



## 2003 ASSEMBLY BILL 688

December 5, 2003 - Introduced by Representatives UNDERHEIM, AINSWORTH, KRAWCZYK, MUSSER, PETROWSKI, HINES, TOWNSEND, LOTHIAN, GUNDERSON and OTT, cosponsored by Senators DARLING, A. LASEE and ROESSLER. Referred to Committee on Criminal Justice.

- 1     **AN ACT to create** 961.493 of the statutes; **relating to:** distributing controlled  
2           substances in a place in which a child is present and providing a penalty.

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### *Analysis by the Legislative Reference Bureau*

Current law prohibits the unauthorized distribution or delivery of a controlled substance and the unauthorized possession of a controlled substance with intent to distribute or deliver it. The maximum term of imprisonment, which consists of a term of confinement in state prison followed by a term of extended supervision, for a person who violates this prohibition ranges from three and one-half to forty years, depending on which controlled substance -- and how much of it -- is involved. In addition, the maximum term of imprisonment may be increased by five years if the offender distributes or delivers certain controlled substances (including cocaine, heroin, PCP, LSD, methamphetamine, and marijuana) within 1,000 feet of a school or public park or in other specified places.

Under this bill, the maximum term of imprisonment for unlawfully distributing or delivering a controlled substance or for unlawfully possessing a controlled substance with intent to deliver or distribute it may be increased by five years if: 1) the person commits the offense at a residential building while a child is present; or 2) the person uses a vehicle to facilitate the commission of the offense and a child is in or on the vehicle while the person commits it.

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.

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For further information see the *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.** 961.493 of the statutes is created to read:

2           **961.493 Distributing controlled substances around children.** (1) In this  
3 section:

4           (a) “Child” means a person who is under the age of 18 years.

5           (b) “Residential building” has the meaning given in s. 101.145 (1) (a).

6           (c) “Unit” has the meaning given in s. 101.145 (1) (d).

7           **(2)** If a person violates s. 961.41 (1) by distributing or delivering a controlled  
8 substance or a controlled substance analog or violates s. 961.41 (1m) by possessing  
9 a controlled substance or a controlled substance analog with intent to distribute or  
10 deliver it under any of the following circumstances, the maximum term of  
11 imprisonment for the crime may be increased by 5 years:

12           (a) The person commits the offense in a unit, in a common area, or on the  
13 grounds of a residential building while a child is present in or on the unit, common  
14 area, or grounds.

15           (b) The person uses a vehicle to facilitate the commission of the offense and a  
16 child is in or on the vehicle while the person commits the offense.

17           **(3)** (a) A prosecutor may charge a person under sub. (2) and s. 961.455  
18 regarding the same incident or occurrence, but the person may not be convicted  
19 under both this section and s. 961.455 if the child described in sub. (2) is the person  
20 under the age of 17 years involved in the violation of s. 961.455.

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1           (b) A prosecutor may charge a person under sub. (2) and s. 961.46 regarding  
2           the same incident or occurrence, but the person may not be convicted under both this  
3           section and s. 961.46 if the child described in sub. (2) is the person to whom the  
4           controlled substance or controlled substance analog is distributed or delivered under  
5           s. 961.46.

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**(END)**