
15 forfeiture for a violation of the ordinance; except that any person who is charged with  
16 possession of more than 25 grams of marijuana, or who is charged with possession

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1 of any amount of marijuana following a conviction for possession of marijuana, in this  
2 state shall not be prosecuted under this paragraph; and

3 **SECTION 3.** 139.87 (4g) of the statutes is created to read:

4 139.87 (4g) "Immediate family member" has the meaning given in s. 254.64 (4)  
5 (a).

6 **SECTION 4.** 139.87 (4r) of the statutes is created to read:

7 139.87 (4r) "Primary caregiver" means an individual who has assumed  
8 responsibility for the housing, health or safety of another.

9 **SECTION 5.** 139.87 (7) of the statutes is amended to read:

10 139.87 (7) "Tetrahydrocannabinols" means a substance included in s. ~~961.14~~  
11 ~~(4) (t)~~ 961.18 (4) (c).

12 **SECTION 6.** 139.885 of the statutes is created to read:

13 **139.885 Medical need; exemption from tax. (1)** A dealer is exempt from  
14 the occupational tax under s. 139.88 on material containing tetrahydrocannabinols  
15 or plants containing tetrahydrocannabinols if one of the following applies:

16 (a) The dealer has a medical need to possess tetrahydrocannabinols under sub.  
17 (2).

18 (b) The dealer is an immediate family member, legal guardian or, subject to sub.  
19 (2m), primary caregiver of a person who has a medical need to possess  
20 tetrahydrocannabinols under sub. (2) and the dealer is possessing, manufacturing,  
21 producing or importing tetrahydrocannabinols for, or shipping, transporting,  
22 delivering, distributing, selling or transferring tetrahydrocannabinols to, the person  
23 who has the medical need to possess tetrahydrocannabinols under sub. (2).

24 **(2)** A person has a medical need to possess tetrahydrocannabinols if all of the  
25 following conditions are satisfied:

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1 (a) One or more of the following applies to the person:

2 1. He or she is undergoing chemotherapy for treatment of cancer.

3 2. He or she is suffering from glaucoma.

4 3. He or she has tested positive for the presence of the human  
5 immunodeficiency virus, antigen or nonantigen products of the human  
6 immunodeficiency virus or an antibody to the human immunodeficiency virus, or he  
7 or she is suffering from acquired immunodeficiency syndrome.

8 4. He or she is suffering from an illness, other than an illness specified in subds.

9 1. to 3., that is acute, chronic, incurable or terminal.

10 (b) Conventional treatment for the condition or illness specified in par. (a) is  
11 not effective for the person or the person is suffering severe side effects from  
12 conventional treatment that is proving effective for the condition or illness specified  
13 in par. (a).

14 (c) A physician, acting under s. 448.30, informs the person in writing that the  
15 use of tetrahydrocannabinols may help control or treat the condition or illness  
16 specified in par. (a), relieve any symptoms of or any pain caused by the condition or  
17 illness or relieve any side effects of conventional treatment that the person is  
18 receiving for the condition or illness.

19 **(2m)** A dealer is exempt under sub. (1) as a primary caregiver of a person who  
20 has a medical need for tetrahydrocannabinols under sub. (2) only if the person who  
21 has the medical need designates, in a letter to the physician specified in sub. (2) (c),  
22 that the dealer is his or her primary caregiver. A physician receiving a letter of  
23 designation under this subsection shall retain the letter in the patient's medical  
24 records.

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1           **(3)** The department shall establish a procedure by which a dealer may apply  
2 for a determination that the dealer is exempt from the occupational tax for  
3 tetrahydrocannabinols under sub. (1). In the procedure established under this  
4 subsection, the dealer has the burden of proving by a preponderance of the evidence  
5 that he or she is exempt under sub. (1). The procedure established under this  
6 subsection shall include an opportunity for the dealer who applies for the  
7 determination of exemption to submit evidence that he or she is exempt under sub.  
8 (1).

9           **(4)** A dealer may appeal an adverse determination of exemption by the  
10 department under sub. (3) to the circuit court for Dane County. Notwithstanding ss.  
11 801.09 (1), 801.095, 802.04 (1) and 815.05 (intro.), in an appeal brought under this  
12 subsection the dealer may substitute his or her initials, or fictitious initials, and his  
13 or her age and county of residence for his or her name and address on the summons  
14 and complaint. The dealer or the dealer's attorney shall supply the court the name  
15 and other necessary identifying information of the dealer. The court shall maintain  
16 the name and other identifying information, and supply the information to the  
17 department, in a manner which maintains the confidentiality of the information.

18           **(5)** Unless the information was also obtained independently of the procedure  
19 or appeal, information obtained by the department in an application procedure  
20 under sub. (3) and information obtained in an appeal of an adverse determination  
21 under sub. (4) may not be used by the department to assess or collect any tax, penalty  
22 or interest due under this subchapter and may not be used against the dealer in any  
23 criminal or civil proceeding. A court may issue an injunction to prevent or delay the  
24 levying, assessment or collection of taxes or penalties under this subchapter if the

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1 levy, assessment or collection is based on information used in violation of this  
2 subsection.

3 **SECTION 7.** 139.89 of the statutes is amended to read:

4 **139.89 (title) Proof of payment or exemption.** The department shall create  
5 a uniform system of providing, affixing and displaying stamps, labels or other  
6 evidence that the tax under s. 139.88 has been paid or that the dealer is exempt from  
7 tax under s. 139.885 (1). Stamps or other evidence of payment shall be sold at face  
8 value. Evidence of exemption under s. 139.885 (1) shall be issued without charge to  
9 a dealer who is determined to be exempt using the procedure under s. 139.885 (3).  
10 No dealer may possess any schedule I controlled substance ~~or, any~~ schedule II  
11 controlled substance or any plants or other material containing  
12 tetrahydrocannabinols unless the tax under s. 139.88 has been paid on it, as  
13 evidenced by a stamp or other official evidence issued by the department, or unless  
14 the dealer is exempt from tax under s. 139.885 (1). The tax under this subchapter  
15 is due and payable immediately upon acquisition or possessing of the schedule I  
16 controlled substance ~~or, schedule II controlled substance~~ or plants or other material  
17 containing tetrahydrocannabinols in this state, unless the dealer is exempt from tax  
18 under s. 139.885 (1), and the department at that time has a lien on all of the  
19 taxpayer's property. Late payments are subject to interest at the rate of 1% per  
20 month or part of a month. No person may transfer to another person a stamp or other  
21 evidence of payment or any evidence of exemption under s. 139.885 (1).

22 **SECTION 8.** 139.90 (title) of the statutes is amended to read:

23 **139.90 (title) No Limited immunity; presumption.**

24 **SECTION 9.** 139.90 of the statutes is renumbered 139.90 (1).

25 **SECTION 10.** 139.90 (2) and (3) of the statutes are created to read:



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1           139.90 (2) A dealer to whom the department has issued evidence of exemption  
2           under s. 139.885 (1) is immune from collection action under s. 139.95 (1) and criminal  
3           prosecution under s. 139.95 (2).

4           (3) Acquisition of evidence of exemption under s. 139.885 (1) does not create  
5           immunity for a dealer from criminal prosecution under ch. 961 but does provide the  
6           presumption under s. 961.437 (5) (a) that the medical necessity defense under s.  
7           961.437 applies to the dealer.

8           **SECTION 11.** 139.91 of the statutes is renumbered 139.91 (1) and amended to  
9           read:

10           139.91 (1) The department may not reveal facts obtained in administering this  
11           subchapter, except that the department may publish statistics that do not reveal the  
12           identities of dealers.

13           (2) Dealers may not be required to provide any identifying information in  
14           connection with the purchase of stamps, but dealers may be required to provide  
15           identifying information in connection with an application for exemption under s.  
16           139.885 (1). No information

17           (3) (a) Except as provided in par. (b) and s. 139.885 (5), information obtained  
18           by the department may be used against a dealer in any criminal proceeding unless  
19           only if that information has been independently obtained, except in.

20           (b) The department may use information obtained in administering this  
21           subchapter, other than information specified in s. 139.885 (5), in connection with a  
22           proceeding involving possession of schedule I controlled substances or schedule II  
23           controlled substances on which the tax has not been paid or in connection with taxes  
24           due under s. 139.88 from the dealer.

**ASSEMBLY BILL 560****SECTION 12**

1           **SECTION 12.** 139.92 of the statutes is renumbered 139.92 (1) and amended to  
2 read:

3           139.92 (1) ~~For~~ Except as provided in sub. (2), for the purposes of determining  
4 the amount of tax that should have been paid, determining whether or not the dealer  
5 should have paid taxes or collecting any taxes under s. 139.88, the department may  
6 examine, or cause to be examined, any books, papers, records or memoranda that  
7 may be relevant to making those determinations, whether the books, papers, records  
8 or memoranda are the property of or in the possession of the dealer or another person.  
9 The department may require the attendance of any person having knowledge or  
10 information that may be relevant, compel the production of books, papers, records  
11 or memoranda by persons required to attend, take testimony on matters material to  
12 the determination, issue subpoenas and administer oaths or affirmations.

13           **SECTION 13.** 139.92 (2) of the statutes is created to read:

14           139.92 (2) For the purpose of determining whether or not a dealer is exempt  
15 under s. 139.885 (1), the department may examine, cause to be examined or compel  
16 the production of only those parts of the medical records of the dealer or of the person  
17 with the medical need that relate to whether the dealer or the person with the  
18 medical need satisfies the requirements under s. 139.885 (2) and, if applicable, s.  
19 139.885 (2m).

20           **SECTION 14.** 139.93 (1) of the statutes is amended to read:

21           139.93 (1) The taxes, penalties and interest under this subchapter shall be  
22 assessed, collected and reviewed as are income taxes under ch. 71, except that  
23 applications for determination of exemption shall be reviewed as provided under s.  
24 139.885.

25           **SECTION 15.** 139.93 (2) of the statutes is amended to read:

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1           139.93 (2) If Except as provided in s. 139.885, if the department finds that the  
2 collection of the tax under this subchapter is jeopardized by delay, the department  
3 may issue, in person or by registered mail to the last-known address of the taxpayer,  
4 a notice of its intent to proceed under this subsection, may make a demand for  
5 immediate payment of the taxes, penalties and interest due and may proceed by the  
6 methods under s. 71.91 (5) and (6). If the taxes, penalties and interest are not  
7 immediately paid, the department may seize any of the taxpayer's assets.  
8 Immediate seizure of assets does not nullify the taxpayer's right to a hearing on the  
9 department's determination that the collection of the assessment will be jeopardized  
10 by delay, nor does it nullify the taxpayer's right to post a bond. Within 5 days after  
11 giving notice of its intent to proceed under this subsection, the department shall, by  
12 mail or in person, provide the taxpayer in writing with its reasons for proceeding  
13 under this subsection. The warrant of the department shall not issue and the  
14 department may not take other action to collect if the taxpayer within 10 days after  
15 the notice of intent to proceed under this subsection is given furnishes a bond in the  
16 amount, not exceeding double the amount of the tax, and with such sureties as the  
17 department of revenue approves, conditioned upon the payment of so much of the  
18 taxes as shall finally be determined to be due, together with interest thereon. Within  
19 20 days after notice of intent to proceed under this subsection is given by the  
20 department of revenue, the person against whom the department intends to proceed  
21 under this subsection may appeal to the department the department's determination  
22 that the collection of the assessment will be jeopardized by delay. Any statement that  
23 the department files may be admitted into evidence and is prima facie evidence of  
24 the facts it contains. Taxpayers may appeal adverse determinations by the  
25 department to the circuit court for Dane county.

**ASSEMBLY BILL 560****SECTION 16**

1           **SECTION 16.** 139.93 (3) of the statutes is amended to read:

2           139.93 (3) The taxes and penalties assessed by the department are presumed  
3 to be valid and correct. The Except as provided in s. 139.955 (2) and (3), the burden  
4 is on the taxpayer to show their invalidity or incorrectness.

5           **SECTION 17.** 139.93 (5) of the statutes is amended to read:

6           139.93 (5) No Except as provided in s. 139.885 (5), no court may issue an  
7 injunction to prevent or delay the levying, assessment or collection of taxes or  
8 penalties under this subchapter.

9           **SECTION 18.** 139.95 of the statutes is amended to read:

10           **139.95 Penalties.** (1) Any dealer who possesses a schedule I controlled  
11 substance or, a schedule II controlled substance or plants or other material  
12 containing tetrahydrocannabinols that does do not bear evidence that the tax under  
13 s. 139.88 has been paid or that the dealer is exempt under s. 139.885 (1) shall pay,  
14 in addition to the tax under s. 139.88, a penalty equal to the tax due. The department  
15 shall collect penalties under this subchapter in the same manner as it collects the tax  
16 under this subchapter.

17           (2) A dealer who possesses a schedule I controlled substance or, a schedule II  
18 controlled substance or plants or other material containing tetrahydrocannabinols  
19 that does do not bear evidence that the tax under s. 139.88 has been paid or that the  
20 dealer is exempt under s. 139.885 (1) may be fined not more than \$10,000 or  
21 imprisoned for not more than 5 years or both.

22           (3) Any person who falsely or fraudulently makes, alters or counterfeits any  
23 stamp or procures or causes the same to be done or who knowingly utters, publishes,  
24 passes or tenders as true any false, altered or counterfeit stamp or who affixes a  
25 counterfeit stamp to a schedule I controlled substance or, a schedule II controlled

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1     substance or plants or other material containing tetrahydrocannabinols or who  
2     possesses a schedule I controlled substance ~~or~~ a schedule II controlled substance or  
3     plants or other material containing tetrahydrocannabinols to which a false, altered  
4     or counterfeit stamp is affixed may be fined not more than \$10,000 or imprisoned for  
5     not less than one year nor more than 10 years or both.

6             **SECTION 19.** 139.955 of the statutes is created to read:

7             **139.955        Medical necessity defense in cases involving**  
8     **tetrahydrocannabinols.** (1) A dealer has a defense to any proceeding brought  
9     against the dealer under s. 139.95 (1) or (2) relating to the possession, manufacture,  
10    production, shipping, transporting, delivery, importation, sale or transfer of  
11    tetrahydrocannabinols that he or she is exempt from the tax under s. 139.885. A  
12    dealer may raise the defense under this subsection even if any of the following apply:

13            (a) The dealer did not apply for a determination of exemption under s. 139.885  
14            (3).

15            (b) The dealer applied for a determination of exemption under s. 139.885 (3)  
16            and the department or, if the dealer appealed under s. 139.885 (4), a court  
17            determined that the dealer was not exempt under s. 139.885.

18            **(2)** When the existence of a defense under sub. (1) has been placed in issue by  
19            the evidence in a proceeding to collect a penalty under s. 139.95 (1), the department  
20            must prove by clear and convincing evidence that the facts constituting the defense  
21            do not exist in order to collect the penalty specified under s. 139.95 (1).

22            **(3)** When the existence of a defense under sub. (1) has been placed in issue by  
23            the evidence in a prosecution under s. 139.95 (2), the state must prove beyond a  
24            reasonable doubt that the facts constituting the defense do not exist in order to  
25            sustain a finding of guilt under s. 139.95 (2).

**ASSEMBLY BILL 560****SECTION 20**

1           **SECTION 20.** 938.34 (14t) of the statutes is amended to read:

2           **938.34 (14t) POSSESSION OF A CONTROLLED SUBSTANCE OR CONTROLLED SUBSTANCE**  
3           ANALOG ON OR NEAR CERTAIN PREMISES. If the juvenile is adjudicated delinquent under  
4           a violation of s. 961.41 (3g) by possessing or attempting to possess a controlled  
5           substance included in schedule I or II under ch. 961 ~~or~~ a controlled substance analog  
6           of a controlled substance included in schedule I or II under ch. 961 or a controlled  
7           substance included in s. 961.18 (4) (c) while in or on the premises of a scattered-site  
8           public housing project, as defined in s. 961.01 (20i), while in or on or otherwise within  
9           1,000 feet of a state, county, city, village or town park, a jail or correctional facility,  
10          as defined in s. 961.01 (12m), a multiunit public housing project, as defined in s.  
11          961.01 (14m), a swimming pool open to members of the public, a youth center, as  
12          defined in s. 961.01 (22), or a community center, while in or on or otherwise within  
13          1,000 feet of any private or public school premises or while in or on or otherwise  
14          within 1,000 feet of a school bus, as defined in s. 340.01 (56), the court shall require  
15          that the juvenile participate for 100 hours in a supervised work program or other  
16          community service work under sub. (5g).

17          **SECTION 21.** 961.14 (4) (t) of the statutes is renumbered 961.18 (4) (c) and  
18          amended to read:

19          **961.18 (4) (c)** Tetrahydrocannabinols, commonly known as “THC”, in any form  
20          including tetrahydrocannabinols contained in marijuana, obtained from marijuana  
21          or chemically synthesized;

22          **SECTION 22.** 961.18 (4) (intro.) of the statutes is amended to read:

23          **961.18 (4) OTHER SUBSTANCES.** (intro.) Any material, compound, mixture or  
24          preparation which contains any quantity of any of the following substances,  
25          including any of their salts, isomers and salts of isomers that are theoretically

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1 possible within the specific chemical designation, in any form including a substance,  
2 salt, isomer or salt of an isomer contained in a plant, obtained from a plant or  
3 chemically synthesized:

4 **SECTION 23.** 961.41 (1) (b) of the statutes is amended to read:

5 961.41 (1) (b) Except as provided in pars. (cm) and (e) to ~~(h)~~ (g), any other  
6 controlled substance included in schedule I, II or III, or a controlled substance analog  
7 of any other controlled substance included in schedule I or II, may be fined not more  
8 than \$15,000 or imprisoned for not more than 5 years or both.

9 **SECTION 24.** 961.41 (1) (h) of the statutes is repealed.

10 **SECTION 25.** 961.41 (1m) (b) of the statutes is amended to read:

11 961.41 (1m) (b) Except as provided in pars. (cm) and (e) to ~~(h)~~ (g), any other  
12 controlled substance included in schedule I, II or III, or a controlled substance analog  
13 of any other controlled substance included in schedule I or II, may be fined not more  
14 than \$15,000 or imprisoned for not more than 5 years or both.

15 **SECTION 26.** 961.41 (1m) (h) of the statutes is repealed.

16 **SECTION 27.** 961.41 (1q) (title) of the statutes is repealed.

17 **SECTION 28.** 961.41 (1q) of the statutes is renumbered 961.49 (4) and amended  
18 to read:

19 961.49 (4) Under ~~subs. (1) (h) and (1m) (h) and s. 961.49 sub.~~ (2), if different  
20 penalty provisions apply to a person depending on whether the weight of  
21 tetrahydrocannabinols or the number of plants containing tetrahydrocannabinols is  
22 considered, the greater penalty provision applies.

23 **SECTION 29.** 961.41 (1r) of the statutes is amended to read:

24 961.41 (1r) DETERMINING WEIGHT OF SUBSTANCE. In determining amounts under  
25 subs. (1) and (1m) and s. 961.49 (2) (b), an amount includes the weight of cocaine,

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1 cocaine base, heroin, phencyclidine, lysergic acid diethylamide, psilocin, psilocybin,  
2 amphetamine, methamphetamine, methcathinone or tetrahydrocannabinols or, if  
3 the substance has a controlled substance analog, any controlled substance analog of  
4 any of these substances together with any compound, mixture, diluent, plant  
5 material or other substance mixed or combined with the controlled substance or  
6 controlled substance analog. ~~In addition, in determining amounts under subs. (1) (h)~~  
7 ~~and (1m) (h), the amount of tetrahydrocannabinols means anything included under~~  
8 ~~s. 961.14 (4) (t) and includes the weight of any marijuana.~~

9 **SECTION 30.** 961.41 (1x) of the statutes is amended to read:

10 961.41 (1x) CONSPIRACY. Any person who conspires, as specified in s. 939.31,  
11 to commit a crime under sub. (1) (cm) to ~~(h)~~ (g) or (1m) (cm) to ~~(h)~~ (g) is subject to the  
12 applicable penalties under sub. (1) (cm) to ~~(h)~~ (g) or (1m) (cm) to ~~(h)~~ (g).

13 **SECTION 31.** 961.41 (3g) (b) of the statutes is amended to read:

14 961.41 (3g) (b) Except as provided in pars. (c), and (d) ~~and (e)~~, if the person  
15 possesses or attempts to possess a controlled substance or controlled substance  
16 analog, other than a controlled substance included in schedule I or II that is a  
17 narcotic drug or a controlled substance analog of a controlled substance included in  
18 schedule I or II that is a narcotic drug, the person is guilty of a misdemeanor,  
19 punishable under s. 939.61.

20 **SECTION 32.** 961.41 (3g) (e) of the statutes is repealed.

21 **SECTION 33.** 961.437 of the statutes is created to read:

22 **961.437 Medical necessity defense in cases involving**  
23 **tetrahydrocannabinols. (1)** A person has a defense to prosecution under s. 961.41  
24 (1) (b) or (1m) (b) if he or she manufactures, or possesses with intent to manufacture,



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1 tetrahydrocannabinols for a person who has a medical need for  
2 tetrahydrocannabinols under sub. (4).

3 (2) A person has a defense to prosecution under s. 961.41 (1) (b) or (1m) (b) if  
4 he or she distributes or delivers, or possesses with intent to distribute or deliver,  
5 tetrahydrocannabinols to a person who has a medical need for  
6 tetrahydrocannabinols under sub. (4).

7 (3) A person has a defense to a prosecution under s. 961.41 (3g) (b) for  
8 possessing or attempting to possess tetrahydrocannabinols if the person has a  
9 medical need for tetrahydrocannabinols under sub. (4).

10 (4) A person has a medical need for tetrahydrocannabinols if all of the following  
11 conditions are satisfied:

12 (a) One or more of the following applies to the person:

13 1. He or she is undergoing chemotherapy for treatment of cancer.

14 2. He or she is suffering from glaucoma.

15 3. He or she has tested positive for the presence of the human  
16 immunodeficiency virus, antigen or nonantigen products of the human  
17 immunodeficiency virus or an antibody to the human immunodeficiency virus, or he  
18 or she is suffering from acquired immunodeficiency syndrome.

19 4. He or she is suffering from an illness, other than an illness specified in subds.

20 1. to 3., that is acute, chronic, incurable or terminal.

21 (b) Conventional treatment for the condition or illness specified in par. (a) is  
22 not effective for the person or the person is suffering severe side effects from  
23 conventional treatment that is proving effective for the condition or illness specified  
24 in par. (a).

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1 (c) A physician, acting under s. 448.30, informs the person in writing that the  
2 use of tetrahydrocannabinols may help control or treat the condition or illness  
3 specified in par. (a), relieve any symptoms of or any pain caused by the condition or  
4 illness or relieve any side effects of conventional treatment that the person is  
5 receiving for the condition or illness.

6 (5) (a) A person shall be presumed to have a defense under sub. (1), (2) or (3)  
7 if the person has been issued evidence of exemption under s. 139.885 from the  
8 occupational tax on material or plants containing tetrahydrocannabinols under  
9 subch. IV of ch. 139. The presumption under this paragraph may be rebutted by  
10 proof beyond a reasonable doubt of any of the following:

11 1. That the conduct on which the prosecution is based is not within the scope  
12 of the exemption under s 139.885 (1).

13 2. That the medical need no longer exists.

14 (b) If a person has not been issued evidence of exemption under s. 139.885 from  
15 the occupational tax on material or plants containing tetrahydrocannabinols under  
16 subch. IV of ch. 139 and the existence of a defense under sub. (1), (2) or (3) has been  
17 placed in issue by the trial evidence, the state must prove beyond a reasonable doubt  
18 that the facts constituting the defense do not exist in order to sustain a finding of guilt  
19 under s. 961.41 (1) (b), (1m) (b) or (3g) (b), whichever is applicable.

20 **SECTION 34.** 961.46 (3) of the statutes is amended to read:

21 961.46 (3) If any person 17 years of age or over violates s. 961.41 (1) (b), (cm),  
22 (d), (e), (f), or (g) ~~or (h)~~ by distributing or delivering cocaine, cocaine base, heroin,  
23 phencyclidine, lysergic acid diethylamide, psilocin, psilocybin, amphetamine,  
24 methamphetamine, methcathinone or any form of tetrahydrocannabinols or, if the  
25 substance has a controlled substance analog, a controlled substance analog of any of

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1 these substances to a person 17 years of age or under who is at least 3 years his or  
2 her junior, any applicable minimum and maximum fines and minimum and  
3 maximum periods of imprisonment under s. 961.41 (1) (b), (cm), (d), (e), (f), or (g) ~~or~~  
4 ~~(h)~~ are doubled.

5 **SECTION 35.** 961.465 (2) of the statutes is amended to read:

6 961.465 (2) If a person violates s. 961.41 (1) (b), (cm), (d), (e), (f), or (g) ~~or~~ ~~(h)~~  
7 or (1m) (b), (cm), (d), (e), (f), or (g) ~~or~~ ~~(h)~~ by delivering, distributing or possessing with  
8 intent to deliver or distribute cocaine, cocaine base, heroin, phencyclidine, lysergic  
9 acid diethylamide, psilocin, psilocybin, amphetamine, methamphetamine,  
10 methcathinone or any form of tetrahydrocannabinols, or, if the substance has a  
11 controlled substance analog, a controlled substance analog of any of these  
12 substances, to a prisoner within the precincts of any prison, jail or house of  
13 correction, any applicable minimum and maximum fines and minimum and  
14 maximum periods of imprisonment under s. 961.41 (1) (b), (cm), (d), (e), (f), or (g) ~~or~~  
15 ~~(h)~~ or (1m) (b), (cm), (d), (e), (f), or (g) ~~or~~ ~~(h)~~ are doubled.

16 **SECTION 36.** 961.48 (2) of the statutes is amended to read:

17 961.48 (2) If any person is charged under sub. (2m) with a 2nd or subsequent  
18 offense under this chapter that is specified in s. 961.41 (1) (cm), (d), (e), (f), or (g) ~~or~~  
19 ~~(h)~~, (1m) (cm), (d), (e), (f), or (g) ~~or~~ ~~(h)~~ or (3g) (a) 2., (c), or (d) ~~or~~ ~~(e)~~, and he or she is  
20 convicted of that 2nd or subsequent offense, any applicable minimum and maximum  
21 fines and minimum and maximum periods of imprisonment under s. 961.41 (1) (cm),  
22 (d), (e), (f), or (g) ~~or~~ ~~(h)~~, (1m) (cm), (d), (e), (f), or (g) ~~or~~ ~~(h)~~ or (3g) (a) 2., (c), or (d) ~~or~~  
23 ~~(e)~~ are doubled. A person convicted of a 2nd or subsequent offense under s. 961.41  
24 (3g) (c), or (d) ~~or~~ ~~(e)~~ is guilty of a felony and the person may be imprisoned in state  
25 prison.

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1           **SECTION 37.** 961.49 (1) of the statutes is amended to read:

2           961.49 (1) If any person violates s. 961.41 (1) (b), (cm), (d), (e), (f), or (g) ~~or (h)~~  
3 by delivering or distributing, or violates s. 961.41 (1m) (b), (cm), (d), (e), (f), or (g) ~~or~~  
4 ~~(h)~~ by possessing with intent to deliver or distribute, cocaine, cocaine base, heroin,  
5 phencyclidine, lysergic acid diethylamide, psilocin, psilocybin, amphetamine,  
6 methamphetamine, methcathinone or any form of tetrahydrocannabinols or, if the  
7 substance has a controlled substance analog, a controlled substance analog of any of  
8 these substances while in or on the premises of a scattered-site public housing  
9 project, while in or on or otherwise within 1,000 feet of a state, county, city, village  
10 or town park, a jail or correctional facility, a multiunit public housing project, a  
11 swimming pool open to members of the public, a youth center or a community center,  
12 while in or on or otherwise within 1,000 feet of any private or public school premises  
13 or while in or on or otherwise within 1,000 feet of a school bus, as defined in s. 340.01  
14 (56), the maximum term of imprisonment prescribed by law for that crime may be  
15 increased by 5 years.

16           **SECTION 38.** 961.49 (2) (a) of the statutes is amended to read:

17           961.49 (2) (a) Except as provided in par. (b), if any person violates s. 961.41 (1)  
18 by delivering or distributing, or violates s. 961.41 (1m) by possessing with intent to  
19 deliver or distribute, a controlled substance included in schedule I or II ~~or~~, a  
20 controlled substance analog of a controlled substance included in schedule I or II, or  
21 any form of tetrahydrocannabinols while in or on the premises of a scattered-site  
22 public housing project, while in or on or otherwise within 1,000 feet of a state, county,  
23 city, village or town park, a jail or correctional facility, a multiunit public housing  
24 project, a swimming pool open to members of the public, a youth center or a  
25 community center, while in or on or otherwise within 1,000 feet of any private or

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1 public school premises or while in or on or otherwise within 1,000 feet of a school bus,  
2 as defined in s. 340.01 (56), the court shall sentence the person to at least 3 years in  
3 prison, but otherwise the penalties for the crime apply. Except as provided in s.  
4 961.438, the court shall not place the person on probation. The person is not eligible  
5 for parole until he or she has served at least 3 years, with no modification by the  
6 calculation under s. 302.11 (1).

7 **SECTION 39.** 961.49 (2) (b) of the statutes is amended to read:

8 961.49 (2) (b) If the conduct described in par. (a) involves only the delivery or  
9 distribution, or the possession with intent to deliver or distribute, of not more than  
10 25 grams of tetrahydrocannabinols, included in s. ~~961.14 (4) (t)~~ 961.18 (4) (c), or not  
11 more than 5 plants containing tetrahydrocannabinols, the court shall sentence the  
12 person to at least one year in prison, but otherwise the penalties for the crime apply.  
13 Except as provided in s. 961.438, the court shall not place the person on probation.  
14 The person is not eligible for parole until he or she has served at least one year, with  
15 no modification by the calculation under s. 302.11 (1).

16 **SECTION 40.** 961.495 of the statutes is amended to read:

17 **961.495 Possession or attempted possession of a controlled substance**  
18 **on or near certain places.** If any person violates s. 961.41 (3g) by possessing or  
19 attempting to possess a controlled substance included in schedule I or II ~~or~~, a  
20 controlled substance analog of a controlled substance included in schedule I or II, or  
21 any form of tetrahydrocannabinols while in or on the premises of a scattered-site  
22 public housing project, while in or on or otherwise within 1,000 feet of a state, county,  
23 city, village or town park, a jail or correctional facility, a multiunit public housing  
24 project, a swimming pool open to members of the public, a youth center or a  
25 community center, while in or on or otherwise within 1,000 feet of any private or

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1 public school premises or while in or on or otherwise within 1,000 feet of a school bus,  
2 as defined in s. 340.01 (56), the court shall, in addition to any other penalties that  
3 may apply to the crime, impose 100 hours of community service work for a public  
4 agency or a nonprofit charitable organization. The court shall ensure that the  
5 defendant is provided a written statement of the terms of the community service  
6 order and that the community service order is monitored. Any organization or  
7 agency acting in good faith to which a defendant is assigned pursuant to an order  
8 under this section has immunity from any civil liability in excess of \$25,000 for acts  
9 or omissions by or impacting on the defendant.

10 **SECTION 41.** 961.55 (1) (d) 3. of the statutes is amended to read:

11 961.55 (1) (d) 3. A vehicle is not subject to forfeiture for a violation of s. 961.41  
12 (3g) (b), (c), or (d) ~~or~~ (e); and

13 **SECTION 42.** 961.555 (2m) of the statutes is created to read:

14 961.555 (2m) MEDICAL NECESSITY DEFENSE. (a) In an action to forfeit property  
15 seized under s. 961.55 based on the crime of manufacturing, distributing or  
16 delivering, or possessing with intent to manufacture, distribute or deliver,  
17 tetrahydrocannabinols, if the owner of the property has not been convicted of a crime  
18 which was the basis for the seizure of the property it is a defense to the forfeiture of  
19 the property that the property relates to the manufacture, distribution or delivery  
20 of, or to the possession with intent to manufacture, distribute or deliver,  
21 tetrahydrocannabinols to a person who has a medical need for  
22 tetrahydrocannabinols under s. 961.437 (4).

23 (b) In an action to forfeit property seized under s. 961.55 based on the crime of  
24 possessing tetrahydrocannabinols, if the owner of the property has not been  
25 convicted of a crime which was the basis for the seizure of the property it is a defense

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1 to the forfeiture of the property that the property relates to the possession of  
2 tetrahydrocannabinols by a person who has a medical need for  
3 tetrahydrocannabinols under s. 961.437 (4).

4 (c) The owner of property seized under s. 961.55 shall raise a defense under par.  
5 (a) or (b) in the answer to the complaint that he or she serves under sub. (2) (b). When  
6 a defense under par. (a) or (b) has been raised by the property owner in his or her  
7 answer, the state must, as part of the burden of proof specified in sub. (3), prove that  
8 the facts constituting the defense do not exist.

9 **SECTION 43.** 961.56 (1) of the statutes is amended to read:

10 961.56 (1) ~~It~~ Except as provided in s. 961.437 (5), it is not necessary for the state  
11 to negate any exemption or exception in this chapter in any complaint, information,  
12 indictment or other pleading or in any trial, hearing or other proceeding under this  
13 chapter. ~~The, and the~~ burden of proof of any exemption or exception is upon the  
14 person claiming it.

15 **SECTION 44.** 971.365 of the statutes is amended to read:

16 **971.365 Crimes involving certain controlled substances.** (1) (a) In any  
17 case under s. 961.41 (1) (cm), (d), (e), (f), or (g) ~~or (h)~~ involving more than one violation,  
18 all violations may be prosecuted as a single crime if the violations were pursuant to  
19 a single intent and design.

20 (b) In any case under s. 961.41 (1m) (cm), (d), (e), (f), or (g) ~~or (h)~~ involving more  
21 than one violation, all violations may be prosecuted as a single crime if the violations  
22 were pursuant to a single intent and design.

23 (c) In any case under s. 961.41 (3g) (a) 2., (c), or (d) ~~or (e)~~ involving more than  
24 one violation, all violations may be prosecuted as a single crime if the violations were  
25 pursuant to a single intent and design.

