

## **Survey of Dane County Municipalities' Treatment of First-Offense Possession of THC<sup>1</sup> and Underage Drinking**

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### *Governing Statutes*

The Wisconsin Legislature has promulgated statutes concerning possession of THC and possession and consumption of alcohol by underage individuals. According to Wis. Stat. § 961.41(3g)(e), a person in possession, or attempting to possess, THC or an analog of THC can be fined up to \$1000, imprisoned for 6 months, or both upon a first conviction. For a second or subsequent conviction, a person is guilty of a Class I felony carrying a potential penalty of \$10,000, imprisonment for not more than 3 years and 6 months, or both. Wis. Stat. § 939.50(3)(i).

Additionally, statutes codify a prohibition of underage possession or consumption of alcohol. Wis. Stat. § 125.07(b) states “any underage person not accompanied by his or her parent, guardian or spouse who has attained the legal drinking age who knowingly possesses or consumes alcohol beverages is guilty of a violation.” Sec. 125.07 continues by delineating a penalty for violation of the prohibition. Wis. Stat. § 125.07(c). An underage person will be subject to a forfeiture of \$100 to \$200, a driver’s license revocation for 30 to 90 days<sup>3</sup>, completion of community service or other work program comporting with state statute, or any combination of the listed penalties for a first violation. Penalties increase for subsequent convictions.

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<sup>1</sup> Tetrahydrocannabinol, otherwise known as marijuana.

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<sup>3</sup> See Wis. Stat. § 343.30(6)(b)1.

### *Statutes Granting Municipal Authority*

Wisconsin municipalities are authorized to create ordinances and municipal courts if they desire. Wis. Stats. §§ 66.0103, 755.01. When the governing body of the municipality has created a municipal court, the court has exclusive jurisdiction over actions involving violation of municipal ordinances under which the penalty is forfeiture. Wis. Const. art. VII, § 2, Wis. Stat. § 755.045(1). Section 755 of the Wisconsin Statutes describes the powers and limits of the municipal court. For example, municipal courts have no jurisdiction if equitable relief is sought, concurrent jurisdiction with juvenile court, and the ability to issue warrants to enforce matters under its jurisdiction or order contempt. *See* Wis. Stats. §§ 755.045, 800.12, 938.17.

### *Ordinances*

Municipalities may regulation the possession of marijuana through an ordinance. Wis. Stat. § 66.0107(1)(bm). The amount possessed must be 25 grams or less and the municipal court only has jurisdiction over first offenses. *Id.* Similarly, municipalities may pass an ordinance adopting the relevant parts of the alcohol regulation chapters<sup>4</sup> in the state statutes. Wis. Stat. § 938.17(2)(cm). Once adopted, the municipalities determine a deposit amount for violations that complies with the relevant statutes. Wis. Stat. § 800.037. The attached table gives a break down of forfeiture amounts available for Dane County municipalities. Additionally, the attached “Juvenile/Underage Sentencing in Municipal Court” table from the Wisconsin Municipal Judge Benchbook illustrates the applicable statutes and corresponding forfeiture ranges.

### *Alternative Treatment*

Where available, the table discusses the practice of the particular municipal court in lieu of assessing fines when the court exercises its discretion. Wis. Stat. § 800.09. Court clerks stated

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<sup>4</sup> See Wis. Stats. § 125, 938.

that many municipal judges ordered treatment program completion or community service as an alternative to forfeiture. Judges are more prone to order alternatives when the person is a juvenile. Judges ordered Alcohol and Other Drug Assessments (AODA), peer court administered through Youth Services of Southern Wisconsin, essay writing, or other community service. Judges routinely lower the forfeiture, dismiss the violation, or modify the violation to a lesser charge after successful completion of alternative punishment. Judges require the individual to maintain a clean record for a period of time, usually one year, prior to modifying the initial punishment.