



## 2023 ASSEMBLY BILL 1207

April 11, 2024 - Introduced by Representatives STUBBS, J. ANDERSON, EMERSON, OHNSTAD, SHANKLAND, SINICKI and SUBECK, cosponsored by Senators LARSON, L. JOHNSON, SMITH and HESSELBEIN. Referred to Committee on Criminal Justice and Public Safety.

**AN ACT** *to renumber* 961.41 (1q); *to renumber and amend* 961.41 (1) (h) 1.;  
  
*to amend* 59.54 (25) (a) (intro.), 66.0107 (1) (bm), 961.41 (1m) (h) 1., 961.41 (1r), 961.41 (3g) (e) and 961.46; *to repeal and recreate* 961.41 (1q) (title); and  
  
*to create* 961.41 (1) (h) 1g., 961.41 (1q) (b) and (c) and 973.016 of the statutes;  
  
**relating to:** decriminalizing 28 grams or less of marijuana.

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

This bill decriminalizes 28 grams or less of marijuana. Current law prohibits a person from possessing or attempting to possess; possessing with the intent to manufacture, distribute, or deliver; and manufacturing, distributing, or delivering marijuana. The penalties vary based on the amount of marijuana or plants involved or the number of previous controlled-substance convictions the person has, as follows:

1. A person who possesses marijuana is guilty of a misdemeanor and may be fined not more than \$1,000 or imprisoned for not more than six months, or both, for a first conviction and is guilty of a Class I felony and may be fined not more than \$10,000 or imprisoned for not more than three years and six months, or both, for a repeat conviction.

2. A person who manufactures, distributes, or delivers marijuana, or

**ASSEMBLY BILL 1207****SECTION 1**

possesses marijuana with the intent to manufacture, distribute, or deliver it, is guilty of a Class I felony if the amount involves not more than 200 grams or not more than four plants; a Class H felony if the amount involves more than 200 grams but not more than 1,000 grams or more than four plants but not more than 20 plants; a Class G felony if the amount involves more than 1,000 grams but not more than 2,500 grams or more than 20 plants but not more than 50 plants; a Class F felony if the amount involves more than 2,500 grams but not more than 10,000 grams or more than 50 plants but not more than 200 plants; or a Class E felony if the amount involves more than 10,000 grams or more than 200 plants.

This bill eliminates 1) the penalty for possession of marijuana if the amount of marijuana involved is not more than 28 grams; and 2) the penalty for manufacturing, distributing, or delivering, or for possessing with the intent to manufacture, distribute, or deliver, if the amount of marijuana involved is not more than 28 grams or the number of plants involved is not more than two. The bill, however, retains the current law penalty for distributing or delivering any amount of marijuana to a minor who is no more than 17 years of age by a person who is at least three years older than the minor.

Current law also allows local governments to enact ordinances prohibiting the possession of marijuana. The bill limits local governments to enacting ordinances prohibiting the possession of only more than 28 grams of marijuana.

Current law requires that, when determining the weight of controlled substances, the weight includes the weight of the controlled substance together with any compound, mixture, or other substance mixed or combined with the controlled substance. Under the bill, when determining the amount of tetrahydrocannabinols, only the weight of the marijuana may be considered.

The bill also prohibits establishing probable cause that a person is violating the prohibition against possessing more than 28 grams of marijuana by an odor of marijuana or by the possession of not more than 28 grams of marijuana. Finally, the bill creates a process for expunging or dismissing convictions involving less than 28 grams of marijuana that occurred before this bill takes effect.

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:***

**SECTION 1.** 59.54 (25) (a) (intro.) of the statutes is amended to read:

59.54 **(25)** (a) (intro.) The board may enact and enforce an ordinance to prohibit the possession of more than 28 grams of marijuana, as defined in s. 961.01 (14), subject to the exceptions in s. 961.41 (3g) (intro.), and provide a forfeiture for a

**ASSEMBLY BILL 1207****SECTION 1**

violation of the ordinance; except that if a complaint is issued ~~regarding an allegation of~~ alleging possession of more than ~~25~~ 28 grams of ~~marijuana, or possession of any amount~~ of marijuana following a conviction in this state for possession of more than 28 grams of marijuana, the subject of the complaint may not be prosecuted under this subsection for the same action that is the subject of the complaint unless all of the following occur:

**SECTION 2.** 66.0107 (1) (bm) of the statutes is amended to read:

66.0107 (1) (bm) Enact and enforce an ordinance to prohibit the possession of more than 28 grams of marijuana, as defined in s. 961.01 (14), subject to the exceptions in s. 961.41 (3g) (intro.), and provide a forfeiture for a violation of the ordinance; except that if a complaint is issued ~~regarding an allegation of~~ alleging possession of more than ~~25~~ 28 grams of ~~marijuana, or possession of any amount~~ of marijuana following a conviction in this state for possession of more than 28 grams of marijuana, the subject of the complaint may not be prosecuted under this paragraph for the same action that is the subject of the complaint unless the charges are dismissed or the district attorney declines to prosecute the case.

**SECTION 3.** 961.41 (1) (h) 1. of the statutes is renumbered 961.41 (1) (h) 1r. and amended to read:

961.41 (1) (h) 1r. ~~Two hundred~~ More than 28 grams but not more than 200 grams ~~or less, or more than 2 but not more than 4 or fewer~~ plants containing tetrahydrocannabinols, the person is guilty of a Class I felony.

**SECTION 4.** 961.41 (1) (h) 1g. of the statutes is created to read:

961.41 (1) (h) 1g. Twenty-eight grams or less, or 2 or fewer plants containing

**ASSEMBLY BILL 1207****SECTION 4**

tetrahydrocannabinols, the person is guilty of a Class I felony if the person is at least 17 years of age and distributes or delivers to a person who is no more than 17 years of age and who is at least 3 years younger than the person distributing or delivering.

**SECTION 5.** 961.41 (1m) (h) 1. of the statutes is amended to read:

961.41 (1m) (h) 1. ~~Two hundred~~ More than 28 grams but not more than 200 grams or less, or more than 2 but not more than 4 or fewer plants containing tetrahydrocannabinols, the person is guilty of a Class I felony.

**SECTION 6.** 961.41 (1q) (title) of the statutes is repealed and recreated to read:

961.41 (1q) (title) TETRAHYDROCANNABINOLS PENALTY AND PROBABLE CAUSE.

**SECTION 7.** 961.41 (1q) of the statutes is renumbered 961.41 (1q) (a).

**SECTION 8.** 961.41 (1q) (b) and (c) of the statutes are created to read:

961.41 (1q) (b) The following are not sufficient to establish probable cause that a violation of sub. (1) (h) has occurred:

1. Odor of marijuana.
2. The possession of not more than 28 grams of marijuana.

(c) No individual on parole, probation, extended supervision, supervised release, or any other release may have the release revoked for possessing not more than 28 grams of marijuana.

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

961.41 (1r) DETERMINING WEIGHT OF SUBSTANCE. In determining amounts under s. 961.49 (2) (b), 1999 stats., and subs. (1) and (1m), an amount includes the weight of cocaine, cocaine base, fentanyl, a fentanyl analog, heroin, phencyclidine,

**ASSEMBLY BILL 1207****SECTION 9**

lysergic acid diethylamide, psilocin, psilocybin, amphetamine, methamphetamine, ~~tetrahydrocannabinols~~, synthetic cannabinoids, or substituted cathinones, or any controlled substance analog of any of these substances together with any compound, mixture, diluent, plant material or other substance mixed or combined with the controlled substance or controlled substance analog. In ~~addition, in~~ determining amounts under subs. (1) (h) ~~and~~, (1m) (h), and (3g) (e), the amount of tetrahydrocannabinols means ~~anything included under s. 961.14 (4) (t) and includes~~ the weight of ~~any~~ only marijuana.

**SECTION 10.** 961.41 (3g) (e) of the statutes is amended to read:

961.41 **(3g)** (e) *Tetrahydrocannabinols*. If a person possesses or attempts to possess more than 28 grams of tetrahydrocannabinols included under s. 961.14 (4) (t), or a controlled substance analog of tetrahydrocannabinols, the person may be fined not more than \$1,000 or imprisoned for not more than 6 months or both upon a first conviction and is guilty of a Class I felony for a 2nd or subsequent offense. For purposes of this paragraph, an offense is considered a 2nd or subsequent offense if, prior to the offender's conviction of the offense, the offender has at any time been convicted of any felony or misdemeanor under this chapter or under any statute of the United States or of any state relating to controlled substances, controlled substance analogs, narcotic drugs, marijuana, or depressant, stimulant, or hallucinogenic drugs.

**SECTION 11.** 961.46 of the statutes is amended to read:

**961.46 Distribution to persons under age 18.** If a person 17 years of age or over violates s. 961.41 (1), except s. 961.41 (1) (h) 1g., by distributing or delivering

**ASSEMBLY BILL 1207****SECTION 11**

a controlled substance or a controlled substance analog to a person 17 years of age or under who is at least 3 years his or her junior, the applicable maximum term of imprisonment prescribed under s. 961.41 (1) for the offense may be increased by not more than 5 years.

**SECTION 12.** 973.016 of the statutes is created to read:

**973.016 Special disposition for marijuana-related crimes. (1)**

DISMISSAL OF CONVICTION FOR PERSONS SERVING A SENTENCE OR PROBATION. (a) A person serving a sentence or on probation may request dismissal as provided under par. (b) if one of the following applies:

1. The sentence or probation period was imposed for a conviction under s. 961.41 (1) (h), 2021 stats., or s. 961.41 (1m) (h), 2021 stats., and the person proves to the court by a preponderance of the evidence that the amount of marijuana involved was 28 grams or less, or 2 or fewer plants.

2. The sentence or probation period was imposed for a conviction under s. 961.41 (3g) (e), 2021 stats., and the person proves to the court by a preponderance of the evidence that the amount of marijuana involved was 28 grams or less.

(b) A person to whom par. (a) applies shall file a petition with the sentencing court to request dismissal of the conviction. If the court receiving a petition under this paragraph determines that par. (a) applies, the court may grant the petition without a hearing or may schedule a hearing to consider the petition. If a hearing is scheduled, unless the person cannot prove the amount of marijuana involved was 28 grams or less or the court determines that the dismissal of the conviction

**ASSEMBLY BILL 1207****SECTION 12**

presents an unreasonable risk of danger to public safety, the court shall grant the petition.

**(2) EXPUNGING AN OFFENSE FOR PERSONS WHO COMPLETED A SENTENCE OR PROBATION.** (a) A person who has completed his or her sentence or period of probation may request under par. (b) expungement of the conviction if one of the following applies:

1. The sentence or probation period was imposed for a conviction under s. 961.41 (1) (h), 2021 stats., or s. 961.41 (1m) (h), 2021 stats., and the person proves to the court by a preponderance of the evidence that the amount of marijuana involved was 28 grams or less, or 2 or fewer plants.

2. The sentence or probation period was imposed for a conviction under s. 961.41 (3g) (e), 2021 stats., and the person proves to the court by a preponderance of the evidence that the amount of marijuana involved was 28 grams or less.

(b) A person to whom par. (a) applies shall file a petition with the sentencing court to request expungement of the conviction. If the court receiving a petition under this paragraph determines that par. (a) applies, the court may grant the petition without a hearing or may schedule a hearing to consider the petition. If a hearing is scheduled, unless the person cannot prove the amount of marijuana involved was 28 grams or less or the court determines that expungement of the conviction presents an unreasonable risk of danger to public safety, the court shall grant the petition.

**(3) CRIMES DISMISSED OR EXPUNGED UNDER THIS SECTION.** A conviction that has been expunged or dismissed under this section is not considered a conviction for

**ASSEMBLY BILL 1207**

**SECTION 12**

any purpose under state or federal law, including for purposes of s. 941.29 or 18 USC 921.

**(END)**