

2005 BILL

1 **AN ACT** *to renumber* 961.01 (1); *to renumber and amend* 59.54 (25), 968.19
2 and 968.20 (1); *to amend* 59.54 (25m), 60.23 (21), 66.0107 (1) (bm), 173.12 (1m),
3 289.33 (3) (d), 349.02 (2) (b) 4., 961.55 (8), 961.555 (2) (a), 961.56 (1), 968.20 (3)
4 (a) and 968.20 (3) (b); and *to create* 59.54 (25) (b) 2., 59.54 (25) (b) 3., 146.45,
5 961.01 (1g), 961.01 (5m), 961.01 (11v), 961.01 (14g), 961.01 (19m), 961.01
6 (20hm), 961.01 (20ht), 961.01 (20t), 961.436, 961.555 (2) (e), 961.555 (2m),
7 961.5755, 968.073, 968.12 (5), 968.19 (2), 968.20 (1d) and 968.20 (1j) of the
8 statutes; **relating to:** medical use of marijuana, requiring the exercise of
9 rule-making authority, and providing a penalty.

Analysis by the Legislative Reference Bureau***Current prohibitions and penalties regarding marijuana***

Current law prohibits the manufacture, distribution, and delivery of marijuana and the possession of marijuana with intent to manufacture, distribute, or deliver it. Penalties for violating these prohibitions depend on the amount of marijuana involved. If the crime involves 200 grams or less or four or fewer marijuana plants, the person is guilty of a felony and may be fined up to \$10,000 or sentenced to a term of imprisonment of up to three years and six months (which, if the sentence is for

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more than one year, includes a term of extended supervision) or both. If the crime involves more than 200 grams but not more than 1,000 grams, or more than four plants but not more than 20 plants, the person is guilty of a felony and may be fined up to \$10,000 or sentenced to a term of imprisonment of up to six years (which, if the sentence is for more than one year, includes a term of extended supervision) or both. If the crime involves more than 1,000 grams but not more than 2,500 grams, or more than 20 plants but not more than 50 plants, the person is guilty of a felony and may be fined up to \$25,000 or sentenced to a term of imprisonment of up to ten years (which, if the sentence is for more than one year, includes a term of extended supervision) or both. If the crime involves more than 2,500 grams but not more than 10,000 grams, or more than 50 plants but not more than 200 plants, the person is guilty of a felony and may be fined up to \$25,000 or sentenced to a term of imprisonment of up to 12 years and 6 months (which, if the sentence is for more than one year, includes a term of extended supervision) or both. If the crime involves more than 10,000 grams or more than 200 plants, the person is guilty of a felony and may be fined up to \$50,000 or sentenced to a term of imprisonment of up to 15 years (which, if the sentence is for more than one year, includes a term of extended supervision) or both.

Current law also prohibits a person from possessing or attempting to possess marijuana. A person who violates this prohibition may be fined not more than \$1,000 or imprisoned for not more than six months or both for a first conviction. For a second or subsequent conviction, the person is guilty of a felony and may be fined up to \$10,000 or sentenced to a term of imprisonment of up to three years and six months (which, if the sentence is for more than one year, includes a term of extended supervision) or both. In addition, a town, village, city, or county may enact an ordinance that prohibits the possession of 25 grams or less of marijuana. A person who violates the ordinance is subject to a forfeiture.

Current law also contains certain prohibitions regarding drug paraphernalia, which includes equipment, products, and materials used to produce, distribute, and use controlled substances, such as marijuana. Under current law, a person who uses drug paraphernalia, or who possesses it with the primary intent to use it, to produce, distribute, or use a controlled substance unlawfully may be fined not more than \$500 or imprisoned for not more than 30 days, or both. A person who delivers drug paraphernalia, possesses it with intent to deliver it, or manufactures it with intent to deliver it, knowing that it will be primarily used to produce, distribute, or use a controlled substance unlawfully, may be fined not more than \$1,000 or imprisoned for not more than 90 days, or both.

Medical necessity defense and immunity from arrest and prosecution

This bill establishes a medical necessity defense to marijuana-related prosecutions and property seizure actions. A person may invoke this defense if he or she is a qualifying patient or, under certain circumstances, the primary caregiver for a qualifying patient. A “qualifying patient” is someone having or undergoing a debilitating medical condition or treatment, and a “primary caregiver” is a person who is at least 18 years old who has agreed to be responsible for managing a qualifying patient’s medical use of marijuana. The bill defines a debilitating medical

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condition to mean any of the following: 1) cancer, glaucoma, AIDS, a positive HIV test, or the treatment of these conditions; 2) a chronic or debilitating disease or medical condition or the treatment of such a disease or condition that causes cachexia (wasting away), severe pain, severe nausea, seizures, or severe and persistent muscle spasms; 3) any other medical condition or any other treatment for a medical condition designated as a debilitating medical condition or treatment in rules promulgated by the Department of Health and Family Services (DHFS).

A person may invoke this defense if he or she acquires, possesses, cultivates, transports, or uses marijuana to alleviate the symptoms or effects of his or her debilitating medical condition or treatment or, as a primary caregiver, acquires, possesses, cultivates, or transports marijuana to facilitate the qualifying patient's medical use of it, but only if no more than a reasonable amount of marijuana is involved. The defense applies also to prosecutions involving drug paraphernalia if the qualifying patient uses the paraphernalia for the medical use of marijuana. A person is presumed to have the defense if the person has a valid registry identification card from DHFS (see *Registry for medical users of marijuana* below) if no more than a reasonable amount of marijuana is involved.

The bill also prohibits the arrest or prosecution of a person who acquires, possesses, cultivates, transports, or uses marijuana to alleviate the symptoms or effects of his or her debilitating medical condition or treatment or, as a primary caregiver, acquires, possesses, cultivates, or transports marijuana to facilitate the qualifying patient's medical use of it, if the person has a valid registry identification card from DHFS. This prohibition applies also to arrests or prosecutions involving drug paraphernalia if the qualifying patient uses the drug paraphernalia for the medical use of marijuana. This prohibition, however, applies only if no more than a reasonable amount of marijuana is involved. In addition, the bill prohibits the arrest or prosecution of or the imposition of any penalty on a physician who provides a written certification to a person in good faith. (See *Registry for medical users of marijuana* below.)

The defense provided under the bill and the prohibition on arrest and prosecution contained in the bill do not apply if the person possesses or attempts to possess marijuana under the following circumstances: 1) the person drives or operates a motor vehicle while under the influence of marijuana; 2) while under the influence of marijuana, the person operates heavy machinery or engages in any other conduct that endangers the health or well-being of another person; 3) the person smokes marijuana on a bus, at the person's workplace, on school premises, in an adult or juvenile correctional facility or jail, at a public park, beach, or recreation center, or at a youth center; or 4) the person has been convicted of distributing or delivering, or possessing with the intent to distribute and deliver, marijuana to another person. In addition, if the putative qualifying patient is under 18 years of age, the defense provided under the bill and the prohibition on arrest and prosecution contained in the bill apply only if the person's parent, guardian, or legal custodian agrees to serve as a primary caregiver for the person.

BILL***Registry for medical users of marijuana***

The bill requires DHFS to establish a registry for medical users of marijuana. Under the bill, a person claiming to be a qualifying patient may apply for a registry identification card by submitting to DHFS a signed application, accompanied by a statement from his or her physician documenting that the person has or is undergoing a debilitating medical condition or treatment and that the potential benefits to the person of using marijuana outweigh the health risks involved (a “written certification”). DHFS must then verify the information. If it is complete and correct, DHFS must issue the person a registry identification card. A qualifying patient and one of his or her primary caregivers may jointly apply for a registry identification card for the primary caregiver. DHFS may not disclose that it has issued to a person a registry identification card, or information from an application for one, except to a law enforcement agency for the purpose of verifying that a person possesses a valid registry identification card. A registry identification card is valid for one year, unless revoked sooner by DHFS based on a change of circumstances, and may be renewed. DHFS may not charge a fee for issuing a registry identification card.

Effect on federal law

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

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.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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 renumbered 59.54 (25) (a) and amended
2 to read:

3 59.54 **(25)** (a) The board may enact and enforce an ordinance to prohibit the
4 possession of 25 grams or less of marijuana, as defined in s. 961.01 (14), subject to
5 par. (b) and the exceptions in s. 961.41 (3g) (intro.), and provide a forfeiture for a
6 violation of the ordinance; ~~except that any person who is charged with possession of~~
7 ~~more than 25 grams of marijuana, or who is charged with possession of any amount~~

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1 of marijuana following a conviction for possession of marijuana, in this state shall
2 not be prosecuted under this subsection. Any ordinance enacted under this
3 paragraph shall provide a person who is prosecuted under it with the defenses that
4 the person has under s. 961.436 to prosecutions under s. 961.41 (1) (h), (1m) (h), or
5 (3g) (e).

6 (b) 1. Any ordinance enacted under ~~this subsection~~ par. (a) by a county with a
7 population of less than 500,000 does not apply in any municipality that has enacted
8 an ordinance prohibiting the possession of marijuana. Any ordinance enacted under
9 ~~this subsection~~ par. (a) by a county with a population of 500,000 or more applies in
10 every municipality within the county.

11 **SECTION 2.** 59.54 (25) (b) 2. of the statutes is created to read:

12 59.54 **(25)** (b) 2. A person may not be prosecuted under an ordinance enacted
13 under par. (a) if, under s. 968.073 (2), the person would not be subject to prosecution
14 under s. 961.41 (3g) (e).

15 **SECTION 3.** 59.54 (25) (b) 3. of the statutes is created to read:

16 59.54 **(25)** (b) 3. No person who is charged with possession of more than 25
17 grams of marijuana, or who is charged with possession of any amount of marijuana
18 following a conviction for possession of marijuana, in this state may be prosecuted
19 under an ordinance enacted under par. (a).

20 **SECTION 4.** 59.54 (25m) of the statutes is amended to read:

21 59.54 **(25m)** DRUG PARAPHERNALIA. The board of a county with a population of
22 500,000 or more may enact an ordinance to prohibit conduct that is the same as that
23 prohibited by s. 961.573 (1) or (2), 961.574 (1) or (2), or 961.575 (1) or (2) and provide
24 a forfeiture for violation of the ordinance. Any ordinance enacted under this
25 subsection shall provide a person prosecuted under it with the defenses that the

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1 person has under s. 961.5755 to prosecutions under s. 961.573 (1), 961.574 (1), or
2 961.575 (1). A person may not be prosecuted under an ordinance enacted under this
3 subsection if, under s. 968.073 (3), the person would not be subject to prosecution
4 under s. 961.573 (1), 961.574 (1), or 961.575 (1). The board may enforce an ordinance
5 enacted under this subsection in any municipality within the county.

6 **SECTION 5.** 60.23 (21) of the statutes is amended to read:

7 **60.23 (21) DRUG PARAPHERNALIA.** Adopt an ordinance to prohibit conduct that
8 is the same as that prohibited by s. 961.573 (2), 961.574 (2) or 961.575 (2). Any
9 ordinance enacted under this subsection shall provide a person prosecuted under it
10 with the defenses that the person has under s. 961.5755 to prosecutions under s.
11 961.573 (1), 961.574 (1), or 961.575 (1). A person may not be prosecuted under an
12 ordinance enacted under this subsection if, under s. 968.073 (3), the person would
13 not be subject to prosecution under s. 961.573 (1), 961.574 (1), or 961.575 (1).

14 **SECTION 6.** 66.0107 (1) (bm) of the statutes is amended to read:

15 **66.0107 (1) (bm)** Enact and enforce an ordinance to prohibit the possession of
16 25 grams or less of marijuana, as defined in s. 961.01 (14), subject to this paragraph
17 and the exceptions in s. 961.41 (3g) (intro.), and provide a forfeiture for a violation
18 of the ordinance; except that any. Any ordinance enacted under this paragraph shall
19 provide a person prosecuted under it with the defenses that the person has under s.
20 961.436 to prosecutions under s. 961.41 (1) (h), (1m) (h), or (3g) (e). A person may not
21 be prosecuted under an ordinance enacted under this paragraph if, under s. 968.073
22 (2), the person would not be subject to prosecution under s. 961.41 (3g) (e). No person
23 who is charged with possession of more than 25 grams of marijuana, or who is
24 charged with possession of any amount of marijuana following a conviction for

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1 possession of marijuana, in this state ~~shall not~~ may be prosecuted under this
2 paragraph.

3 **SECTION 7.** 146.45 of the statutes is created to read:

4 **146.45 Medical marijuana registry program. (1) DEFINITIONS.** In this
5 section:

6 (a) “Applicant” means a person who is applying for a registry identification card
7 under sub. (2) (a).

8 (b) “Debilitating medical condition or treatment” has the meaning given in s.
9 961.01 (5m).

10 (c) “Medical use of tetrahydrocannabinols” has the meaning given in s. 961.01
11 (14g).

12 (d) “Primary caregiver” has the meaning given in s. 961.01 (19m).

13 (e) “Qualifying patient” has the meaning given in s. 961.01 (20hm).

14 (f) “Registrant” means a person to whom a registry identification card is issued
15 under sub. (4).

16 (g) “Registry identification card” means a document issued by the department
17 under this section that identifies a person as a qualifying patient or primary
18 caregiver.

19 (h) “Written certification” means a statement made by a person’s physician if
20 all of the following apply:

21 1. The statement indicates that, in the physician’s professional opinion, the
22 person has or is undergoing a debilitating medical condition or treatment and the
23 potential benefits of the person’s use of tetrahydrocannabinols in the manner
24 described under s. 961.01 (14g) (a) would likely outweigh the health risks for the
25 person.

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1 2. The statement indicates that the opinion described in subd. 1. was formed
2 after a full assessment, made in the course of a bona fide physician–patient
3 relationship, of the person’s medical history and current medical condition.

4 3. The statement is signed by the physician or is contained in the person’s
5 medical records.

6 **(2) APPLICATION.** (a) An adult who is claiming to be a qualifying patient may
7 apply for a registry identification card by submitting to the department a signed
8 application form containing or accompanied by all of the following:

9 1. His or her name, address, and date of birth.

10 2. A written certification.

11 3. The name, address, and telephone number of the person’s current physician,
12 as listed in the written certification.

13 (b) A qualifying patient who is an adult and who has been issued a registry
14 identification card under sub. (4) or an applicant may jointly apply with another
15 adult to the department for a registry identification card for the other adult,
16 designating him or her as a primary caregiver for the qualifying patient or the
17 applicant. Both persons who jointly apply for a registry identification card under this
18 paragraph shall sign the application form, which shall contain the name, address,
19 and date of birth of the individual applying to be registered as a primary caregiver.

20 (c) The department shall promulgate rules specifying how a parent, guardian,
21 or person having legal custody of a child may apply for a registry identification card
22 for himself or herself and for the child and the circumstances under which the
23 department may approve or deny the application.

24 (d) The department may not charge any fees in connection with an application
25 for or the issuance of a registry identification card.

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1 **(3) PROCESSING THE APPLICATION.** The department shall verify the information
2 contained in or accompanying an application submitted under sub. (2) and shall
3 approve or deny the application within 30 days after receiving it. Except as provided
4 in sub. (2) (c), the department may deny an application submitted under sub. (2) only
5 if the required information has not been provided or if false information has been
6 provided.

7 **(4) ISSUING A REGISTRY IDENTIFICATION CARD.** The department shall issue a
8 registry identification card within 5 days after approving an application under sub.
9 (3). Unless voided under sub. (5) (b) or (c) or revoked under rules issued by the
10 department under sub. (7) (d), a registry identification card shall expire one year
11 from the date of issuance. A registry identification card shall contain all of the
12 following:

13 (a) The name, address, and date of birth of the registrant and the name,
14 address, and date of birth of the primary caregivers, if the registrant is a qualifying
15 patient, or of the qualifying patient, if the registrant is a primary caregiver.

16 (b) The date of issuance and expiration date of the registry identification card.

17 (c) A photograph of the registrant.

18 (d) Other information that the department may require by rule.

19 **(5) ADDITIONAL INFORMATION TO BE PROVIDED BY REGISTRANT.** (a) 1. An adult
20 registrant shall notify the department of any change in the registrant's name and
21 address. An adult registrant who is a qualifying patient shall notify the department
22 of any change in his or her physician, of any significant improvement in his or her
23 health as it relates to his or her debilitating medical condition or treatment, and if
24 a registered primary caregiver no longer assists the registrant with the medical use
25 of tetrahydrocannabinols.

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1 2. If a qualifying patient is a child, a primary caregiver for the child shall
2 provide the department with any information that the child, if he or she were an
3 adult, would have to provide under subd. 1. within 10 days after the date of the
4 change to which the information relates.

5 (b) If a registrant fails to notify the department within 10 days after any change
6 for which notification is required under par. (a) 1., his or her registry identification
7 card is void. If a registrant fails to comply with par. (a) 2., the registry identification
8 card for the qualifying patient to whom the information under par. (a) 2. relates is
9 void.

10 (c) If a qualifying patient's registry identification card becomes void under par.
11 (b), the registry identification card for each of the qualifying patient's primary
12 caregivers is void. The department shall send written notice of this fact to each such
13 primary caregiver.

14 **(6) RECORDS.** (a) The department shall maintain a list of all registrants.

15 (b) Notwithstanding s. 19.35 and except as provided in par. (c), the department
16 may not disclose information from an application submitted or a registry
17 identification card issued under this section.

18 (c) The department may disclose to a state or local law enforcement agency
19 information from an application submitted by, or from a registry identification card
20 issued to, a specific person under this section, for the purpose of verifying that the
21 person possesses a valid registry identification card.

22 **(7) RULES.** The department shall promulgate rules to implement this section,
23 including the rules required under sub. (2) (c) and rules doing all of the following:

24 (a) Creating forms for applications to be used under sub. (2).

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1 (b) Specifying how the department will verify the truthfulness of information
2 submitted on an application under sub. (2).

3 (c) Specifying how and under what circumstances registry identification cards
4 may be renewed.

5 (d) Specifying how and under what changed circumstances a registry
6 identification card may be revoked.

7 (e) Specifying under what circumstances a person whose application for a
8 registry identification card is denied may reapply.

9 **SECTION 8.** 173.12 (1m) of the statutes is amended to read:

10 173.12 **(1m)** If an animal has been seized because it is alleged that the animal
11 has been used in or constitutes evidence of any crime specified in s. 951.08, the
12 animal may not be returned to the owner by an officer under s. 968.20 (2). In any
13 hearing under s. 968.20 ~~(4)~~ **(1f)**, the court shall determine if the animal is needed as
14 evidence or there is reason to believe that the animal has participated in or been
15 trained for fighting. If the court makes such a finding, the animal shall be retained
16 in custody.

17 **SECTION 9.** 289.33 (3) (d) of the statutes is amended to read:

18 289.33 **(3)** (d) “Local approval” includes any requirement for a permit, license,
19 authorization, approval, variance or exception or any restriction, condition of
20 approval or other restriction, regulation, requirement or prohibition imposed by a
21 charter ordinance, general ordinance, zoning ordinance, resolution or regulation by
22 a town, city, village, county or special purpose district, including without limitation
23 because of enumeration any ordinance, resolution or regulation adopted under s.
24 59.03 (2), 59.11 (5), 59.42 (1), 59.48, 59.51 (1) and (2), 59.52 (2), (5), (6), (7), (8), (9),
25 (11), (12), (13), (15), (16), (17), (18), (19), (20), (21), (22), (23), (24), (25), (26) and (27),

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1 59.53 (1), (2), (3), (4), (5), (7), (8), (9), (11), (12), (13), (14), (15), (19), (20) and (23),
2 59.535 (2), (3) and (4), 59.54 (1), (2), (3), (4), (4m), (5), (6), (7), (8), (10), (11), (12), (16),
3 (17), (18), (19), (20), (21), (22), (23), (24), (25) (a), and (26), 59.55 (3), (4), (5) and (6),
4 59.56 (1), (2), (4), (5), (6), (7), (9), (10), (11), (12), (12m), (13) and (16), 59.57 (1), 59.58
5 (1) and (5), 59.62, 59.69, 59.692, 59.693, 59.696, 59.697, 59.698, 59.70 (1), (2), (3), (5),
6 (7), (8), (9), (10), (11), (21), (22) and (23), 59.79 (1), (2), (3), (4), (5), (6), (7), (8), (10) and
7 (11), 59.792 (2) and (3), 59.80, 59.82, 60.10, 60.22, 60.23, 60.54, 60.77, 61.34, 61.35,
8 61.351, 61.354, 62.11, 62.23, 62.231, 62.234, 66.0101, 66.0415, 87.30, 91.73, 196.58,
9 200.11 (8), 236.45, 281.43 or 349.16 or subch. VIII of ch. 60.

10 **SECTION 10.** 349.02 (2) (b) 4. of the statutes is amended to read:

11 349.02 (2) (b) 4. Local ordinances enacted under s. 59.54 (25) (a) or (25m), 60.23
12 (21), or 66.0107 (1) (bm).

13 **SECTION 11.** 961.01 (1) of the statutes is renumbered 961.01 (1m).

14 **SECTION 12.** 961.01 (1g) of the statutes is created to read:

15 961.01 (1g) “Adequate supply” means an amount of tetrahydrocannabinols
16 that is not more than is reasonably necessary to ensure the uninterrupted
17 availability of tetrahydrocannabinols for their medical use by a treatment team.

18 **SECTION 13.** 961.01 (5m) of the statutes is created to read:

19 961.01 (5m) “Debilitating medical condition or treatment” means any of the
20 following:

21 (a) Cancer, glaucoma, acquired immunodeficiency syndrome, a positive test for
22 the presence of HIV, antigen or nonantigenic products of HIV, or an antibody to HIV,
23 or the treatment of any of these conditions.

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1 (b) A chronic or debilitating disease or medical condition or the treatment of
2 such a disease or condition that causes cachexia, severe pain, severe nausea,
3 seizures, or severe and persistent muscle spasms.

4 (c) Any other medical condition or any other treatment for a medical condition
5 designated as a debilitating medical condition or treatment in rules promulgated by
6 the department of health and family services under s. 961.436 (5).

7 **SECTION 14.** 961.01 (11v) of the statutes is created to read:

8 961.01 (11v) “HIV” means any strain of human immunodeficiency virus.

9 **SECTION 15.** 961.01 (14g) of the statutes is created to read:

10 961.01 (14g) “Medical use of tetrahydrocannabinols” means any of the
11 following:

12 (a) The use of tetrahydrocannabinols by a qualifying patient to alleviate the
13 symptoms or effects of the qualifying patient’s debilitating medical condition or
14 treatment.

15 (b) The acquisition, possession, cultivation, or transportation of
16 tetrahydrocannabinols by a qualifying patient if done to facilitate his or her use of
17 tetrahydrocannabinols under par. (a).

18 (c) The acquisition, possession, cultivation, or transportation of
19 tetrahydrocannabinols by a primary caregiver of a qualifying patient, the transfer
20 of tetrahydrocannabinols between a qualifying patient and his or her primary
21 caregivers, or the transfer of tetrahydrocannabinols between persons who are
22 primary caregivers for the same qualifying patient if all of the following apply:

23 1. The acquisition, possession, cultivation, transportation, or transfer of the
24 tetrahydrocannabinols is done to facilitate the qualifying patient’s use of
25 tetrahydrocannabinols under par. (a) or (b).

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1 2. It is not practicable for the qualifying patient to acquire, possess, cultivate,
2 or transport the tetrahydrocannabinols independently, or the qualifying patient is
3 under 18 years of age.

4 **SECTION 16.** 961.01 (19m) of the statutes is created to read:

5 961.01 **(19m)** “Primary caregiver” means a person who is at least 18 years of
6 age and who has agreed to help a qualifying patient in his or her medical use of
7 tetrahydrocannabinols.

8 **SECTION 17.** 961.01 (20hm) of the statutes is created to read:

9 961.01 **(20hm)** “Qualifying patient” means a person who has been diagnosed
10 by a physician as having or undergoing a debilitating medical condition or treatment
11 but does not include a person under the age of 18 years unless all of the following
12 apply:

13 (a) The person’s physician has explained the potential risks and benefits of the
14 medical use of tetrahydrocannabinols to the person and to a parent, guardian, or
15 person having legal custody of the person.

16 (b) The parent, guardian, or person having legal custody provides the physician
17 a written statement consenting to do all of the following:

- 18 1. Allow the person’s medical use of tetrahydrocannabinols.
- 19 2. Serve as a primary caregiver for the person.
- 20 3. Manage the person’s medical use of tetrahydrocannabinols.

21 **SECTION 18.** 961.01 (20ht) of the statutes is created to read:

22 961.01 **(20ht)** “Registry identification card” has the meaning given in s. 146.45
23 (1) (g).

24 **SECTION 19.** 961.01 (20t) of the statutes is created to read:

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1 961.01 **(20t)** “Treatment team” means a qualifying patient and his or her
2 primary caregivers.

3 **SECTION 20.** 961.436 of the statutes is created to read:

4 **961.436 Medical use defense in cases involving**
5 **tetrahydrocannabinols. (1)** A member of a qualifying patient’s treatment team
6 has a defense to prosecution under s. 961.41 (1) (h) or (1m) (h) for manufacturing, or
7 possessing with intent to manufacture, tetrahydrocannabinols if all of the following
8 apply:

9 (a) The manufacture or possession is a medical use of tetrahydrocannabinols
10 by the treatment team.

11 (b) The amount of tetrahydrocannabinols does not exceed an adequate supply.

12 **(2)** A member of a qualifying patient’s treatment team has a defense to
13 prosecution under s. 961.41 (1) (h) or (1m) (h) for distributing or delivering, or
14 possessing with intent to distribute or deliver, tetrahydrocannabinols to another
15 member of the treatment team if all of the following apply:

16 (a) The distribution, delivery, or possession is a medical use of
17 tetrahydrocannabinols by the treatment team.

18 (b) The amount of tetrahydrocannabinols does not exceed an adequate supply.

19 **(3)** (a) Except as provided in par. (b), a member of a qualifying patient’s
20 treatment team has a defense to a prosecution under s. 961.41 (3g) (e) if all of the
21 following apply:

22 1. The possession or attempted possession is a medical use of
23 tetrahydrocannabinols by the treatment team.

24 2. The amount of tetrahydrocannabinols does not exceed an adequate supply.

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1 (b) A person may not assert the defense described in par. (a) if, while he or she
2 possesses or attempts to possess tetrahydrocannabinols, any of the following applies:

3 1. The person drives or operates a motor vehicle while under the influence of
4 tetrahydrocannabinols in violation of s. 346.63 (1) or a local ordinance in conformity
5 with s. 346.63 (1).

6 2. While under the influence of tetrahydrocannabinols, the person operates
7 heavy machinery or engages in any other conduct that endangers the health or
8 well-being of another person.

9 3. The person smokes marijuana in, on, or at any of the following places:

10 a. A school bus or a public transit vehicle.

11 b. The person's place of employment.

12 c. Public or private school premises.

13 d. A juvenile correctional facility.

14 e. A jail or adult correctional facility.

15 f. A public park, beach, or recreation center.

16 g. A youth center.

17 4. The person has been convicted under s. 961.41 (1) (h) or (1m) (h).

18 **(4)** For the purposes of a defense raised under sub. (1), (2), or (3) (a), a valid
19 registry identification card is presumptive evidence that the person identified on the
20 card as a qualifying patient is a qualifying patient and that if the person uses
21 tetrahydrocannabinols he or she does so to alleviate the symptoms or effects of his
22 or her debilitating medical condition or treatment.

23 **(5)** (a) In this subsection, "department" means the department of health and
24 family services.

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1 (b) Notwithstanding s. 227.12 (1), any person may petition the department to
2 promulgate a rule to designate a medical condition or treatment as a debilitating
3 medical condition or treatment. The department shall promulgate rules providing
4 for public notice of and a public hearing regarding any such petition, with the public
5 hearing providing persons an opportunity to comment upon the petition. After the
6 hearing, but no later than 180 days after the submission of the petition, the
7 department shall approve or deny the petition. The department's decision to approve
8 or deny a petition is subject to judicial review under s. 227.52.

9 **SECTION 21.** 961.55 (8) of the statutes is amended to read:

10 961.55 (8) The failure, upon demand by any officer or employee designated in
11 s. 961.51 (1) or (2), of the person in occupancy or in control of land or premises upon
12 which the species of plants are growing or being stored, to produce an appropriate
13 federal registration, or proof that the person is the holder thereof, or an appropriate
14 valid registry identification card for the person constitutes authority for the seizure
15 and forfeiture of the plants.

16 **SECTION 22.** 961.555 (2) (a) of the statutes is amended to read:

17 961.555 (2) (a) The Except as provided in par. (e), the district attorney of the
18 county within which the property was seized shall commence the forfeiture action
19 within 30 days after the seizure of the property, ~~except that the defendant may~~
20 ~~request that the forfeiture proceedings be adjourned until after adjudication of any~~
21 ~~charge concerning a crime which was the basis for the seizure of the property. The~~
22 ~~request shall be granted.~~ The forfeiture action shall be commenced by filing a
23 summons, complaint and affidavit of the person who seized the property with the
24 clerk of circuit court, provided service of authenticated copies of those papers is made
25 in accordance with ch. 801 within 90 days after filing upon the person from whom

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1 the property was seized and upon any person known to have a bona fide perfected
2 security interest in the property.

3 **SECTION 23.** 961.555 (2) (e) of the statutes is created to read:

4 961.555 (2) (e) The court shall adjourn forfeiture proceedings until after
5 adjudication of any charge concerning a crime that was the basis for the seizure of
6 the property if any of the following applies:

- 7 1. The defendant requests an adjournment.
- 8 2. The defendant invokes a defense to the crime under s. 961.436 or 961.5755.

9 **SECTION 24.** 961.555 (2m) of the statutes is created to read:

10 961.555 (2m) MEDICAL NECESSITY DEFENSE. (a) In an action to forfeit property
11 seized under s. 961.55, the person who was in possession of the property when it was
12 seized has a defense to the forfeiture of the property if any of the following applies:

13 1. The person was prosecuted under s. 961.41 (1) (h), (1m) (h), or (3g) (e),
14 961.573 (1), 961.574 (1), or 961.575 (1) in connection with the seized property but had
15 a valid defense under s. 961.436 (1), (2), or (3) (a) or 961.5755 (1) (a) or (2).

16 2. The person was not prosecuted under s. 961.41 (1) (h), (1m) (h), or (3g) (e),
17 961.573 (1), 961.574 (1), or 961.575 (1) in connection with the seized property, but,
18 if the person had been, he or she would have had a valid defense under s. 961.436 (1),
19 (2), or (3) (a) or 961.5755 (1) (a) or (2).

20 (b) The owner of property seized under s. 961.55 who is raising a defense under
21 par. (a) shall do so in the answer to the complaint that he or she serves under sub.
22 (2) (b). If a property owner raises such a defense in his or her answer, the state must,
23 as part of the burden of proof specified in sub. (3), prove that the facts constituting
24 the defense do not exist.

25 **SECTION 25.** 961.56 (1) of the statutes is amended to read:

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1 961.56 (1) ~~It~~ Except as provided in s. 961.555 (2m) (b) and except for any
2 presumption arising under s. 961.436 (4) or 961.5755 (3), it is not necessary for the
3 state to negate any exemption or exception in this chapter in any complaint,
4 information, indictment or other pleading or in any trial, hearing or other proceeding
5 under this chapter. ~~The, and the~~ burden of proof of any exemption or exception is
6 upon the person claiming it.

7 **SECTION 26.** 961.5755 of the statutes is created to read:

8 **961.5755 Medical use of marijuana defense in drug paraphernalia**
9 **cases. (1)** (a) Except as provided in par. (b), a member of a treatment team has a
10 defense to prosecution under s. 961.573 (1) if he or she uses, or possesses with the
11 primary intent to use, drug paraphernalia only for the medical use of
12 tetrahydrocannabinols by the treatment team.

13 (b) This subsection does not apply if, while the person uses, or possesses with
14 the primary intent to use, drug paraphernalia, s. 961.436 (3) (b) 1., 2., 3., or 4. applies.

15 **(2)** A member of a treatment team has a defense to prosecution under s. 961.574
16 (1) or 961.575 (1) if he or she delivers, possesses with intent to deliver, or
17 manufactures with intent to deliver to another member of his or her treatment team
18 drug paraphernalia, knowing that it will be primarily used for the medical use of
19 tetrahydrocannabinols by the treatment team.

20 **(3)** For the purposes of a defense raised under sub. (1) (a) or (2), a valid registry
21 identification card is presumptive evidence that the person identified on the card as
22 a qualifying patient is a qualifying patient and that, if the person uses
23 tetrahydrocannabinols, he or she does so to alleviate the symptoms or effects of his
24 or her debilitating medical condition or treatment.

25 **SECTION 27.** 968.073 of the statutes is created to read:

BILL**1 968.073 Medical use of marijuana; arrest and prosecution. (1)**

2 DEFINITIONS. In this section:

3 (a) “Adequate supply” has the meaning given in s. 961.01 (1g).

4 (b) “Medical use of tetrahydrocannabinols” has the meaning given in s. 961.01
5 (14g).

6 (c) “Primary caregiver” has the meaning given in s. 961.01 (19m).

7 (d) “Qualifying patient” has the meaning given in s. 961.01 (20hm).

8 (e) “Registry identification card” has the meaning given in s. 146.45 (1) (g).

9 (f) “Treatment team” has the meaning given in s. 961.01 (20t).

10 **(2)** LIMITATIONS ON ARRESTS AND PROSECUTION; MEDICAL USE OF MARIJUANA. Unless
11 s. 961.436 (3) (b) 1., 2., 3., or 4. applies, a member of a qualifying patient’s treatment
12 team may not be arrested or prosecuted for a violation of s. 961.41 (1) (h), (1m) (h),
13 or (3g) (e) if all of the following apply:

14 (a) The person manufactures, distributes, delivers, or possesses
15 tetrahydrocannabinols only for their medical use by the treatment team.

16 (b) The person possesses a copy of the qualifying patient’s or primary
17 caregiver’s valid registry identification card.

18 (c) The quantity of tetrahydrocannabinols does not exceed an adequate supply.

19 **(3)** LIMITATIONS ON ARRESTS AND PROSECUTION; DRUG PARAPHERNALIA FOR MEDICAL
20 USE OF MARIJUANA. (a) Unless s. 961.436 (3) (b) 1., 2., 3., or 4. applies, a member of
21 a treatment team may not be arrested or prosecuted for a violation of s. 961.573 (1)
22 if all of the following apply:

23 1. The person uses, or possesses with the primary intent to use, drug
24 paraphernalia only for the medical use of tetrahydrocannabinols by the treatment
25 team.

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1 2. The person possesses a copy of the qualifying patient's or primary caregiver's
2 valid registry identification card.

3 3. The person does not possess more than an adequate supply of
4 tetrahydrocannabinols.

5 (b) Unless s. 961.436 (3) (b) 1., 2., 3., or 4. applies, a member of a treatment team
6 may not be arrested or prosecuted for a violation of s. 961.574 (1) or 961.575 (1) if all
7 of the following apply:

8 1. The person delivers, possesses with intent to deliver, or manufactures with
9 intent to deliver to another member of his or her treatment team drug paraphernalia,
10 knowing that it will be primarily used for the medical use of tetrahydrocannabinols
11 by the treatment team.

12 2. The person possesses a copy of the qualifying patient's or primary caregiver's
13 valid registry identification card.

14 3. The person does not possess more than an adequate supply of
15 tetrahydrocannabinols.

16 **(4) LIMITATIONS ON ARRESTS, PROSECUTION, AND OTHER SANCTIONS; PHYSICIANS.** A
17 physician may not be arrested and a physician, hospital, or clinic may not be subject
18 to prosecution, denied any right or privilege, or penalized in any manner for making
19 or providing a written certification, as defined in s. 146.45 (1) (h), in good faith.

20 **(5) PENALTY FOR FALSE STATEMENTS.** Whoever intentionally provides false
21 information to a law enforcement officer in an attempt to avoid arrest or prosecution
22 under this section for a violation of s. 961.41 (1) (h), (1m) (h), or (3g) (e), 961.573 (1),
23 961.574 (1), or 961.575 (1) may be fined not more than \$500.

24 **SECTION 28.** 968.12 (5) of the statutes is created to read:

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1 **968.12 (5) MEDICAL USE OF MARIJUANA REGISTRY CARDS.** An application for a
2 registry identification card under s. 146.45 (2), the issuance of such a card under s.
3 146.45 (4), or a person's possession of such a card shall not, by itself, constitute
4 probable cause under sub. (1) or otherwise subject the person or property of the
5 person who is applying for, issued, or possessing the card to inspection by any
6 governmental agency.

7 **SECTION 29.** 968.19 of the statutes is renumbered 968.19 (1) and amended to
8 read:

9 **968.19 (1) Property** Except as provided in sub. (2), property seized under a
10 search warrant or validly seized without a warrant shall be safely kept by the officer,
11 who may leave it in the custody of the sheriff and take a receipt therefor, so long as
12 necessary for the purpose of being produced as evidence on any trial.

13 **SECTION 30.** 968.19 (2) of the statutes is created to read:

14 **968.19 (2)** A law enforcement agency that has seized a live marijuana plant is
15 not responsible for the plant's care and maintenance.

16 **SECTION 31.** 968.20 (1) of the statutes is renumbered 968.20 (1f), and 968.20
17 (1f) (intro.), as renumbered, is amended to read:

18 **968.20 (1f) (intro.)** Any person claiming the right to possession of property
19 seized pursuant to a search warrant or seized without a search warrant may apply
20 for its return to the circuit court for the county in which the property was seized or
21 where the search warrant was returned. The court shall order such notice as it
22 deems adequate to be given the district attorney and all persons who have or may
23 have an interest in the property and shall hold a hearing to hear all claims to its true
24 ownership. If Except as provided in sub. (1j), if the right to possession is proved to

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1 the court's satisfaction, it shall order the property, ~~other than contraband or property~~
2 ~~covered under sub. (1m) or (1r) or s. 173.12, 173.21 (4), or 968.205~~, returned if:

3 **SECTION 32.** 968.20 (1d) of the statutes is created to read:

4 968.20 (1d) In this section:

5 (a) "Drug paraphernalia" has the meaning given in s. 961.571 (1).

6 (b) "Tetrahydrocannabinols" means a substance included in s. 961.14 (4) (t).

7 **SECTION 33.** 968.20 (1j) of the statutes is created to read:

8 968.20 (1j) (a) Except as provided in par. (b), the court may not order the return
9 of contraband or property covered under sub. (1m) or (1r) or s. 173.12, 173.21 (4), or
10 968.205.

11 (b) The court may return drug paraphernalia or tetrahydrocannabinols that
12 have been seized to the person from whom they were seized if any of the following
13 applies:

14 1. The person was prosecuted under s. 961.41 (1) (h), (1m) (h), or (3g) (e),
15 961.573 (1), 961.574 (1), or 961.575 (1) in connection with the seized property but had
16 a valid defense under s. 961.436 (1), (2), or (3) (a) or 961.5755 (1) (a) or (2).

17 2. The person was not prosecuted under s. 961.41 (1) (h), (1m) (h), or (3g) (e),
18 961.573 (1), 961.574 (1), or 961.575 (1) in connection with the seized property, but,
19 if the person had been, he or she would have had a valid defense under s. 961.436 (1),
20 (2), or (3) (a) or 961.5755 (1) (a) or (2).

21 **SECTION 34.** 968.20 (3) (a) of the statutes is amended to read:

22 968.20 (3) (a) First class cities shall dispose of dangerous weapons or
23 ammunition seized 12 months after taking possession of them if the owner,
24 authorized under sub. (1m), has not requested their return and if the dangerous
25 weapon or ammunition is not required for evidence or use in further investigation

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1 and has not been disposed of pursuant to a court order at the completion of a criminal
2 action or proceeding. Disposition procedures shall be established by ordinance or
3 resolution and may include provisions authorizing an attempt to return to the
4 rightful owner any dangerous weapons or ammunition which appear to be stolen or
5 are reported stolen. If enacted, any such provision shall include a presumption that
6 if the dangerous weapons or ammunition appear to be or are reported stolen an
7 attempt will be made to return the dangerous weapons or ammunition to the
8 authorized rightful owner. If the return of a seized dangerous weapon other than a
9 firearm is not requested by its rightful owner under sub. ~~(1)~~ (1f) and is not returned
10 by the officer under sub. (2), the city shall safely dispose of the dangerous weapon or,
11 if the dangerous weapon is a motor vehicle, as defined in s. 340.01 (35), sell the motor
12 vehicle following the procedure under s. 973.075 (4) or authorize a law enforcement
13 agency to retain and use the motor vehicle. If the return of a seized firearm or
14 ammunition is not requested by its authorized rightful owner under sub. ~~(1)~~ (1f) and
15 is not returned by the officer under sub. (2), the seized firearm or ammunition shall
16 be shipped to and become property of the state crime laboratories. A person
17 designated by the department of justice may destroy any material for which the
18 laboratory has no use or arrange for the exchange of material with other public
19 agencies. In lieu of destruction, shoulder weapons for which the laboratories have
20 no use shall be turned over to the department of natural resources for sale and
21 distribution of proceeds under s. 29.934.

22 **SECTION 35.** 968.20 (3) (b) of the statutes is amended to read:

23 968.20 **(3)** (b) Except as provided in par. (a) or sub. (1m) or (4), a city, village,
24 town or county or other custodian of a seized dangerous weapon or ammunition, if
25 the dangerous weapon or ammunition is not required for evidence or use in further

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1 investigation and has not been disposed of pursuant to a court order at the
2 completion of a criminal action or proceeding, shall make reasonable efforts to notify
3 all persons who have or may have an authorized rightful interest in the dangerous
4 weapon or ammunition of the application requirements under sub. ~~(1)~~ (1f). If, within
5 30 days after the notice, an application under sub. ~~(1)~~ (1f) is not made and the seized
6 dangerous weapon or ammunition is not returned by the officer under sub. (2), the
7 city, village, town or county or other custodian may retain the dangerous weapon or
8 ammunition and authorize its use by a law enforcement agency, except that a
9 dangerous weapon used in the commission of a homicide or a handgun, as defined
10 in s. 175.35 (1) (b), may not be retained. If a dangerous weapon other than a firearm
11 is not so retained, the city, village, town or county or other custodian shall safely
12 dispose of the dangerous weapon or, if the dangerous weapon is a motor vehicle, as
13 defined in s. 340.01 (35), sell the motor vehicle following the procedure under s.
14 973.075 (4). If a firearm or ammunition is not so retained, the city, village, town or
15 county or other custodian shall ship it to the state crime laboratories and it is then
16 the property of the laboratories. A person designated by the department of justice
17 may destroy any material for which the laboratories have no use or arrange for the
18 exchange of material with other public agencies. In lieu of destruction, shoulder
19 weapons for which the laboratory has no use shall be turned over to the department
20 of natural resources for sale and distribution of proceeds under s. 29.934.

SECTION 36. Effective date.

(1) This act takes effect on July 1, 2007.

(END)