

1999 DRAFTING REQUEST

Bill

Received: **05/21/1999**

Received By: **olsenje**

Wanted: **As time permits**

Identical to LRB:

For: **Stephen Freese (608) 266-7502**

By/Representing: **Rob Richard**

This file may be shown to any legislator: **NO**

Drafter: **olsenje**

May Contact:

Alt. Drafters:

Subject: **Criminal Law - drugs**

Extra Copies: **RCT**

Pre Topic:

No specific pre topic given

Topic:

Waste from methamphetamine production

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/P1	olsenje 11/11/1999	chanaman 11/11/1999	kfollet 11/11/1999	_____	lrb_docadmin 11/11/1999		
/1	olsenje 12/21/1999	jgeller 12/21/1999	martykr 12/21/1999	_____	lrb_docadmin 12/21/1999	lrb_docadmin 12/29/1999	
/2	olsenje 01/19/2000	jgeller 01/20/2000	martykr 01/20/2000	_____	lrb_docadmin 01/20/2000	lrb_docadmin 01/20/2000	

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/1	olsenje 12/21/1999	jgeller 12/21/1999	martykr 12/21/1999		lrb_docadmin 12/21/1999	lrb_docadmin 12/29/1999	

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Handwritten notes: 12/20 jlg, km 1/20, JH km 1/20

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1 12/21 jlg km 12/21
 YMC km 12/21

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See Attached

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1?	olsenje	cm # pl 11/11	kjf 11/11	kjf/mic 11/11			
FE Sent For:							

<END>



3117

Wisconsin Speaker Pro Tempore
Representative Stephen J. Freese

MEMORANDUM

To: Jefren Olsen, LRB Attorney

From: Rob Richard, Administrative Assistant
Office of Representative Steve Freese

Date: May 12, 1999

Re: Creating a bill draft concerning penalties for dumping methamphetamine waste by-products

Representative Kreibich introduced 1999 AB 318, relating to the controlled substance methamphetamine and proving penalties. This bill will put penalties for possessing, manufacturing, delivering or distributing meth in line with penalties currently enforced for heroin.

Rep. Freese would like to expand on Rep. Kreibich's bill and introduce legislation that would make it a felony to dispose of or dump (or any other term you can come up with) the waste by-product of meth.

It is known that the waste by-product is a very hazardous and toxic substance that needs to be treated with extreme caution and care. If possible, I would like the felony charges to reflect those found in s. 291.97, or any other section you find appropriate. Civil liability should fall upon the guilty individual(s) for remediation costs as well.

I would also like to keep the law broad in the sense that we could prosecute individuals found guilty in this draft's language for dumping or possessing meth waste by-product or the paraphernalia associated with meth. The definitions found in s. 961.571 I think would be sufficient.

If you need any other information or have questions, please call me at 6-7502.

FYI: Materials found in the production of meth-
Ephedrine
Pseudoephedrine

Fifty-First Assembly District

Office: Post Office Box 8952 • Madison, Wisconsin 53708-8952 • (608) 266-7502 • Fax: (608) 261-9474 • Rep.Freese@legis.state.wi.us
District: 1121 Professional Drive • Dodgeville, Wisconsin 53533 • (608) 935-3789

Printed on recycled paper with soy-based ink.

Phenylpropanoamine
Red Phosphorous
Sodium Hydroxide
Iodine Crystals
Hydrogen Chloride Gas
Lithium Batteries
Sodium Metal
Hydriodic Acid
Starter Fluid
Freon
Anhydrous Ammonia
Sulfuric Acid/Drain Openers
Denatured Alcohol
Muriatic/Hydrochloric Acid
Acetone/paint Thinner
Coleman Lantern Fuel
Rock/Table Salt
Heating Elements
Lab Glassware

291 penalties - apply² - "generation" of haz. waste
Not "generation" 291.21;

ch. 292

- "Hazardous substance" → would appear to cover meth chemicals

- Meth maker: must provide notice - 292.11(2)(a)
is responsible to clean up - " (3)

- Access to meth maker property 292.11(2)(8)

- Meth maker would probably not be a "voluntary party" under 292.15(1)(f)

- 292.41 might apply

77.54(5)(c)

(c) Motor vehicles which are not required to be licensed for highway use and which are exclusively and directly used in conjunction with waste reduction or recycling activities which reduce the amount of solid waste generated, reuse solid waste, recycle solid waste, compost solid waste or recover energy from solid waste. For the purposes of this paragraph, "solid waste"

means garbage, refuse, sludge or other materials or articles, whether these materials or articles are discarded or purchased, including solid, semisolid, liquid or contained gaseous materials or articles resulting from industrial, commercial, mining or agricultural operations or from domestic use or from public service activities.

84.078(1)(am)

(am) "High-volume industrial waste" means fly ash, bottom ash, paper mill sludge or foundry process waste, or any other waste with similar characteristics specified by the department of natural resources by rule.

107.30(12)

(12) "Mining waste" means wastes directly resulting from or displaced by prospecting or mining and from the cleaning, preparation, separation or purification of minerals or metals during prospecting, mining, concentrating, refining or smelting operations and includes but is not limited to concentrator tailings, refinery and smelter residue, refining and smelting process emissions, mining overburden and waste treatment sludges, materials in process and salvageable by-products.

281.01(15)

(15) "Solid waste" means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant or air pollution control facility and other discarded or salvageable materials, including solid, liquid, semisolid, or contained gaseous materials resulting from industrial, commercial, mining and agricultural operations, and from community activities, but does not include solids or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under ch. 283, or source material, as defined in s. 254.31 (10), special nuclear material, as defined in s. 254.31 (11), or by-product material, as defined in s. 254.31 (3).

285.01(40)

(40) "Solid waste" means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant or air pollution control facility and other discarded or salvageable materials, including solid, liquid, semisolid, or contained gaseous materials resulting from industrial, commercial, mining and agricultural operations, and from community activities, but does not include solids or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under ch. 283, or source material, as defined in s. 254.31 (10), special nuclear material, as defined in s. 254.31 (11), or by-product material, as defined in s. 254.31 (3).

287.01(7)

(7) "Postconsumer waste" means solid waste other than solid waste generated in the production of goods, hazardous waste, as defined in s. 291.01 (7), waste from construction and demolition of structures, scrap automobiles, or high-volume industrial waste, as defined in s. 289.01 (17).

287.01(17)

(17) "Yard waste" means leaves, grass clippings, yard and garden debris and brush, including clean woody vegetative material no greater than 6 inches in diameter. This term does not include stumps, roots or shrubs with intact root balls.

289.01(12)

(12) "Hazardous waste" means any solid waste identified by the department as hazardous under s. 291.05 (2).

289.01(33)

(33) "Solid waste" means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant or air pollution control facility and other discarded or salvageable materials, including solid, liquid, semisolid, or contained gaseous materials resulting from industrial, commercial, mining and agricultural operations, and from community activities, but does not include solids or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under ch. 283, or source material, as defined in s. 254.31 (10), special nuclear material, as defined in s. 254.31 (11), or by-product material, as defined in s. 254.31 (3).

289.51(1)(am)

(am) "Household waste" means any solid waste derived from a household, hotel, motel, bunkhouse, ranger station, crew quarters, campground, picnic ground or day-use recreation area.

295.11(10)

(10) "Solid waste" means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant or air pollution control facility and other discarded or salvageable materials, including solid, liquid, semisolid, or contained gaseous materials resulting from industrial, commercial, mining and agricultural operations, and from community activities, but does not include solids or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under ch. 283, or source material, as defined in s. 254.31 (10), special nuclear material, as defined in s. 254.31 (11), or by-product material, as defined in s. 254.31 (3).

16.11(2)(j)

(j) "Generator" means a person who first produces low-level radioactive waste, including, without limitation, any person who does so in the course of or incident to manufacturing, power generation, processing, waste treatment, waste storage, medical diagnosis and treatment, research or other industrial or commercial activity. If the person who first produced an item or quantity of waste cannot be identified, "generator" means the person first possessing the waste who can be identified.

16.70(11m)

(11m) "Recyclable material" means material in waste for which there exists a commercially demonstrated processing or manufacturing technology which uses the material as a raw material.

16.70(12)

(12) "Recycled material" means a product which is manufactured from solid waste or paper mill sludge.

29.601(3)(a)

(a) No person may throw or deposit, or permit to be thrown or deposited, into any waters within the jurisdiction of the state any lime, oil, tar, garbage, refuse, debris, tanbark, ship ballast, stone, sand, except where permitted by s. 30.12 (3) (a) 1., slabs, decayed wood, sawdust, sawmill refuse, planing mill shavings or waste material of any kind, or any acids or chemicals or waste or refuse arising from the manufacture of any article of commerce, or any other substance deleterious to game or fish life.

70.11(21)(a)

(a) All property purchased or constructed as a waste treatment facility used for the treatment of industrial wastes as defined in s. 281.01 (5) or air contaminants as defined in s. 285.01 (1) but not for other wastes as defined in s 281.01 (7) and approved by the department of revenue for the purpose of abating or eliminating pollution of surface waters, the air or waters of the state if that property is not used to grow agricultural products for sale. For the purposes of this subsection "industrial waste" also includes wood chips, sawdust and other wood residue from the paper and wood products manufacturing process that can be used as fuel and would otherwise be considered superfluous, discarded or fugitive material. The department of natural resources and department of health and family services shall make recommendations upon request to the department of revenue regarding such property. All property purchased or upon which construction began prior to July 31, 1975, shall be subject to s. 70.11 (21), 1973 stats.

77.04(2)

(2) **Tax per acre; payment; penalty.** The "acreage share" shall be computed at the rate of 10 cents per acre on all lands entered prior to 1972. On all lands entered after December 31, 1971, the "acreage share" shall be computed every 10 years to the nearest cent by the department of revenue at the rate of 20 cents per acre multiplied by a ratio using the equalized value of the combined residential, commercial, manufacturing, agricultural, swamp, or waste and

productive forest land classes under s. 70.32 (2) within the state in 1972 as the denominator, and using equalized value for these combined land classes in 1982 and every 10th year thereafter as the numerator. All owners shall pay to the taxation district treasurer the acreage share on each description on or before January 31. If the acreage share is not paid when due to the taxation district treasurer it shall be subject to interest and penalty as provided under ss. 74.11 (11), 74.12 (10) and 74.47. These lands shall be returned as delinquent and a tax certificate under subch. VII of ch. 74 shall be issued on them. After 2 years from the date of the issuance of a tax certificate, the county clerk shall promptly take a tax deed under ch. 75. On taking such deed the county clerk shall certify that fact and specify the descriptions to the department of natural resources.

287.11(2m)(a)2.

2. "Cost of selling processed material" means the net cost, including any storage costs, of selling processed material to a broker, dealer or **manufacturing** facility, plus any cost of transporting the processed material from the **waste** processing facility to the destination specified by the broker, dealer or **manufacturing** facility, less the portion of any state financial assistance received under s. 287.23 or 287.25 attributable to the processed material.

287.11(2m)(a)3.

3. "Processed material" means a component of solid **waste** that has been collected, transported to a **waste** processing facility and prepared for sale to a broker, dealer or **manufacturer**.

287.46(1)

(1) The board may award financial assistance, directly or in cooperation with another person, to a governmental entity or a business entity to assist **waste** generators in the marketing of recovered materials or to develop markets for recovered materials. Forms of financial assistance awarded by the board, and by a recipient of financial assistance awarded by the board, may include grants, loans and **manufacturing** rebates.

289.55(1)(b)

(b) "Tire dump" means any location that is used for storing or disposing of **waste** tires or solid **waste** resulting from **manufacturing** tires.

289.55(2)

(2) **Department authority; abatement.** If the department determines that a tire dump is a nuisance, it shall notify the person responsible for the nuisance and request that the **waste** tires or the solid **waste** resulting from **manufacturing** tires be processed or removed within a specified period. If the person fails to take the requested action within the specified period, the department shall order the person to abate the nuisance within a specified period. If the person responsible for the nuisance is not the owner of the property on which the tire dump is located, the department may order the property owner to permit abatement of the nuisance. If the person responsible for the nuisance fails to comply with the order, the department may take any action necessary to abate the nuisance, including entering the property where the tire dump is located and confiscating the **waste** tires or the solid **waste** resulting from **manufacturing** tires, or arranging to have the **waste** tires or the solid **waste** resulting from **manufacturing** tires

processed or removed.

289.62(2)(c)

(c) *Tonnage fee; other waste*. Except as provided under par. (g), the tonnage fee imposed by sub. (3) (a) [(1) (a)] is 1.5 cents per ton for waste consisting of ashes and sludges from electric and process steam generating facilities, sludges produced by waste treatment or manufacturing processes at pulp or paper mills, manufacturing process solid wastes from foundries and sludges produced by municipal wastewater treatment facilities.

291.01(5)

(5) "Generation" means the act or process of producing hazardous waste but does not include any manufacturing process.

303.015(1)(b)

(b) The board shall develop a plan containing recommendations for the manufacture and marketing of prison industries products, the provision of prison industries services and the provision of research and development activities. Whenever feasible, the plan shall include research activities with a facility involved in the cocomposting of solid waste and sludge from wastewater treatment facilities. The plan may include, but is not limited to, recommended market research, product modifications, manufacturing techniques, pricing policies, advertising and elimination or establishment of specific industries or products. No prison industry may be established or permanently closed without approval of the board.

560.031

560.031 Recycling market development. In carrying out its responsibilities under ss. 560.03 and 560.07, the department may promulgate rules for the provision of financial assistance for the development of markets for materials recovered from solid waste if the provision of that financial assistance is a responsibility assigned to the department in a memorandum of understanding, contract or other agreement with the recycling market development board. The financial assistance may be in the form of grants, loans or manufacturing rebates.

560.031 - ANNOT.

560.031 Recycling market development. (1) Recycling market development. In carrying out its responsibilities under ss. 560.03 and 560.07, the department may promulgate rules for the provision of financial assistance, from the appropriation under s. 20.143 (1) (L), for the development of markets for materials recovered from solid waste. The rules may provide for the provision of financial assistance, directly or in cooperation with another person, to a governmental entity or a business entity to assist waste generators in the marketing of recovered materials or to develop markets for recovered materials. The financial assistance may be in the form of grants, loans or manufacturing rebates.



State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-3117/P1

JEO:.....

cmw

D-Note

3:00 pm
if possible

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 *represent*
 AN ACT ...; relating to: possession and disposal of waste produced by the illegal
 2 manufacture of the controlled substance methamphetamine, possession of
 3 paraphernalia used in the manufacture of the controlled substance
 4 methamphetamine and providing penalties.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version.

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

5 SECTION 1. 961.437 of the statutes is created to read:

6 **961.437 Possession and disposal of waste from manufacture of**
 7 **methamphetamine. (1) In this section:**

8 (a) "Dispose of" means discharge, deposit, inject, dump, spill, leak or place
 9 methamphetamine manufacturing waste into or on any land or water in a manner

10 *which* ^{that} may permit the waste to be emitted into the air, to be discharged into any

11 waters of the state or otherwise to enter the environment.

1 (b) "Intentionally" has the meaning given in s. 939.23 (3).

2 (c) "Methamphetamine manufacturing waste" means any solid, semisolid,
3 liquid or contained gaseous material or article that results from or is produced by the
4 manufacture of methamphetamine or a controlled substance analog of
5 methamphetamine in violation of this chapter.

6 (2) Except as provided in sub. (3), no person may do any of the following:

7 (a) Knowingly possess methamphetamine manufacturing waste.

8 (b) Intentionally dispose of methamphetamine manufacturing waste.

9 (3) A person may possess or dispose of methamphetamine manufacturing
10 waste if the person is storing, treating or disposing of the waste in compliance with
11 chs. 287, 289, 291 and 292.

12 (4) A person who violates sub. (2) is subject to the following penalties:

13 (a) For a first offense, the person shall be fined not less than \$1,000 nor more
14 than \$100,000 or imprisoned for not more than 7 years and 6 months or both.

15 (b) For a 2nd or subsequent offense, the person shall be fined not less than
16 \$5,000 nor more than \$150,000 or imprisoned for not more than 15 years or both.

17 (5) Each day of a continuing violation of sub. (2) (a) or (b) constitutes a separate
18 offense.

19 SECTION 2. 961.573 (1) of the statutes is amended to read:

20 961.573 (1) No person may use, or possess with the primary intent to use, drug
21 paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture,
22 compound, convert, produce, process, prepare, test, analyze, pack, repack, store,
23 contain, conceal, inject, ingest, inhale or otherwise introduce into the human body
24 a controlled substance or controlled substance analog in violation of this chapter.

1 Any person who violates this section ~~subsection~~ [✓] may be fined not more than \$500 or
2 imprisoned for not more than 30 days or both.

3 History: 1989 a. 121; 1991 a. 39, 140; 1995 a. 27, 77; 1995 a. 448 ss. 312 to 314, 492; Stats. 1995 s. 961.573.

3 SECTION 3. 961.573 (2) of the statutes is amended to read:

4 961.573 (2) Any person who violates this section ~~sub.~~ [✓] (1) who is under 17 years
5 of age is subject to a disposition under s. 938.344 (2e).

6 History: 1989 a. 121; 1991 a. 39, 140; 1995 a. 27, 77; 1995 a. 448 ss. 312 to 314, 492; Stats. 1995 s. 961.573.

6 SECTION 4. 961.573 (3) of the statutes is created to read:

7 961.573 (3) No person may use, or possess with the primary intent to use, drug
8 paraphernalia to manufacture, compound, convert, produce, process, prepare, test,
9 analyze, pack, repack or store methamphetamine or a controlled substance analog
10 of methamphetamine in violation of this chapter. Any person who violates this
11 ~~subsection~~ [✓] may be fined not more than \$10,000 or imprisoned for not more than 5
12 years or both.

13 SECTION 5. 961.574 (1) of the statutes is amended to read:

14 961.574 (1) No person may deliver, possess with intent to deliver, or
15 manufacture with intent to deliver, drug paraphernalia, knowing that it will be
16 primarily used to plant, propagate, cultivate, grow, harvest, manufacture,
17 compound, convert, produce, process, prepare, test, analyze, pack, repack, store,
18 contain, conceal, inject, ingest, inhale or otherwise introduce into the human body
19 a controlled substance or controlled substance analog in violation of this chapter.
20 Any person who violates this section ~~subsection~~ [✓] may be fined not more than \$1,000
21 or imprisoned for not more than 90 days or both.

22 History: 1989 a. 121; 1991 a. 39, 140; 1995 a. 27, 77; 1995 a. 448 ss. 315 to 317, 493; Stats. 1995 s. 961.574.

22 SECTION 6. 961.574 (2) of the statutes is amended to read:

1 961.574 (2) Any person who violates ~~this section~~ [✓] sub. (1) who is under 17 years
2 of age is subject to a disposition under s. 938.344 (2e).

3 History: 1989 a. 121; 1991 a. 39, 140; 1995 a. 27, 77; 1995 a. 448 ss. 315 to 317, 493; Stats. 1995 s. 961.574.

SECTION 7. 961.574 (3) of the statutes is created to read:

4 961.574 (3) No person may deliver, possess with intent to deliver, or
5 manufacture with intent to deliver, drug paraphernalia, knowing that it will be
6 primarily used to manufacture, compound, convert, produce, process, prepare, test,
7 analyze, pack, repack or store methamphetamine or a controlled substance analog
8 of methamphetamine in violation of this chapter. Any person who violates this
9 subsection [✓] may be fined not more than \$10,000 or imprisoned for not more than 5
10 years or both.

INS
4-10

(END)

INS 4 - 10, p. 1 of 2

Section #. 961.575 (1) of the statutes is amended to read:

(1)

961.575 (1) Any person 17 years of age or over who violates s. 961.574 by delivering drug paraphernalia to a person 17 years of age or under who is at least 3 years younger than the violator may be fined not more than \$10,000 or imprisoned for not more than 9 months or both.

~~History: 1989 a. 121; 1991 a. 39; 1995 a. 27, 77; 1995 a. 448 ss. 318, 494, Stats. 1995 s. 961.575~~

3

Section #. 961.575 (1) of the statutes is created to read:

(B)
3

(3)

961.575 (1) Any person 17 years of age or over who violates s. 961.574 by delivering drug paraphernalia to a person 17 years of age or under who is at least 3 years younger than the violator may be fined not more than ~~\$10,000~~ \$50,000 or imprisoned for not more than ~~9 months~~ 10 years or both.

~~History: History: 1989 a. 121, 1991 a. 39, 1995 a. 27, 77, 1995 a. 448 ss. 318, 494, Stats. 1995 s. 961.575.~~

(END OF INSERT)

D-NOTE

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3117/P1dn

JEO:.....

cm #

DATE

This is a preliminary draft for your review. Please note the following when reviewing the draft:

1. The draft creates a new statute dealing with possession and disposal of waste from the illegal manufacture of methamphetamine. The definitions of "dispose of" and of "methamphetamine manufacturing waste" are based on definitions found in current statutes dealing with hazardous and solid wastes. Please review the definitions carefully to make sure that they cover what you intend to cover.

2. The draft prohibits the *intentional* disposal of methamphetamine waste. This means that the person will have to have the purpose to dispose of the waste or will have to be aware that his or her conduct is practically certain to cause disposal of the waste. In addition, the person will have to know that it is waste from the illegal manufacture of methamphetamine. Likewise, the draft prohibits possession of methamphetamine waste by persons who know that it is waste from the illegal manufacture of methamphetamine. I structured the prohibitions in this way as one way of avoiding the possible prosecution of, for instance, a person who owns land on which a meth lab is set up without the person's knowledge or consent. Do these provisions effect your intent?

3. The draft exempts from its prohibitions a person acting in accordance with current laws governing the storage, treatment and disposal of hazardous and solid waste. Okay? Also, if waste from a meth lab is also hazardous or solid waste or a hazardous substance under the current statutes dealing with storage, treatment and disposal of hazardous and solid waste, a person who improperly disposes of the waste from the meth lab could be prosecuted for violating those statutes as well as for violating proposed s. 961.437 (2). Is that your intent?

4. The penalties under proposed s. 961.437 (4) are the same as the penalties under s. 291.97 (2) (b) and (c) 2., stats., as affected by the "truth in sentencing" act from last session. Note that the criminal penalties study committee recommendations, as contained in 1999 Assembly Bill 465, would eliminate the minimum fines provided in s. 291.97 (2) (b) and (c) 2., stats. Do you want to eliminate the minimum fines in this draft?

5. The penalties under proposed s. 961.573 (3) and 961.574 (3) are those for current lower range felony offenses. They can be modified if you'd like to provide for different penalties.

Please let me know if you have any questions or changes.

Jefren E. Olsen
Legislative Attorney
Phone: (608) 266-8906
E-mail: Jefren.Olsen@legis.state.wi.us

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3117/P1dn
JEO:cmh:kjf

November 11, 1999

This is a preliminary draft for your review. Please note the following when reviewing the draft:

1. The draft creates a new statute dealing with possession and disposal of waste from the illegal manufacture of methamphetamine. The definitions of "dispose of" and of "methamphetamine manufacturing waste" are based on definitions found in current statutes dealing with hazardous and solid wastes. Please review the definitions carefully to make sure that they cover what you intend to cover.

2. The draft prohibits the *intentional* disposal of methamphetamine waste. This means that the person will have to have the purpose to dispose of the waste or will have to be aware that his or her conduct is practically certain to cause disposal of the waste. In addition, the person will have to know that it is waste from the illegal manufacture of methamphetamine. Likewise, the draft prohibits possession of methamphetamine waste by persons who know that it is waste from the illegal manufacture of methamphetamine. I structured the prohibitions in this way as one way of avoiding the possible prosecution of, for instance, a person who owns land on which a meth lab is set up without the person's knowledge or consent. Do these provisions effect your intent?

3. The draft exempts from its prohibitions a person acting in accordance with current laws governing the storage, treatment and disposal of hazardous and solid waste. Okay? Also, if waste from a meth lab is also hazardous or solid waste or a hazardous substance under the current statutes dealing with storage, treatment and disposal of hazardous and solid waste, a person who improperly disposes of the waste from the meth lab could be prosecuted for violating those statutes as well as for violating proposed s. 961.437 (2). Is that your intent?

4. The penalties under proposed s. 961.437 (4) are the same as the penalties under s. 291.97 (2) (b) and (c) 2., stats., as affected by the "truth in sentencing" act from last session. Note that the criminal penalties study committee recommendations, as contained in 1999 Assembly Bill 465, would eliminate the minimum fines provided in s. 291.97 (2) (b) and (c) 2., stats. Do you want to eliminate the minimum fines in this draft?

5. The penalties under proposed ss. 961.573 (3) and 961.574 (3) are those for current lower range felony offenses. They can be modified if you'd like to provide for different penalties.

Please let me know if you have any questions or changes.

Jefren E. Olsen
Senior Legislative Attorney
Phone: (608) 266-8906
E-mail: Jefren.Olsen@legis.state.wi.us

Olsen, Jefren

From: Richard, Rob
Sent: Monday, December 06, 1999 4:07 PM
To: Olsen, Jefren

Mr. Olsen:

Now that LRB-3117 has been reviewed by the parties interested in this legislation, I would like to move forward on it.

Regarding point #4 in your drafter's note, you asked us if we wanted to eliminate the minimum fines in this draft. I think the answer is, no. Keep everything in line with current law until TIS is passed. It's my understanding that you wrote an amendment for Rep. Kreibich's AB 318 that would keep the current penalties, but if TIS is enacted then the study committee's recommendations would go into effect. Please do the same with this draft.

If you have any questions please call or e-mail me.

Thank you!

Rob Richard, Administrative Assistant
Office of Rep. Freese
608-266-7502



State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-3117/1

JEO:cmh:kjf

Soon

D-Note

jlg +
R.M.R.

~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

Regen

1 AN ACT *to amend* 961.573 (1), 961.573 (2), 961.574 (1), 961.574 (2) and 961.575
 2 (1); and *to create* 961.437, 961.573 (3), 961.574 (3) and 961.575 (3) of the
 3 statutes; **relating to:** possession and disposal of waste produced by the illegal
 4 manufacture of the controlled substance methamphetamine, possession of
 5 paraphernalia used in the manufacture of the controlled substance
 6 methamphetamine and providing penalties.

ANALYSIS
INSERT

Analysis by the Legislative Reference Bureau

~~This is a preliminary draft. An analysis will be provided in a later version.~~

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

7 SECTION 1. 961.437 of the statutes is created to read:
 8 **961.437 Possession and disposal of waste from manufacture of**
 9 **methamphetamine.** (1) In this section:
 10 (a) "Dispose of" means discharge, deposit, inject, dump, spill, leak or place
 11 methamphetamine manufacturing waste into or on any land or water in a manner

1 that may permit the waste to be emitted into the air, to be discharged into any waters
2 of the state or otherwise to enter the environment.

3 (b) “Intentionally” has the meaning given in s. 939.23 (3).

4 (c) “Methamphetamine manufacturing waste” means any solid, semisolid,
5 liquid or contained gaseous material or article that results from or is produced by the
6 manufacture of methamphetamine or a controlled substance analog of
7 methamphetamine in violation of this chapter.

8 (2) Except as provided in sub. (3), no person may do any of the following:

9 (a) Knowingly possess methamphetamine manufacturing waste.

10 (b) Intentionally dispose of methamphetamine manufacturing waste.

11 (3) A person may possess or dispose of methamphetamine manufacturing
12 waste if the person is storing, treating or disposing of the waste in compliance with
13 chs. 287, 289, 291 and 292.

14 (4) A person who violates sub. (2) is subject to the following penalties:

15 (a) For a first offense, the person shall be fined not less than \$1,000 nor more
16 than \$100,000 or imprisoned for not more than 7 years and 6 months or both.

17 (b) For a 2nd or subsequent offense, the person shall be fined not less than
18 \$5,000 nor more than \$150,000 or imprisoned for not more than 15 years or both.

19 (5) Each day of a continuing violation of sub. (2) (a) or (b) constitutes a separate
20 offense.

21 **SECTION 2.** 961.573 (1) of the statutes is amended to read:

22 961.573 (1) No person may use, or possess with the primary intent to use, drug
23 paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture,
24 compound, convert, produce, process, prepare, test, analyze, pack, repack, store,
25 contain, conceal, inject, ingest, inhale or otherwise introduce into the human body

1 a controlled substance or controlled substance analog in violation of this chapter.
2 Any person who violates this section subsection may be fined not more than \$500 or
3 imprisoned for not more than 30 days or both.

4 **SECTION 3.** 961.573 (2) of the statutes is amended to read:

5 961.573 (2) Any person who violates ~~this section~~ sub. (1) who is under 17 years
6 of age is subject to a disposition under s. 938.344 (2e).

7 **SECTION 4.** 961.573 (3) of the statutes is created to read:

8 961.573 (3) No person may use, or possess with the primary intent to use, drug
9 paraphernalia to manufacture, compound, convert, produce, process, prepare, test,
10 analyze, pack, repack or store methamphetamine or a controlled substance analog
11 of methamphetamine in violation of this chapter. Any person who violates this
12 subsection may be fined not more than \$10,000 or imprisoned for not more than 5
13 years or both.

14 **SECTION 5.** 961.574 (1) of the statutes is amended to read:

15 961.574 (1) No person may deliver, possess with intent to deliver, or
16 manufacture with intent to deliver, drug paraphernalia, knowing that it will be
17 primarily used to plant, propagate, cultivate, grow, harvest, manufacture,
18 compound, convert, produce, process, prepare, test, analyze, pack, repack, store,
19 contain, conceal, inject, ingest, inhale or otherwise introduce into the human body
20 a controlled substance or controlled substance analog in violation of this chapter.
21 Any person who violates this section subsection may be fined not more than \$1,000
22 or imprisoned for not more than 90 days or both.

23 **SECTION 6.** 961.574 (2) of the statutes is amended to read:

24 961.574 (2) Any person who violates ~~this section~~ sub. (1) who is under 17 years
25 of age is subject to a disposition under s. 938.344 (2e).

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SECTION 7. 961.574 (3) of the statutes is created to read:

961.574 (3) No person may deliver, possess with intent to deliver, or manufacture with intent to deliver, drug paraphernalia, knowing that it will be primarily used to manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack or store methamphetamine or a controlled substance analog of methamphetamine in violation of this chapter. Any person who violates this subsection may be fined not more than \$10,000 or imprisoned for not more than 5 years or both.

SECTION 8. 961.575 (1) of the statutes is amended to read:

961.575 (1) Any person 17 years of age or over who violates s. 961.574 (1) by delivering drug paraphernalia to a person 17 years of age or under who is at least 3 years younger than the violator may be fined not more than \$10,000 or imprisoned for not more than 9 months or both.

SECTION 9. 961.575 (3) of the statutes is created to read:

961.575 (3) Any person 17 years of age or over who violates s. 961.574 (3) by delivering drug paraphernalia to a person 17 years of age or under may be fined not more than \$50,000 or imprisoned for not more than 10 years or both.

(END)

ANALYSIS INSERT:

Possession and disposal of methamphetamine manufacturing waste

Current law regulates the storage, treatment and disposal of hazardous and solid waste and provides penalties for the improper disposal of hazardous or solid waste. Current law also prohibits the unlawful manufacture of the controlled substance methamphetamine or a controlled substance analog of methamphetamine.

This bill creates prohibitions relating to methamphetamine manufacturing waste, which is any material or article that results from or is produced by the unlawful manufacture of methamphetamine or a controlled substance analog of methamphetamine. Specifically, the bill prohibits a person from knowingly possessing methamphetamine manufacturing waste or intentionally disposing of methamphetamine manufacturing waste by discharging, depositing, injecting, dumping, spilling, leaking or placing methamphetamine manufacturing waste into or on any land or water in a manner that may permit the waste to be emitted into the air, to be discharged into any waters of the state or otherwise to enter the environment. A person who violates the prohibitions created in the bill is subject to the following penalties:

1. For a first offense, the person must be fined not less than \$1,000 nor more than \$100,000 or imprisoned for not more than seven years and six months or both.
2. For a ^{second} or subsequent offense, the person must be fined not less than \$5,000 nor more than \$150,000 or imprisoned for not more than 15 years or both.

The prohibitions in the bill relating to methamphetamine manufacturing waste do not apply to a person who is possessing or disposing of methamphetamine manufacturing waste in compliance with current law governing the storage, treatment and disposal of hazardous or solid waste.

Possession of paraphernalia used to manufacture methamphetamine

Current law prohibits the possession, use, manufacture and delivery of drug paraphernalia. Drug paraphernalia includes any object or item that is used, designed for use or primarily intended for use in unlawfully manufacturing, producing, processing, preparing or storing a controlled substance. A person who possesses or uses drug paraphernalia may be fined not more than \$500 or imprisoned for not more than 30 days or both. A person who manufactures or delivers drug paraphernalia may be fined not more than \$1,000 or imprisoned for not more than 90 days or both, except that if a person delivers drug paraphernalia to a minor the person may be fined not more than \$10,000 or imprisoned for not more than nine months or both.

This bill increases the penalties for methamphetamine-related violations of the current drug paraphernalia prohibitions. Specifically, under the bill a person may be fined not more than \$10,000 or imprisoned for not more than five years or both if the person uses or delivers drug paraphernalia, or possesses or manufactures drug paraphernalia with intent to use or deliver the paraphernalia, knowing that the

drug paraphernalia will be primarily used to unlawfully manufacture, compound, produce, process, prepare, test, analyze, pack, repack or store methamphetamine or a controlled substance analog of methamphetamine. The bill also provides that a person may be fined not more than \$50,000 or imprisoned for not more than ten years or both if the person delivers drug paraphernalia to a minor knowing that the drug paraphernalia will be primarily used to unlawfully manufacture, compound, produce, process, prepare, test, analyze, pack, repack or store methamphetamine or a controlled substance analog of methamphetamine.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3117/1dn

JEO:...



Rob Richard:

The current impasse on the "truth in sentencing" legislation makes uncertain the final form that legislation will take, assuming it is enacted. Thus, this draft does *not* include a provision that reconciles the penalties in the draft and the penalty structure under the "truth in sentencing" legislation. Such a provision can be added in a later redraft or an amendment, whichever is appropriate, once the "truth in sentencing" legislation is enacted or, at least, its fate has becomes clearer.

Jefren E. Olsen
Legislative Attorney
Phone: (608) 266-8906
E-mail: Jefren.Olsen@legis.state.wi.us

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-3117/1dn
JEO:jlg:km

December 21, 1999

Rob Richard:

The current impasse on the "truth in sentencing" legislation makes uncertain the final form that legislation will take, assuming it is enacted. Thus, this draft does *not* include a provision that reconciles the penalties in the draft and the penalty structure under the "truth in sentencing" legislation. Such a provision can be added in a later redraft or an amendment, whichever is appropriate, once the "truth in sentencing" legislation is enacted or, at least, its fate has become clearer.

Jefren E. Olsen
Senior Legislative Attorney
Phone: (608) 266-8906
E-mail: Jefren.Olsen@legis.state.wi.us

**SUBMITTAL
FORM**

**LEGISLATIVE REFERENCE BUREAU
Legal Section Telephone: 266-3561
5th Floor, 100 N. Hamilton Street**

The attached draft is submitted for your inspection. Please check each part carefully, proofread each word, and sign on the appropriate line(s) below.

Date: 12/21/1999

To: Representative Freese

Relating to LRB drafting number: LRB-3117

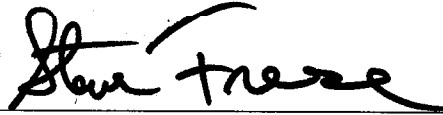
Topic

Waste from methamphetamine production

Subject(s)

Criminal Law - drugs

1. JACKET the draft for introduction



in the Senate _____ or the Assembly (check only one). Only the requester under whose name the drafting request is entered in the LRB's drafting records may authorize the draft to be submitted. Please allow one day for the preparation of the required copies.

2. REDRAFT. See the changes indicated or attached _____

A revised draft will be submitted for your approval with changes incorporated.

3. Obtain FISCAL ESTIMATE NOW, prior to introduction _____

If the analysis indicates that a fiscal estimate is required because the proposal makes an appropriation or increases or decreases existing appropriations or state or general local government fiscal liability or revenues, you have the option to request the fiscal estimate prior to introduction. If you choose to introduce the proposal without the fiscal estimate, the fiscal estimate will be requested automatically upon introduction. It takes about 10 days to obtain a fiscal estimate. Requesting the fiscal estimate prior to introduction retains your flexibility for possible redrafting of the proposal.

If you have any questions regarding the above procedures, please call 266-3561. If you have any questions relating to the attached draft, please feel free to call me.

Jefren E. Olsen, Senior Attorney
Telephone: (608) 266-8906

Olsen, Jefren

From: Richard, Rob
Sent: Thursday, January 13, 2000 11:26 AM
To: Olsen, Jefren
Subject: FW:

Mr. Olsen:

Please read the concerns below regarding LRB-3117 brought forth by JoAnna Richard of the AG's office. Please do nothing if you believe the language you have included in the draft will take care of the AG's concerns, but if she raises some valid points, can you please make the appropriate changes and let me know so I can return the jacket.

Thank you!

Rob Richard
Freese Office
266-7502

*meth waste ^{can lawfully} possessed ~~etc.~~ or
disposed of by another*

-----Original Message-----

From: Richard, JoAnna M.
Sent: Thursday, January 13, 2000 11:05 AM
To: Richard, Rob
Subject: RE:

Rob,

One of our environmental attorneys brought up the following concern:

The exemption contained in the legislation for those that comply with the State's environmental laws is problematic. For example, if the discovered meth waste turns out to not be a hazardous waste and is only a solid waste, the possessor of the waste would be immune from prosecution if he or she could establish that he or she safely stored the material and planned to take it to a licensed landfill or proper disposal pursuant to Wis. Stat. ch. 289. Even if discovered meth waste tested hazardous, exemption for small quantity generators found in NR 610 and those for "household wastes" found in Wis. Admin. Code could exempt them.

You may want to check with LRB if we can define this tighter or somehow fix it in administrative rule. I would hope that a simple amendment will take care of it.

Also, can LRB check to see that Law Enforcement (including the Wisconsin Crime Lab) are exempt from the storage criteria. In some cases, they may have evidence in storage or even precursors stored in their usual evidence lockers. In most cases, the hazardous materials are not held, they are cleaned up, but we may want to exempt them (law enforcement) in case the definition is broadly interpreted. If LRB thinks this is not a problem, I'm comfortable with their interpretation. Our lawyers just might be a little too sensitive but it might be good to check out.

I'll let you know if we run across anything else.

Jo

Soon

2
P.M.P.

1999 BILL

Regen

1 AN ACT to amend 961.573 (1), 961.573 (2), 961.574 (1), 961.574 (2) and 961.575
 2 (1); and to create 961.437, 961.573 (3), 961.574 (3) and 961.575 (3) of the
 3 statutes; relating to: possession and disposal of waste produced by the illegal
 4 manufacture of the controlled substance methamphetamine, possession of
 5 paraphernalia used in the manufacture of the controlled substance
 6 methamphetamine and providing penalties.

Analysis by the Legislative Reference Bureau

Possession and disposal of methamphetamine manufacturing waste

Current law regulates the storage, treatment and disposal of hazardous and solid waste and provides penalties for the improper disposal of hazardous or solid waste. Current law also prohibits the unlawful manufacture of the controlled substance methamphetamine or a controlled substance analog of methamphetamine.

This bill creates prohibitions relating to methamphetamine manufacturing waste, which is any material or article that results from or is produced by the unlawful manufacture of methamphetamine or a controlled substance analog of methamphetamine. Specifically, the bill prohibits a person from knowingly possessing methamphetamine manufacturing waste or intentionally disposing of methamphetamine manufacturing waste by discharging, depositing, injecting,

BILL

✓
if the waste had previously been possessed or disposed of in violation of the prohibitions

dumping, spilling, leaking or placing methamphetamine manufacturing waste into or on any land or water in a manner that may permit the waste to be emitted into the air, to be discharged into any waters of the state or otherwise to enter the environment. A person who violates the prohibitions created in the bill is subject to the following penalties:

1. For a first offense, the person must be fined not less than \$1,000 nor more than \$100,000 or imprisoned for not more than seven years and six months or both.

2. For a second or subsequent offense, the person must be fined not less than \$5,000 nor more than \$150,000 or imprisoned for not more than 15 years or both.

The prohibitions in the bill relating to methamphetamine manufacturing waste do not apply to a person who is possessing or disposing of methamphetamine manufacturing waste in compliance with current law governing the storage, treatment and disposal of hazardous or solid waste.

Possession of paraphernalia used to manufacture methamphetamine

Current law prohibits the possession, use, manufacture and delivery of drug paraphernalia. Drug paraphernalia includes any object or item that is used, designed for use or primarily intended for use in unlawfully manufacturing, producing, processing, preparing or storing a controlled substance. A person who possesses or uses drug paraphernalia may be fined not more than \$500 or imprisoned for not more than 30 days or both. A person who manufactures or delivers drug paraphernalia may be fined not more than \$1,000 or imprisoned for not more than 90 days or both, except that if a person delivers drug paraphernalia to a minor the person may be fined not more than \$10,000 or imprisoned for not more than nine months or both.

This bill increases the penalties for methamphetamine-related violations of the current drug paraphernalia prohibitions. Specifically, under the bill a person may be fined not more than \$10,000 or imprisoned for not more than five years or both if the person uses or delivers drug paraphernalia, or possesses or manufactures drug paraphernalia with intent to use or deliver the paraphernalia, knowing that the drug paraphernalia will be primarily used to unlawfully manufacture, compound, produce, process, prepare, test, analyze, pack, repack or store methamphetamine or a controlled substance analog of methamphetamine. The bill also provides that a person may be fined not more than \$50,000 or imprisoned for not more than ten years or both if the person delivers drug paraphernalia to a minor knowing that the drug paraphernalia will be primarily used to unlawfully manufacture, compound, produce, process, prepare, test, analyze, pack, repack or store methamphetamine or a controlled substance analog of methamphetamine.

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

1 SECTION 1. 961.437 of the statutes is created to read:

BILL

1 **961.437 Possession and disposal of waste from manufacture of**
2 **methamphetamine.** (1) In this section:

3 (a) "Dispose of" means discharge, deposit, inject, dump, spill, leak or place
4 methamphetamine manufacturing waste into or on any land or water in a manner
5 that may permit the waste to be emitted into the air, to be discharged into any waters
6 of the state or otherwise to enter the environment.

7 (b) "Intentionally" has the meaning given in s. 939.23 (3).

8 (c) "Methamphetamine manufacturing waste" means any solid, semisolid,
9 liquid or contained gaseous material or article that results from or is produced by the
10 manufacture of methamphetamine or a controlled substance analog of
11 methamphetamine in violation of this chapter.

12 (2) ~~Except as provided in sub. (3),~~ no person may do any of the following:

13 (a) Knowingly possess methamphetamine manufacturing waste.

14 (b) Intentionally dispose of methamphetamine manufacturing waste.

15 (3) A person may possess or dispose of methamphetamine manufacturing
16 waste if the person is storing, treating or disposing of the waste in compliance with
17 chs. 287, 289, 291 and 292.

18 (4) A person who violates sub. (2) is subject to the following penalties:

19 (a) For a first offense, the person shall be fined not less than \$1,000 nor more
20 than \$100,000 or imprisoned for not more than 7 years and 6 months or both.

21 (b) For a 2nd or subsequent offense, the person shall be fined not less than
22 \$5,000 nor more than \$150,000 or imprisoned for not more than 15 years or both.

23 (5) Each day of a continuing violation of sub. (2) (a) or (b) constitutes a separate
24 offense.

25 **SECTION 2.** 961.573 (1) of the statutes is amended to read:

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3-15

BILL

1 961.573 (1) No person may use, or possess with the primary intent to use, drug
2 paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture,
3 compound, convert, produce, process, prepare, test, analyze, pack, repack, store,
4 contain, conceal, inject, ingest, inhale or otherwise introduce into the human body
5 a controlled substance or controlled substance analog in violation of this chapter.
6 Any person who violates this section subsection may be fined not more than \$500 or
7 imprisoned for not more than 30 days or both.

8 **SECTION 3.** 961.573 (2) of the statutes is amended to read:

9 961.573 (2) Any person who violates ~~this section~~ sub. (1) who is under 17 years
10 of age is subject to a disposition under s. 938.344 (2e).

11 **SECTION 4.** 961.573 (3) of the statutes is created to read:

12 961.573 (3) No person may use, or possess with the primary intent to use, drug
13 paraphernalia to manufacture, compound, convert, produce, process, prepare, test,
14 analyze, pack, repack or store methamphetamine or a controlled substance analog
15 of methamphetamine in violation of this chapter. Any person who violates this
16 subsection may be fined not more than \$10,000 or imprisoned for not more than 5
17 years or both.

18 **SECTION 5.** 961.574 (1) of the statutes is amended to read:

19 961.574 (1) No person may deliver, possess with intent to deliver, or
20 manufacture with intent to deliver, drug paraphernalia, knowing that it will be
21 primarily used to plant, propagate, cultivate, grow, harvest, manufacture,
22 compound, convert, produce, process, prepare, test, analyze, pack, repack, store,
23 contain, conceal, inject, ingest, inhale or otherwise introduce into the human body
24 a controlled substance or controlled substance analog in violation of this chapter.

BILL

1 Any person who violates this ~~section~~ subsection may be fined not more than \$1,000
2 or imprisoned for not more than 90 days or both.

3 **SECTION 6.** 961.574 (2) of the statutes is amended to read:

4 961.574 (2) Any person who violates ~~this section~~ sub. (1) who is under 17 years
5 of age is subject to a disposition under s. 938.344 (2e).

6 **SECTION 7.** 961.574 (3) of the statutes is created to read:

7 961.574 (3) No person may deliver, possess with intent to deliver, or
8 manufacture with intent to deliver, drug paraphernalia, knowing that it will be
9 primarily used to manufacture, compound, convert, produce, process, prepare, test,
10 analyze, pack, repack or store methamphetamine or a controlled substance analog
11 of methamphetamine in violation of this chapter. Any person who violates this
12 subsection may be fined not more than \$10,000 or imprisoned for not more than 5
13 years or both.

14 **SECTION 8.** 961.575 (1) of the statutes is amended to read:

15 961.575 (1) Any person 17 years of age or over who violates s. 961.574 (1) by
16 delivering drug paraphernalia to a person 17 years of age or under who is at least 3
17 years younger than the violator may be fined not more than \$10,000 or imprisoned
18 for not more than 9 months or both.

19 **SECTION 9.** 961.575 (3) of the statutes is created to read:

20 961.575 (3) Any person 17 years of age or over who violates s. 961.574 (3) by
21 delivering drug paraphernalia to a person 17 years of age or under may be fined not
22 more than \$50,000 or imprisoned for not more than 10 years or both.

23 (END)

1999-2000 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3117/2ins
JEO:.....

1 **INSERT 3-15:**

2 (3) Subsection (2)[✓] does not apply to a person who possesses or disposes of
3 methamphetamine manufacturing waste under all of the following circumstances:

4 (a) The person is storing, treating or disposing of the waste in compliance with
5 chs. 287, 289, 291 and 292.[✓]

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