



State of Wisconsin
2021 - 2022 LEGISLATURE

LRB-0344/2
EAW:skw

2021 ASSEMBLY BILL 357

May 27, 2021 - Introduced by Representatives BILLINGS, SPIROS, ARMSTRONG, BRANDTJEN, CABRAL-GUEVARA, CABRERA, DOYLE, HORLACHER, MURPHY, MURSAU, OHNSTAD, ORTIZ-VELEZ, ROZAR, SINICKI, SUBECK, VRUWINK and WICHGERS, cosponsored by Senators WANGGAARD, SMITH, BALLWEG, DARLING, FEYEN, MARKLEIN and PFAFF. Referred to Committee on Criminal Justice and Public Safety.

1 **AN ACT to amend** 961.41 (1) (a), 961.41 (1m) (a), 961.41 (1r), 961.49 (1m) (intro.),
2 971.365 (1) (a), 971.365 (1) (b) and 971.365 (2); and **to create** 961.41 (1) (dm)
3 and 961.41 (1m) (dm) of the statutes; **relating to:** manufacturing, distributing,
4 or delivering fentanyl or fentanyl analogs and providing a penalty.

Analysis by the Legislative Reference Bureau

Under current law, it is a Class E felony to manufacture, distribute, or deliver, or to possess with the intent to manufacture, distribute, or deliver, any amount of fentanyl or a fentanyl analog. Under this bill, the penalties for these crimes are based on the amount of the fentanyl or analog involved as follows: for 10 grams or less, a Class E felony; for more than 10 grams but not more than 50 grams, a Class D felony; and for more than 50 grams, a Class C felony. This penalty structure is similar to the current law penalty structure for the same crimes involving heroin. In addition, as with the same crimes involving heroin and other controlled substances, the maximum term of imprisonment for the crimes involving fentanyl or a fentanyl analog is increased by five years if the crime occurs on the premises of a scattered-site public housing project or within 1,000 feet of a park, a correctional facility, a multiunit public housing project, a public swimming pool, a youth or community center, school premises, or a school bus.

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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.

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

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

2 961.41 (1) (a) *Schedule I and II narcotic drugs generally.* Except as provided
3 in par. (d) or (dm), if a person violates this subsection with respect to a controlled
4 substance included in schedule I or II which is a narcotic drug, or a controlled
5 substance analog of a controlled substance included in schedule I or II which is a
6 narcotic drug, the person is guilty of a Class E felony.

7 **SECTION 2.** 961.41 (1) (dm) of the statutes is created to read:

8 961.41 (1) (dm) *Fentanyl.* If the person violates this subsection with respect
9 to fentanyl, a controlled substance analog of fentanyl, or a fentanyl analog specified
10 in s. 961.14 (2) (nd) and the amount manufactured, distributed, or delivered is:

11 1. Ten grams or less, the person is guilty of a Class E felony.

12 2. More than 10 grams but not more than 50 grams, the person is guilty of a
13 Class D felony.

14 3. More than 50 grams, the person is guilty of a Class C felony.

15 **SECTION 3.** 961.41 (1m) (a) of the statutes is amended to read:

16 961.41 (1m) (a) *Schedule I and II narcotic drugs generally.* Except as provided
17 in par. (d) or (dm), if a person violates this subsection with respect to a controlled
18 substance included in schedule I or II which is a narcotic drug or a controlled
19 substance analog of a controlled substance included in schedule I or II which is a
20 narcotic drug, the person is guilty of a Class E felony.

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

2 961.41 (**1m**) (dm) *Fentanyl*. If a person violates this subsection with respect
3 to fentanyl, a controlled substance analog of fentanyl, or a fentanyl analog specified
4 in s. 961.14 (2) (nd) and the amount possessed, with intent to manufacture, distribute
5 or deliver, is:

6 1. Ten grams or less, the person is guilty of a Class E felony.

7 2. More than ten grams but not more than 50 grams, the person is guilty of a
8 Class D felony.

9 3. More than 50 grams, the person is guilty of a Class C felony.

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

11 961.41 (**1r**) DETERMINING WEIGHT OF SUBSTANCE. In determining amounts under
12 s. 961.49 (2) (b), 1999 stats., and subs. (1) and (1m), an amount includes the weight
13 of cocaine, cocaine base, fentanyl, a fentanyl analog, heroin, phencyclidine, lysergic
14 acid diethylamide, psilocin, psilocybin, amphetamine, methamphetamine,
15 tetrahydrocannabinols, synthetic cannabinoids, or substituted cathinones, or any
16 controlled substance analog of any of these substances together with any compound,
17 mixture, diluent, plant material or other substance mixed or combined with the
18 controlled substance or controlled substance analog. In addition, in determining
19 amounts under subs. (1) (h) and (1m) (h), the amount of tetrahydrocannabinols
20 means anything included under s. 961.14 (4) (t) and includes the weight of any
21 marijuana.

22 **SECTION 6.** 961.49 (1m) (intro.) of the statutes is amended to read:

23 961.49 (**1m**) (intro.) If any person violates s. 961.41 (1) (cm), (d), (dm), (e), (f),
24 (g) or (h) by delivering or distributing, or violates s. 961.41 (1m) (cm), (d), (dm), (e),
25 (f), (g) or (h) by possessing with intent to deliver or distribute, cocaine, cocaine base,

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1 fentanyl, a fentanyl analog, heroin, phencyclidine, lysergic acid diethylamide,
2 psilocin, psilocybin, amphetamine, methamphetamine, methcathinone or any form
3 of tetrahydrocannabinols or a controlled substance analog of any of these substances
4 and the delivery, distribution or possession takes place under any of the following
5 circumstances, the maximum term of imprisonment prescribed by law for that crime
6 may be increased by 5 years:

7 **SECTION 7.** 971.365 (1) (a) of the statutes is amended to read:

8 971.365 (1) (a) In any case under s. 961.41 (1) (em), 1999 stats., or s. 961.41 (1)
9 (cm), (d), (dm), (e), (f), (g) or (h) involving more than one violation, all violations may
10 be prosecuted as a single crime if the violations were pursuant to a single intent and
11 design.

12 **SECTION 8.** 971.365 (1) (b) of the statutes is amended to read:

13 971.365 (1) (b) In any case under s. 961.41 (1m) (em), 1999 stats., or s. 961.41
14 (1m) (cm), (d), (dm), (e), (f), (g) or (h) involving more than one violation, all violations
15 may be prosecuted as a single crime if the violations were pursuant to a single intent
16 and design.

17 **SECTION 9.** 971.365 (2) of the statutes is amended to read:

18 971.365 (2) An acquittal or conviction under sub. (1) does not bar a subsequent
19 prosecution for any acts in violation of s. 961.41 (1) (em), 1999 stats., s. 961.41 (1m)
20 (em), 1999 stats., s. 961.41 (3g) (a) 2., 1999 stats., or s. 961.41 (3g) (dm), 1999 stats.,
21 or s. 961.41 (1) (cm), (d), (dm), (e), (f), (g), or (h), (1m) (cm), (d), (dm), (e), (f), (g), or (h)
22 or (3g) (am), (c), (d), (e), or (g) on which no evidence was received at the trial on the
23 original charge.

24

(END)