



2005 SENATE BILL 78

February 24, 2005 - Introduced by Senators HARSDORF, BROWN, ROESSLER, JAUCH, DECKER, KAPANKE, ZIEN, LASSA, A. LASEE, OLSEN and STEPP, cosponsored by Representatives RHOADES, LAMB, PETTIS, MOULTON, GRONEMUS, KREIBICH, HUBLER, KRAWCZYK, HAHN, HINES, VAN ROY, TRAVIS, GUNDERSON, TOWNSEND, OTT, HUNDERTMARK, MUSSER, ALBERS and FREESE. Referred to Committee on Health, Children, Families, Aging and Long Term Care.

1 **AN ACT** *to renumber* 961.437 (2) and 961.49; *to renumber and amend* 961.437
2 (3), 961.437 (4), 961.437 (5) and 961.46; *to amend* 101.10 (title), 101.10 (3) (e),
3 895.555 (title), 895.555 (1), 938.34 (14s) (am) (intro.), 939.62 (2m) (a) 2m. d.,
4 939.62 (2m) (d), 948.015 (6), 961.23 (4), 961.23 (5), 961.41 (1r), 961.437 (title),
5 961.49 (title) and 973.01 (2) (c) 2. a.; and *to create* 101.10 (3) (f), 111.335 (1) (cs)
6 5., 125.12 (2) (ag) 5m., 125.12 (2) (ag) 6m., 125.12 (4) (ag) 7m., 125.12 (4) (ag)
7 8m., 939.32 (1) (g), 939.62 (2m) (a) 2m. am., 961.01 (14f), 961.22 (3) (b), 961.23
8 (7), 961.437 (1) (title), 961.437 (2m), 961.437 (3m) (title), 961.46 (2), 961.49
9 (2m), 973.017 (8) (a) 3. and 973.017 (8) (c) of the statutes; **relating to:**
10 pseudoephedrine hydrochloride and other materials used to produce
11 methamphetamine, the distribution of methamphetamine to minors, and
12 providing penalties.

Analysis by the Legislative Reference Bureau

This bill makes a number of changes in the law relating to the controlled substance methamphetamine and materials used to make it.

SENATE BILL 78***Classification of pseudoephedrine hydrochloride as a controlled substance***

Under current law, each controlled substance is classified in one of five separate schedules. The classification is based on: 1) whether there is a currently accepted medical use for the drug; 2) the drug's potential for being abused; and 3) the nature of the psychological or physical dependence that of the drug use may produce. Schedule I controlled substances are those that have a high potential for abuse and no currently accepted medical use. Schedule V controlled substances are those that have an accepted medical use and that have a lower potential for abuse and produce less dependence when compared with other controlled substances. (Methamphetamine is included in Schedule II.)

In general, a Schedule I controlled substance may not be dispensed, even with a prescription. A Schedule II, III, or IV controlled substance may be dispensed with a prescription. A Schedule V controlled substance may be dispensed without a prescription, but only a registered pharmacist may sell it at retail and only then in certain specified amounts. In addition, the pharmacist must record the name and address of the purchaser of a Schedule V controlled substance and the quantity of the product sold. Penalties for crimes relating to Schedule I and II controlled substances are, in general, more severe than those relating to other controlled substances. Penalties for crimes relating to Schedule V controlled substances are generally the least severe. To illustrate, unlawful delivery of heroin (a Schedule I controlled substance) is a Class C, D, E, or F felony, depending on the amount of the drug involved, while unlawful delivery of any Schedule V controlled substance is a Class I felony, regardless of the amount involved.

This bill classifies pseudoephedrine hydrochloride as a Schedule V controlled substance. The bill also prohibits a person from purchasing more than nine grams of pseudoephedrine hydrochloride within a 30-day period and requires the purchaser to provide the pharmacist selling it with a photo ID. But the classification and the resulting restrictions on sale do not apply if: 1) the pseudoephedrine hydrochloride is in a product that contains therapeutically significant quantities of another active medicinal ingredient; 2) the pseudoephedrine hydrochloride is in a liquid or a soft gelatin capsule; or 3) the Controlled Substances Board has determined that the pseudoephedrine hydrochloride involved cannot be used readily in the manufacture of methamphetamine.

Possession of methamphetamine precursors

Current law generally prohibits possessing or disposing of waste resulting from the manufacture of methamphetamine. This prohibition does not apply to legitimate storage, treatment, or clean-up operations. A violation of this prohibition is a Class F felony. Second and subsequent offenses are Class H felonies.

Current law also prohibits possessing or attempting to possess methamphetamine itself. A violation of that prohibition is a Class I felony. In addition, current law prohibits manufacturing, distributing, and delivering methamphetamine and possessing methamphetamine with intent to manufacture, distribute, or deliver. A violation of one of these prohibitions is a Class C, D, E, or F felony, depending on the amount of the drug involved.

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This bill prohibits possessing a variety of materials with intent to manufacture methamphetamine. A person who violates this prohibition is guilty of a Class H felony. (See the table near the end of this analysis for the penalties that apply to felonies created in this bill.) The materials that are covered by this prohibition are pseudoephedrine hydrochloride, ephedrine (a Schedule IV controlled substance), phenylpropanolamine, red phosphorus, lithium metal, sodium metal, iodine, anhydrous ammonia, pressurized ammonia, and liquid nitrogen. Possession of more than 24 grams of pseudoephedrine hydrochloride, ephedrine, or phenylpropanolamine can be used to prove the person's intent to manufacture methamphetamine.

In general, a person who is convicted of possessing the materials listed above with intent to manufacture methamphetamine is subject to the same disqualifications, disabilities, increased penalties, and other adverse or unfavorable treatments as a person who is convicted of possessing a controlled substance with intent to manufacture, distribute, or deliver ("possession with intent" crimes). For example, like possession with intent crimes, this new offense is classified as a "three-strikes" crime, which means that a person who is convicted of this crime and two other offenses that are covered by the relevant statute is sentenced, upon conviction for the last of those three offenses, to life imprisonment without the possibility of parole or extended supervision.

Agricultural chemicals used to make methamphetamine

Current law prohibits the theft of anhydrous ammonia or equipment used to apply it for an agricultural purpose or to store, hold, transport, or transfer it (anhydrous ammonia equipment). Current law also contains other prohibitions regarding storing, holding, transporting, and transferring anhydrous ammonia. A person who violates one of these prohibitions is guilty of a Class I felony (unless the violation occurs during agricultural activity or while the person is working on anhydrous ammonia equipment with its owner's consent, in which case the person is subject to a civil monetary penalty).

This bill prohibits a person from intentionally releasing another person's anhydrous ammonia without the other person's consent. A person who violates this prohibition is guilty of a Class I felony. The bill also makes the statute relating to theft of anhydrous ammonia or anhydrous ammonia equipment applicable to liquid nitrogen and specifies that attempted theft under that statute is subject to the same penalties as those that apply to the completed offense. (Most other attempts are punishable by half of the fine and half of the term of imprisonment that may be imposed for a completed offense.)

Distributing methamphetamine to minors

Under current law, if a person distributes or delivers a controlled substance to someone who is under the age of 18 and who is at least three years younger than he or she is, the applicable maximum term of imprisonment for the crime is increased by five years. Under this bill, if a person distributes or delivers methamphetamine to someone who is under the age of 18 and who is at least two years younger than he or she is, the person is guilty of a Class B felony.

SENATE BILL 78***Penalties***

<i>Crime</i>	<i>Maximum fine</i>	<i>Maximum term of confinement</i>	<i>Maximum sentence length</i>
Class B felony	N/A	40 years	60 years
Class H felony	\$10,000	3 years	6 years
Class I felony	\$10,000	1.5 years	3.5 years

Other information

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.** 101.10 (title) of the statutes is amended to read:

2 **101.10 (title) Storage and handling of anhydrous ammonia; theft of**
3 **liquid nitrogen, anhydrous ammonia, and anhydrous ammonia equipment.**

4 **SECTION 2.** 101.10 (3) (e) of the statutes is amended to read:

5 101.10 (3) (e) Intentionally take, carry away, use, conceal, or retain possession
6 of liquid nitrogen, anhydrous ammonia ~~belonging to another~~, or anhydrous ammonia
7 equipment belonging to another, without the other's consent and with intent to
8 deprive the owner permanently of possession of the liquid nitrogen, anhydrous
9 ammonia, or anhydrous ammonia equipment.

10 **SECTION 3.** 101.10 (3) (f) of the statutes is created to read:

11 101.10 (3) (f) Intentionally release or allow the escape of anhydrous ammonia
12 belonging to another into the atmosphere. This paragraph does not apply if the
13 owner has authorized the actor to exercise control over the anhydrous ammonia or
14 has consented to its release.

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1 **SECTION 4.** 111.335 (1) (cs) 5. of the statutes is created to read:

2 111.335 (1) (cs) 5. Possessing any of the materials listed in s. 961.437 (2m) with
3 intent to manufacture methamphetamine under that subsection or under a federal
4 law or a law of another state that is substantially similar to s. 961.437 (2m).

5 **SECTION 5.** 125.12 (2) (ag) 5m. of the statutes is created to read:

6 125.12 (2) (ag) 5m. The person has been convicted of possessing any of the
7 materials listed in s. 961.437 (2m) with intent to manufacture methamphetamine
8 under that subsection or under a federal law or a law of another state that is
9 substantially similar to s. 961.437 (2m).

10 **SECTION 6.** 125.12 (2) (ag) 6m. of the statutes is created to read:

11 125.12 (2) (ag) 6m. The person knowingly allows another person, who is on the
12 premises for which the license under this chapter is issued, to possess any of the
13 materials listed in s. 961.437 (2m) with the intent to manufacture
14 methamphetamine.

15 **SECTION 7.** 125.12 (4) (ag) 7m. of the statutes is created to read:

16 125.12 (4) (ag) 7m. That the licensee has been convicted of possessing any of
17 the materials listed in s. 961.437 (2m) with intent to manufacture
18 methamphetamine under that subsection or under a federal law or a law of another
19 state that is substantially similar to s. 961.437 (2m).

20 **SECTION 8.** 125.12 (4) (ag) 8m. of the statutes is created to read:

21 125.12 (4) (ag) 8m. That the licensee knowingly allows another person, who is
22 on the premises for which the license under this chapter is issued, to possess any of
23 the materials listed in s. 961.437 (2m) with the intent to manufacture
24 methamphetamine.

25 **SECTION 9.** 895.555 (title) of the statutes is amended to read:

SENATE BILL 78**SECTION 9**

1 **895.555** (title) **Liability exemption; anhydrous ammonia and liquid**
2 **nitrogen**.

3 **SECTION 10.** 895.555 (1) of the statutes is amended to read:

4 895.555 (1) LIABILITY EXEMPTION. Except as provided under sub. (2), any person
5 who owns, maintains, or installs anhydrous ammonia equipment, as defined in s.
6 101.10 (1) (b), or who uses anhydrous ammonia or liquid nitrogen for any legal
7 purpose is immune from any civil liability for acts or omissions relating to the
8 anhydrous ammonia equipment or to anhydrous ammonia or liquid nitrogen that
9 cause damage or injury to an individual, if that damage or injury occurs during the
10 individual's violation of s. 101.10 (3) (c), (d), ~~or (e)~~, or (f).

11 **SECTION 11.** 938.34 (14s) (am) (intro.) of the statutes is amended to read:

12 938.34 (14s) (am) (intro.) In addition to any other dispositions imposed under
13 this section, if the juvenile is found to have violated s. 961.41 (1) or (1m) or 961.437
14 (2m), the court shall order one of the following penalties:

15 **SECTION 12.** 939.32 (1) (g) of the statutes is created to read:

16 939.32 (1) (g) Whoever attempts to commit a crime under s. 101.10 (3) (e) is
17 subject to the penalty for the completed act, as provided in s. 101.10 (4) (b).

18 **SECTION 13.** 939.62 (2m) (a) 2m. am. of the statutes is created to read:

19 939.62 (2m) (a) 2m. am. A crime under s. 961.437 (2m).

20 **SECTION 14.** 939.62 (2m) (a) 2m. d. of the statutes is amended to read:

21 939.62 (2m) (a) 2m. d. A crime at any time under federal law or the law of any
22 other state or, prior to April 28, 1994, under the law of this state that is comparable
23 to a crime specified in subd. 2m. a., am., b., or c.

24 **SECTION 15.** 939.62 (2m) (d) of the statutes is amended to read:

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1 939.62 **(2m)** (d) If a prior conviction is being considered as being covered under
2 par. (a) 1m. b., or 2m. d. as comparable to a felony specified under par. (a) 1m. a. or
3 2m. a., am., b., or c., the conviction may be counted as a prior conviction under par.
4 (b) only if the court determines, beyond a reasonable doubt, that the violation
5 relating to that conviction would constitute a felony specified under par. (a) 1m. a.
6 or 2m. a., am., b., or c. if committed by an adult in this state.

7 **SECTION 16.** 948.015 (6) of the statutes is amended to read:

8 948.015 **(6)** ~~Sections 961.01 (6) and (9) and Section 961.49, relating to~~
9 ~~delivering and distributing offenses involving an intent to deliver or distribute~~
10 ~~controlled substances or controlled substance analogs to children at or near certain~~
11 ~~places.~~

12 **SECTION 17.** 961.01 (14f) of the statutes is created to read:

13 961.01 **(14f)** “Methamphetamine precursor” means ephedrine,
14 pseudoephedrine hydrochloride, phenylpropanolamine, or any of their salts,
15 isomers, and salts of isomers that are theoretically possible within the specific
16 chemical designation.

17 **SECTION 18.** 961.22 (3) (b) of the statutes is created to read:

18 961.22 **(3)** (b) Pseudoephedrine hydrochloride. This paragraph does not apply
19 under any of the following circumstances:

- 20 1. The pseudoephedrine hydrochloride is in a product that contains
21 therapeutically significant quantities of another active medicinal ingredient.
- 22 2. The pseudoephedrine hydrochloride is in a liquid or a soft gelatin capsule.
- 23 3. The controlled substances board has determined, by rule, that the
24 pseudoephedrine hydrochloride cannot be used readily in the manufacture of
25 methamphetamine.

SENATE BILL 78**SECTION 19**

1 **SECTION 19.** 961.23 (4) of the statutes is amended to read:

2 961.23 (4) That any person purchasing such a substance at the time of
3 purchase present to the seller that person's correct name ~~and, address, and, if the~~
4 person is purchasing a product to which s. 961.22 (3) (b) applies, an identification
5 card containing the person's photograph. The seller shall record the name and
6 address and the name and quantity of the product sold. The purchaser and the seller
7 shall sign the record of this transaction. The giving of a false name or false address
8 by the purchaser shall be prima facie evidence of a violation of s. 961.43 (1) (a).

9 **SECTION 20.** 961.23 (5) of the statutes is amended to read:

10 961.23 (5) That no person may purchase more than 8 ounces of a product
11 containing opium or more than 4 ounces of a product containing any other schedule
12 V substance other than pseudoephedrine hydrochloride within a 48-hour period
13 without the authorization of a physician, dentist, or veterinarian ~~nor,~~

14 (6) That no person other than a physician, dentist, veterinarian, or pharmacist
15 may possess more than 8 ounces of a product containing opium or more than 4 ounces
16 of a product containing any other schedule V substance ~~be in the possession of any~~
17 ~~person other than a physician, dentist, veterinarian or pharmacist~~ other than
18 pseudoephedrine hydrochloride at any time without the authorization of a physician,
19 dentist, or veterinarian.

20 **SECTION 21.** 961.23 (7) of the statutes is created to read:

21 961.23 (7) That no person other than a physician, dentist, veterinarian, or
22 pharmacist may purchase more than 9 grams of a product to which s. 961.22 (3) (b)
23 applies within a 30-day period without the authorization of a physician, dentist, or
24 veterinarian.

25 **SECTION 22.** 961.41 (1r) of the statutes is amended to read:

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1 961.41 **(1r)** DETERMINING WEIGHT OF SUBSTANCE. In determining amounts under
2 s. 961.49 (2) (b), 1999 stats., and subs. (1) and (1m), and s. 961.437 (2m), an amount
3 includes the weight of cocaine, cocaine base, heroin, phencyclidine, lysergic acid
4 diethylamide, psilocin, psilocybin, amphetamine, methamphetamine,
5 methamphetamine precursors, methcathinone, or tetrahydrocannabinols or any
6 controlled substance analog of any of these substances together with any compound,
7 mixture, diluent, plant material or other substance mixed or combined with the
8 controlled substance ~~or~~, controlled substance analog, or methamphetamine
9 precursor. In addition, in determining amounts under subs. (1) (h) and (1m) (h), the
10 amount of tetrahydrocannabinols means anything included under s. 961.14 (4) (t)
11 and includes the weight of any marijuana.

12 **SECTION 23.** 961.437 (title) of the statutes is amended to read:

13 **961.437 (title) ~~Possession and disposal of Materials used in and waste~~**
14 **produced from manufacture of methamphetamine.**

15 **SECTION 24.** 961.437 (1) (title) of the statutes is created to read:

16 961.437 **(1)** (title) DEFINITIONS.

17 **SECTION 25.** 961.437 (2) of the statutes is renumbered 961.437 (3m) (a).

18 **SECTION 26.** 961.437 (2m) of the statutes is created to read:

19 961.437 **(2m)** MATERIALS USED IN MANUFACTURE OF METHAMPHETAMINE. Except
20 as authorized by this chapter, any person who possesses a methamphetamine
21 precursor, red phosphorus, lithium metal, sodium metal, iodine, anhydrous
22 ammonia, pressurized ammonia, or liquid nitrogen with intent to manufacture
23 methamphetamine is guilty of a Class H felony. Possession of more than 24 grams
24 of methamphetamine precursors shall be prima facie evidence of intent to
25 manufacture methamphetamine.

SENATE BILL 78**SECTION 27**

1 **SECTION 27.** 961.437 (3) of the statutes is renumbered 961.437 (3m) (b), and
2 961.437 (3m) (b) (intro.) and 2., as renumbered, are amended to read:

3 961.437 **(3m)** (b) (intro.) ~~Subsection (2) Paragraph (a)~~ does not apply to a person
4 who possesses or disposes of methamphetamine manufacturing waste under all of
5 the following circumstances:

6 2. The methamphetamine manufacturing waste had previously been possessed
7 or disposed of by another person in violation of ~~sub. (2) par. (a)~~.

8 **SECTION 28.** 961.437 (3m) (title) of the statutes is created to read:

9 961.437 **(3m)** (title) WASTE FROM MANUFACTURE OF METHAMPHETAMINE.

10 **SECTION 29.** 961.437 (4) of the statutes is renumbered 961.437 (3m) (c), and
11 961.437 (3m) (c) (intro.), as renumbered, is amended to read:

12 961.437 **(3m)** (c) (intro.) A person who violates ~~sub. (2) par. (a)~~ is subject to the
13 following penalties:

14 **SECTION 30.** 961.437 (5) of the statutes is renumbered 961.437 (3m) (d) and
15 amended to read:

16 961.437 **(3m)** (d) Each day of a continuing violation of ~~sub. (2) par. (a) 1. or (b)~~
17 2. constitutes a separate offense.

18 **SECTION 31.** 961.46 of the statutes is renumbered 961.46 (1) and amended to
19 read:

20 961.46 **(1)** ~~If Except as provided in sub. (2), if~~ a person violates s. 961.41 (1) by
21 distributing or delivering a controlled substance or a controlled substance analog to
22 a person 17 years of age or under who is at least 3 years his or her junior, the
23 applicable maximum term of imprisonment prescribed under s. 961.41 (1) for the
24 offense may be increased by not more than 5 years.

25 **SECTION 32.** 961.46 (2) of the statutes is created to read:

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1 961.46 (2) Notwithstanding s. 961.41 (1) (e), if a person violates s. 961.41 (1)
2 by distributing or delivering methamphetamine or a controlled substance analog of
3 methamphetamine to a person 17 years of age or under who is at least 2 years his
4 or her junior, the person is guilty of a Class B felony.

5 **SECTION 33.** 961.49 (title) of the statutes is amended to read:

6 **961.49** (title) ~~**Distribution of or possession with**~~ **Offenses involving**
7 **intent to deliver or distribute a controlled substance on or near certain**
8 **places.**

9 **SECTION 34.** 961.49 of the statutes is renumbered 961.49 (1m).

10 **SECTION 35.** 961.49 (2m) of the statutes is created to read:

11 961.49 (2m) If any person violates s. 961.437 (2m) with intent to deliver or
12 distribute methamphetamine or a controlled substance analog of methamphetamine
13 and the delivery, distribution, or possession takes place under any of the
14 circumstances listed under sub. (1m) (a), (b), (c), or (d), the maximum term of
15 imprisonment prescribed by law for that crime may be increased by 5 years.

16 **SECTION 36.** 973.01 (2) (c) 2. a. of the statutes is amended to read:

17 973.01 (2) (c) 2. a. Sections 939.621, 939.632, 939.645, 961.46 (1), and 961.49.

18 **SECTION 37.** 973.017 (8) (a) 3. of the statutes is created to read:

19 973.017 (8) (a) 3. When making a sentencing decision concerning a person
20 convicted of violating s. 961.437 (2m), the court shall consider as an aggravating
21 factor the fact that the person intended to deliver or distribute methamphetamine
22 or a controlled substance analog of methamphetamine to a prisoner within the
23 precincts of any prison, jail, or house of correction.

24 **SECTION 38.** 973.017 (8) (c) of the statutes is created to read:

